

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **Senate Bill 552**

BY SENATOR MAYNARD

[Introduced February 7, 2019; Referred  
to the Committee on Banking and Insurance; and then to  
the Committee on the Judiciary]

1 A BILL to amend and reenact §29-12-2, §29-12-3, §29-12-4, and §29-12-5 of the Code of West  
 2 Virginia, 1931, as amended; and to amend said code by adding thereto a new section,  
 3 designated §29-12-5d, all relating to reforming the practice of securing state insurance;  
 4 reasserting the sovereign immunity of the State of West Virginia and the qualified immunity  
 5 of its officers and employees as to any damages in excess of state insurance; providing  
 6 for the process by which settlement of claims be approved; limiting attorney fees in  
 7 instances of settlement of claims against state insurance or entry of final judgment for a  
 8 claimant; establishing the extent of the amount of the state's insurance coverage;  
 9 establishing term limits for members of the state Board of Risk and Insurance  
 10 Management; providing that the Insurance Commissioner submits the report of the board's  
 11 activities and providing for certain information to be contained in the report; providing that  
 12 appointed members of the Board of Risk and Insurance Management serve at the  
 13 pleasure of the Governor; clarifying that the Director of the Board of Insurance and Risk  
 14 Management shall hold no other employment; requiring any person who files a claim  
 15 against the state which is subject to state insurance to reimburse the state for its costs of  
 16 defense in the event a verdict is entered for the state; and limiting attorney fees in  
 17 settlement of claims.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 12. STATE INSURANCE.**

### **§29-12-2. Definitions.**

1 As used in this article, unless the context otherwise clearly requires:

2 ~~(a)~~ "Board" means the state Board of Risk and Insurance Management;

3 "Board of Public Works" means the corporation established in §5-4-1 of this code;

4 ~~(b)~~ "Company" means and includes corporations, associations, partnerships and  
 5 individuals;

6 ~~(c)~~ "Insurance" means all forms of insurance and bonding services available for protection

7 and indemnification of the state and its officials, employees, properties, activities and  
8 responsibilities against loss or damage or liability, including fire, marine, casualty, and surety  
9 insurance;

10 ~~(d)~~ "Insurance company" means all insurers or insurance carriers, including, but not limited  
11 to, stock insurance companies, mutual insurance companies, reciprocal and interinsurance  
12 exchanges, and all other types of insurers and insurance carriers, including life, accident, health,  
13 fidelity, indemnity, casualty, hospitalization and other types and kinds of insurance companies,  
14 organizations and associations, but excepting and excluding workers' compensation coverage;

15 ~~(e)~~ "State property activities" and "state responsibilities" means and includes all  
16 operations, boards, commissions, works, projects and functions of the state, its properties,  
17 officials, agents and employees which, within the scope and in the course of governmental  
18 employment, may be subject to liability, loss, damage, risks and hazards recognized to be and  
19 normally included within insurance and bond coverages; and

20 ~~(f)~~ "State property" means all property belonging to the State of West Virginia and any  
21 boards or commissions thereof wherever situated and which is the subject of risk or reasonably  
22 considered to be subject to loss or damage or liability by any single occurrence of any event  
23 insured against.

**§29-12-3. State Board of Risk and Insurance Management; creation, composition,  
qualifications, and compensation.**

1 (a)(1) The "state board of insurance of West Virginia" is hereby reestablished,  
2 reconstituted and continued as the state Board of Risk and Insurance Management. The board  
3 shall be composed of five members. One member shall be the vice chancellor of health sciences  
4 of the West Virginia Higher Education Policy Commission. The remaining four members shall be  
5 appointed by the Governor with the advice and consent of the Senate and shall serve at the  
6 pleasure of the Governor. One member shall be appointed by the Governor from a list of three  
7 eligible persons submitted to the Governor by the President of the Senate, and one member shall

8 be appointed by the Governor from a list of three eligible persons submitted to the Governor by  
9 the Speaker of the House of Delegates. Each member shall be a resident of West Virginia and  
10 shall have experience in one or more of the following areas: law, accounting, business, insurance  
11 or actuarial science.

12 (2) Initial appointment of the members other than the vice chancellor for health sciences  
13 shall be for the following terms:

14 One member shall be appointed for a term ending June 30, 2003;

15 One member shall be appointed for a term ending June 30, 2004;

16 One member shall be appointed for a term ending June 30, 2005; and

17 One member shall be appointed for a term ending June 30, 2006.

18 (3) Except for appointments to fill vacancies, each subsequent appointment shall be for a  
19 term ending June 30 of the fourth year following the year the preceding term expired. In the event  
20 a vacancy occurs it shall be filled by appointment for the unexpired term. A member whose term  
21 has expired shall continue in office until a successor has been duly appointed and qualified:  
22 Provided: That no member, other than the vice chancellor of health sciences of the West Virginia  
23 Higher Education Policy Commission and the Insurance Commissioner of West Virginia, shall  
24 serve for a cumulative period of time greater than four years. No member of the board may be  
25 removed from office by the Governor except for official misconduct, incompetency, neglect of  
26 duty, or gross immorality

27 (4) Members of the board appointed prior to the reenactment of this article during the sixth  
28 extraordinary session of the 2001 Legislature, shall serve until December 15, 2001.

29 (b) The Insurance Commissioner of West Virginia shall serve as secretary of the board  
30 without vote and shall make available to the board the information, facilities, and services of the  
31 office of the state Insurance Commissioner.

32 (c) The members of the board shall receive from the executive director of the board the  
33 same compensation authorized by law for members of the Legislature for the interim duties for

34 each day, or portion thereof, the member is engaged in the discharge of official duties. All board  
35 members shall be reimbursed for their actual and necessary expenses incurred in the discharge  
36 of official duties, except that mileage shall be reimbursed at the same rate as that authorized for  
37 members of the Legislature.

38 (d) Notwithstanding any provision of this section to the contrary, the board is subject to the  
39 provisions of §29-12-12 of this code.

**§29-12-4. Organization, meetings, records and reports of board.**

1 The board shall select one of its members as chairman and shall meet in the office of the  
2 Insurance Commissioner upon call of the chairman. The board shall keep records of all of its  
3 proceedings which shall be public and open to inspection, shall adopt a seal and shall exercise  
4 and perform the duties prescribed by this article.

5 ~~The board~~ In his or her capacity as the secretary of the board, the Insurance  
6 Commissioner shall prepare and submit a report in writing to the Governor, Legislative Auditor,  
7 and budget director on or before August 31 of each year. Such report shall contain a summary of  
8 the board's proceedings during the preceding fiscal year including a detailed and itemized  
9 statement and summary of all state insurance procured by the board during such fiscal year. The  
10 report shall also contain, at a minimum:

11 (1) A list of claims filed against the state during the period of time covered by each report,  
12 containing at a minimum, the names of each claimant, the nature of the claim, whether the  
13 claimant was or is represented by an attorney, and if so, the name of the attorney or attorneys  
14 and law firm representing the claimant, and the sum of damages initially sought for each claim;

15 (2) The disposition or status of each claim as of the date of the report, whether paid, tried,  
16 settled, pending, or otherwise disposed and for those claims settled the votes of the board  
17 members, whether to accept or reject a settlement of the claim;

18 (3) The costs to the state or its insurer for the defense, if any, of each claim as of the date  
19 of the report, including the name and law firm of any attorney representing the state in defending

20 the claim;

21 (4) For those claims which result in a payment by the state or its insurer, the amount finally  
22 paid to each claimant at the close of the claim;

23 (5) Whether the state agency or officer against whom each claim is made has contested  
24 the factual basis for the claim;

25 (6) The funds received by the board during the most recently concluded fiscal year and  
26 the prior four fiscal years, including state agency premiums, mine subsidence premiums, and  
27 political subdivision premiums, interest income, and investment returns;

28 (7) The amounts paid by the board in claims, vendor fees, reinsurance premiums, or any  
29 other expenses itemized by type, during the most recently concluded fiscal year and the prior four  
30 fiscal years; and

31 (8) All funds held in accounts on behalf of the board.

**§29-12-5. Powers and duties of board.**

1 (a)(1) The board has, without limitation and in its discretion as it seems necessary for the  
2 benefit of the insurance program, general supervision and control over the insurance of state  
3 property, activities, and responsibilities, including:

4 (A) The acquisition and cancellation of state insurance: Provided, That the State of West  
5 Virginia does hereby ratify, reassert, and affirm its sovereign immunity, and the qualified immunity  
6 of its officers or employees, under the Constitution of the United States and the Constitution of  
7 the State of West Virginia;

8 (B) Determination of the kind or kinds of coverage;

9 (C) Determination of the amount or limits for each kind of coverage: Provided, That no  
10 policy of insurance issued pursuant to this article shall cover more than \$500,000 in losses, per  
11 occurrence, inclusive of any payments made to an attorney or other party representing a claimant;

12 (D) Determination of the conditions, limitations, exclusions, endorsements, amendments,  
13 and deductible forms of insurance coverage: Provided, That no policy of state insurance shall

14 permit the settlement of claims in contravention of the settlement provisions contained in this  
15 article;

16 (E) Inspections or examinations relating to insurance coverage of state property, activities,  
17 and responsibilities;

18 (F) Reinsurance; and

19 (G) Any and all matters, factors and considerations entering into negotiations for  
20 advantageous rates on and coverage of such state property, activities, and responsibilities.

21 (2) The board shall endeavor to secure reasonably broad protection against loss, damage,  
22 or liability to state property and on account of state activities and responsibilities by proper,  
23 adequate, available, and affordable insurance coverage and through the introduction and  
24 employment of sound and accepted principles of insurance, methods of protection, and principles  
25 of loss control and risk.

26 (3) The board is not required to provide insurance for every state property, activity, or  
27 responsibility.

28 (4) Any policy of insurance purchased or contracted for by the board shall provide that the  
29 insurer shall be barred and estopped from relying upon the constitutional immunity of the State of  
30 West Virginia against claims or suits: *Provided*, That nothing herein shall bar a state agency or  
31 state instrumentality from relying on the constitutional immunity granted the State of West Virginia  
32 against claims or suits arising from or out of any state property, activity, or responsibility not  
33 covered by a policy or policies of insurance: *Provided, however*, That nothing herein shall bar the  
34 insurer of political subdivisions from relying upon any statutory immunity granted such political  
35 subdivisions against claims or suits.

36 (5) The board shall make a complete survey of all presently owned and subsequently  
37 acquired state property subject to insurance coverage by any form of insurance, which survey  
38 shall include and reflect inspections, appraisals, exposures, fire hazards, construction, and any  
39 other objectives or factors affecting or which might affect the insurance protection and coverage

40 required.

41 (6) The board shall keep itself currently informed on new and continuing state activities  
42 and responsibilities within the insurance coverage herein contemplated. The board shall work  
43 closely in cooperation with the state Fire Marshal's office in applying the rules of that office insofar  
44 as the appropriations and other factors peculiar to state property will permit.

45 (7) The board may negotiate and effect, subject to the provisions of subsection (b) of this  
46 section, settlement of any and all insurance claims arising on or incident to losses of and damages  
47 to covered state properties, activities and responsibilities hereunder and shall have authority to  
48 execute and deliver proper releases of all such claims when settled. The board may adopt rules  
49 and procedures for handling, negotiating, and ~~settlement of~~ settling all such claims. Any  
50 discussion or consideration of the financial or personal information of an insured may be held by  
51 the board in executive session closed to the public, notwithstanding the provisions of §6-9A-1 *et*  
52 *seq.* of this code.

53 (8) The board may employ an executive director and such other employees, including  
54 legal counsel, as may be necessary to carry out its duties. The executive director shall receive an  
55 annual salary as provided in §6-7-2a of this code. The executive director shall devote full time to  
56 his or her duties to the exclusion of any other employment. The legal counsel may represent the  
57 board before any judicial or administrative tribunal and perform such other duties as may be  
58 requested by the board.

59 (9) The board may enter into any contracts necessary to the execution of the powers  
60 granted to it by this article or to further the intent of this article.

61 (10) The board may ~~make rules~~ propose rules for legislative approval governing its  
62 functions and operations and the procurement of state insurance. Except where otherwise  
63 provided by statute, rules of the board are subject to the provisions of §29A-3-1 *et seq.* of this  
64 code.

65 (11) The funds received by the board, including, but not limited to, state agency premiums,



66 mine subsidence premiums, and political subdivision premiums, shall be deposited with the West  
67 Virginia Investment Management Board with the interest income and returns on investment a  
68 proper credit to such property insurance trust fund or liability insurance trust fund as applicable.

69 (12) Should the board recommend that an insurance claim against the state be settled,  
70 such settlement shall be subject to the provisions of subsection (b) of this section. No policy of  
71 insurance entered into by the board may provide that the state loses its insurance coverage in  
72 the event it declines to settle an insurance claim against the advice of the board or of any vendor  
73 of state insurance.

74 (b) Settlement of Claims Against State Agencies or Offices. – (1) Should the board  
75 recommend that an insurance claim against a state agency or office be settled, the board shall  
76 make such recommendation in writing to the state’s constitutional officer (whether the Governor,  
77 Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Superintendent of  
78 Free Schools, or Treasurer) under whose authority or supervision the state agency or employee,  
79 against which the claim is alleged, lies. The constitutional officer shall accept or reject the  
80 recommendation of the board, in writing delivered to the board within five business days of receipt  
81 of the board’s written recommendation. In the event that the constitutional officer rejects the  
82 board’s written recommendation to settle the claim, the board may by unanimous vote of all  
83 members appeal the constitutional officer’s rejection to the Board of Public Works. The Board of  
84 Public Works shall consider the appeal at its next regular meeting, or may call an emergency  
85 meeting for the purposes of considering the appeal, and may accept or reject the board’s  
86 recommendation to settle a claim by majority vote. The constitutional officer who rejected the  
87 board’s recommendation may fully participate and vote on the question as a member of the Board  
88 of Public Works.

89 (2) Should a claim against state insurance be settled, any fees payable to an attorney  
90 representing the claimant shall not exceed 15 percent of the settlement amount. Should a claim  
91 against state insurance not be settled and a final order of judgment be entered for the claimant,

92 any fees payable to an attorney representing the claimant shall not exceed 20 percent of the  
93 amount awarded to the claimant. The settlement amount or damage award paid to a claimant,  
94 together with any attorney fees, shall not exceed in the aggregate \$500,000 per occurrence.

95 ~~(b)~~ (c) (1) *Definitions.* -- The following words and phrases when used in this subsection,  
96 for the purposes of this subsection, have the meanings respectively ascribed to them in this  
97 subsection;

98 (A) "Political subdivision" has the same meaning as in §29-12A-3 of this code;

99 (B) "Charitable" or "public service organization" means any hospital in this state which has  
100 been certified as a critical access hospital by the federal Centers for Medicare and Medicaid upon  
101 the designation of the state Office of Rural Health Policy, the Office of Community and Rural  
102 Health Services, the Bureau for Public Health or the Department of Health and Human Resources  
103 and any bona fide, not-for-profit, tax-exempt, benevolent, educational, philanthropic, humane,  
104 patriotic, civic, religious, eleemosynary, incorporated or unincorporated association or  
105 organization, or a rescue unit or other similar volunteer community service organization or  
106 association, but does not include any nonprofit association or organization, whether incorporated  
107 or not, which is organized primarily for the purposes of influencing legislation or supporting or  
108 promoting the campaign of any candidate for public office; and

109 (C) "Emergency medical service agency" has the same meaning as in §16-4C-3 of this  
110 code.

111 (2) If requested by a political subdivision, a charitable or public service organization, or an  
112 emergency medical services agency, the board may, but is not required to, provide property and  
113 liability insurance to insure the property, activities, and responsibilities of the political subdivision,  
114 charitable or public service organization or emergency medical services agency. The board may  
115 enter into any contract necessary to the execution of the powers granted by this article or to further  
116 the intent of this article.

117 (A) Property insurance provided by the board pursuant to this subsection may also include

118 insurance on property leased to or loaned to the political subdivision, a charitable or public service  
119 organization, or an emergency medical services agency, which is required to be insured under a  
120 written agreement.

121 (B) The cost of insurance, as determined by the board, shall be paid by the political  
122 subdivision, the charitable or public service organization, or the emergency medical services  
123 agency and may include administrative expenses. For purposes of this section, if an emergency  
124 medical services agency is a for-profit entity, its claims history may not adversely affect other  
125 participants' rates in the same class.

126 ~~(e)~~ (d) (1) The board has general supervision and control over the optional medical liability  
127 insurance programs providing coverage to health care providers as authorized by the provisions  
128 of §29-12B-1 *et seq.* of this code. The board is hereby granted and may exercise all powers  
129 necessary or appropriate to carry out and effectuate the purposes of this article.

130 (2) The board shall:

131 (A) Administer the preferred medical liability program and the high risk medical liability  
132 program and exercise and perform other powers, duties, and functions specified in this article;

133 (B) Obtain and implement, at least annually, from an independent outside source, such as  
134 a medical liability actuary or a rating organization experienced with the medical liability line of  
135 insurance, written rating plans for the preferred medical liability program and high risk medical  
136 liability program on which premiums shall be based;

137 (C) Prepare and annually review written underwriting criteria for the preferred medical  
138 liability program and the high risk medical liability program. The board may utilize review panels,  
139 including, but not limited to, the same specialty review panels to assist in establishing criteria;

140 (D) Prepare and publish, before each regular session of the Legislature, separate  
141 summaries for the preferred medical liability program and high risk medical liability program  
142 activity during the preceding fiscal year, each summary to be included in the Board of Risk and  
143 Insurance Management audited financial statements as "other financial information" and which

144 shall include a balance sheet, income statement and cash flow statement, an actuarial opinion  
145 addressing adequacy of reserves, the highest and lowest premiums assessed, the number of  
146 claims filed with the program by provider type, the number of judgments and amounts paid from  
147 the program, the number of settlements and amounts paid from the program, and the number of  
148 dismissals without payment;

149 (E) Determine and annually review the claims history debit or surcharge for the high risk  
150 medical liability program;

151 (F) Determine and annually review the criteria for transfer from the preferred medical  
152 liability program to the high risk medical liability program;

153 (G) Determine and annually review the role of independent agents, the amount of  
154 commission, if any, to be paid therefor and agent appointment criteria;

155 (H) Study and annually evaluate the operation of the preferred medical liability program  
156 and the high risk medical liability program and make recommendations to the Legislature, as may  
157 be appropriate, to ensure their viability, including, but not limited to, recommendations for civil  
158 justice reform with an associated cost-benefit analysis, recommendations on the feasibility and  
159 desirability of a plan which would require all health care providers in the state to participate with  
160 an associated cost-benefit analysis, recommendations on additional funding of other state-run  
161 insurance plans with an associated cost-benefit analysis and recommendations on the desirability  
162 of ceasing to offer a state plan with an associated analysis of a potential transfer to the private  
163 sector with a cost-benefit analysis, including impact on premiums;

164 (I) Establish a five-year financial plan to ensure an adequate premium base to cover the  
165 long-tail nature of the claims-made coverage provided by the preferred medical liability program  
166 and the high risk medical liability program. The plan shall be designed to meet the program's  
167 estimated total financial requirements, taking into account all revenues projected to be made  
168 available to the program and apportioning necessary costs equitably among participating classes  
169 of health care providers. For these purposes, the board shall:

170 (i) Retain the services of an impartial, professional actuary, with demonstrated experience  
171 in analysis of large group malpractice plans, to estimate the total financial requirements of the  
172 program for each fiscal year and to review and render written professional opinions as to financial  
173 plans proposed by the board. The actuary shall also assist in the development of alternative  
174 financing options and perform any other services requested by the board or the executive director.  
175 All reasonable fees and expenses for actuarial services shall be paid by the board. Any financial  
176 plan or modifications to a financial plan approved or proposed by the board pursuant to this  
177 section shall be submitted to and reviewed by the actuary and may not be finally approved and  
178 submitted to the Governor and to the Legislature without the actuary's written professional opinion  
179 that the plan may be reasonably expected to generate sufficient revenues to meet all estimated  
180 program and administrative costs, including incurred but not reported claims, for the fiscal year  
181 for which the plan is proposed. The actuary's opinion for any fiscal year shall include a  
182 requirement for establishment of a reserve fund;

183 (ii) Submit its final, approved five-year financial plan, after obtaining the necessary  
184 actuary's opinion, to the Governor and to the Legislature no later than January 1, preceding the  
185 fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the  
186 executive director on July 1, of the fiscal year. In addition to each final, approved financial plan  
187 required under this section, the board shall also simultaneously submit an audited financial  
188 statement based on generally accepted accounting practices (GAAP) and which shall include  
189 allowances for incurred but not reported claims: *Provided*, That the financial statement and the  
190 accrual-based financial plan restatement shall not affect the approved financial plan. The  
191 provisions of Chapter 29A of this code shall not apply to the preparation, approval and  
192 implementation of the financial plans required by this section;

193 (iii) Submit to the Governor and the Legislature a prospective five-year financial plan  
194 beginning on January 1, 2003, and every year thereafter, for the programs established by the  
195 provisions of §29-12B-1 *et seq.* of this code. Factors that the board shall consider include, but

196 shall not be limited to, the trends for the program and the industry; claims history, number and  
197 category of participants in each program; settlements and claims payments; and judicial results;

198 (iv) Obtain annually certification from participants that they have made a diligent search  
199 for comparable coverage in the voluntary insurance market and have been unable to obtain the  
200 same;

201 (J) Meet on at least a quarterly basis to review implementation of its current financial plan  
202 in light of the actual experience of the medical liability programs established in §29-12B-1 *et seq.*  
203 of this code. The board shall review actual costs incurred, any revised cost estimates provided by  
204 the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may  
205 make any additional modifications to the plan necessary to ensure that the total financial  
206 requirements of these programs for the current fiscal year are met;

207 (K) To analyze the benefit of and necessity for excess verdict liability coverage;

208 (L) Consider purchasing reinsurance, in the amounts as it may, from time to time,  
209 determine is appropriate, and the cost thereof shall be considered to be an operating expense of  
210 the board;

211 (M) Make available to participants optional extended reporting coverage or tail coverage:  
212 *Provided, That,* at least five working days prior to offering such coverage to a participant or  
213 participants, the board shall notify the President of the Senate and the Speaker of the House of  
214 Delegates in writing of its intention to do so and such notice shall include the terms and conditions  
215 of the coverage proposed;

216 (N) Review and approve, reject or modify rules that are proposed by the executive director  
217 to implement, clarify or explain administration of the preferred medical liability program and the  
218 high risk medical liability program. Notwithstanding any provisions in this code to the contrary,  
219 rules promulgated pursuant to this paragraph are not subject to the provisions of §29A-3-9  
220 through §29A-3-16, inclusive, of this code. The board shall comply with the remaining provisions  
221 of article three and shall hold hearings or receive public comments before promulgating any

222 proposed rule filed with the Secretary of State: *Provided*, That the initial rules proposed by the  
223 executive director and promulgated by the board shall become effective upon approval by the  
224 board notwithstanding any provision of this code;

225 (O) Enter into settlements and structured settlement agreements whenever appropriate.

226 The policy may not require as a condition precedent to settlement or compromise of any claim  
227 the consent or acquiescence of the policyholder. The board may own or assign any annuity  
228 purchased by the board to a company licensed to do business in the state;

229 (P) Refuse to provide insurance coverage for individual physicians whose prior loss  
230 experience or current professional training and capability are such that the physician represents  
231 an unacceptable risk of loss if coverage is provided;

232 (Q) Terminate coverage for nonpayment of premiums upon written notice of the  
233 termination forwarded to the health care provider not less than 30 days prior to termination of  
234 coverage;

235 (R) Assign coverage or transfer insurance obligations and/or risks of existing or in-force  
236 contracts of insurance to a third-party medical professional liability insurance carrier with the  
237 comparable coverage conditions as determined by the board. Any transfer of obligation or risk  
238 shall effect a novation of the transferred contract of insurance and if the terms of the assumption  
239 reinsurance agreement extinguish all liability of the board and the State of West Virginia, such  
240 extinguishment shall be absolute as to any and all parties; and

241 (S) Meet and consult with and consider recommendations from the Medical Malpractice  
242 Advisory Panel established by the provisions of §29-12B-1 *et seq.* of this code.

243 ~~(d)~~ (e) If, after September 1, 2002, the board has assigned coverages or transferred all  
244 insurance obligations and/or risks of existing or in-force contracts of insurance to a third-party  
245 medical professional liability insurance carrier, and the board otherwise has no covered  
246 participants, then the board shall not thereafter offer or provide professional liability insurance to  
247 any health care provider pursuant to the provisions of subsection ~~(e)~~ (d) of this section or the

248 provisions of §29-12B-1 *et seq.* of this code unless the Legislature adopts a concurrent resolution  
249 authorizing the board to reestablish medical liability insurance programs.

**§29-12-5d. Reimbursement of state costs to defend meritless insurance claims.**

1           The state shall be entitled to reimbursement for its usual and customary fees, costs, and  
2 expenses to defend an insurance claim if: (1) The person making the claim against the state's  
3 insurance is represented by an attorney; (2) the claimant or the state have elected to try the matter  
4 before a court of competent jurisdiction; and (3) the court returns a judgment in favor of the state.

NOTE: The purpose of this bill is to reform certain practices concerning state insurance. The bill clarifies and reasserts the state's sovereign immunity, under the Eleventh Amendment to the United States Constitution and the Constitution of the State of West Virginia, as to any amounts in excess of any policy of insurance and limits the insurance coverage of the state for any type of insurance to \$500,000 per occurrence. The bill requires the state Insurance Commissioner to report the activities of Board of Risk and Insurance Management, and disclose certain information and statistics relative to claims and payouts as part of its annual report. The bill requires that insurance remain in force should the state elect to not settle a claim, and vests in the state's constitutional officers, and ultimately the Board of Public Works, the final determination as to whether a claim should be settled. The bill establishes term limits for the members of the Board of Risk and Insurance Management, clarifies that the board's executive director shall serve full time and hold no other employment, and establishes the state's right to reimbursement of its defense costs in the event a claim is tried civilly and a verdict is returned for the state. Finally, the bill caps the amount of any settlement which may be payable to an attorney representing a claimant, or the amount of any damages awarded to a claimant payable to any attorney representing a claimant.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.