

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2762

BY DELEGATES STEELE, FOSTER, KESSINGER,
HOUSEHOLDER, HARDY, D. KELLY, BARNHART, MARTIN,
AND D. JEFFRIES

[Introduced February 25, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §55-7B-2 of the Code of West Virginia, 1931, relating to medical
2 professional liability, providing for an exemption to actions arising under the chapter for
3 injuries arising from the practice of elective abortion or elective abortion related services
4 except for any care or treatment provided by a health care provider to correct any harm or
5 injury received due to an elective abortion or elective abortion related service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-2. Definitions.

1 (a) "Board" means the State Board of Risk and Insurance Management.

2 (b) "Collateral source" means a source of benefits or advantages for economic loss that
3 the claimant has received from:

4 (1) Any federal or state act, public program or insurance which provides payments for
5 medical expenses, disability benefits, including workers' compensation benefits, or other similar
6 benefits. Benefits payable under the Social Security Act and Medicare are not considered
7 payments from collateral sources except for Social Security disability benefits directly attributable
8 to the medical injury in question;

9 (2) Any contract or agreement of any group, organization, partnership or corporation to
10 provide, pay for or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy
11 or other health care services or provide similar benefits, but excluding any amount that a group,
12 organization, partnership, corporation or health care provider agrees to reduce, discount or write
13 off of a medical bill;

14 (3) Any group accident, sickness or income disability insurance, any casualty or property
15 insurance, including automobile and homeowners' insurance, which provides medical benefits,
16 income replacement or disability coverage, or any other similar insurance benefits, except life
17 insurance, to the extent that someone other than the insured, including the insured's employer,
18 has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

19 (4) Any contractual or voluntary wage continuation plan provided by an employer or
20 otherwise or any other system intended to provide wages during a period of disability.

21 (c) "Consumer Price Index" means the most recent Consumer Price Index for All
22 Consumers published by the United States Department of Labor.

23 (d) "Emergency condition" means any acute traumatic injury or acute medical condition
24 which, according to standardized criteria for triage, involves a significant risk of death or the
25 precipitation of significant complications or disabilities, impairment of bodily functions or, with
26 respect to a pregnant woman, a significant risk to the health of the unborn child.

27 (e) "Health care" means:

28 (1) Any act, service or treatment provided under, pursuant to or in the furtherance of a
29 physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment;

30 (2) Any act, service or treatment performed or furnished, or which should have been
31 performed or furnished, by any health care provider or person supervised by or acting under the
32 direction of a health care provider or licensed professional for, to or on behalf of a patient during
33 the patient's medical care, treatment or confinement, including, but not limited to, staffing, medical
34 transport, custodial care or basic care, infection control, positioning, hydration, nutrition and
35 similar patient services; and

36 (3) The process employed by health care providers and health care facilities for the
37 appointment, employment, contracting, credentialing, privileging and supervision of health care
38 providers.

39 (4) Notwithstanding any other law, the provisions in this article shall not apply to the
40 practice of elective abortion or elective abortion related services except for any care or treatment
41 provided by a health care provider to correct any harm or injury received due to an abortion or
42 abortion related service.

43 (f) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted living
44 facility, residential care community, end-stage renal disease facility, home health agency, child

45 welfare agency, group residential facility, behavioral health care facility or comprehensive
46 community mental health center, intellectual/developmental disability center or program, or other
47 ambulatory health care facility, in and licensed, regulated or certified by the State of West Virginia
48 under state or federal law and any state-operated institution or clinic providing health care and
49 any related entity to the health care facility.

50 (g) "Health care provider" means a person, partnership, corporation, professional limited
51 liability company, health care facility, entity or institution licensed by, or certified in, this state or
52 another state, to provide health care or professional health care services, including, but not limited
53 to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse,
54 hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist,
55 chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist,
56 psychologist, pharmacist, technician, certified nursing assistant, emergency medical service
57 personnel, emergency medical services authority or agency, any person supervised by or acting
58 under the direction of a licensed professional, any person taking actions or providing service or
59 treatment pursuant to or in furtherance of a physician's plan of care, a health care facility's plan
60 of care, medical diagnosis or treatment; or an officer, employee or agent of a health care provider
61 acting in the course and scope of the officer's, employee's or agent's employment.

62 (h) "Medical injury" means injury or death to a patient arising or resulting from the rendering
63 of or failure to render health care.

64 (i) "Medical professional liability" means any liability for damages resulting from the death
65 or injury of a person for any tort or breach of contract based on health care services rendered, or
66 which should have been rendered, by a health care provider or health care facility to a patient. It
67 also means other claims that may be contemporaneous to or related to the alleged tort or breach
68 of contract or otherwise provided, all in the context of rendering health care services.

69 (j) "Medical professional liability insurance" means a contract of insurance or any
70 actuarially sound self-funding program that pays for the legal liability of a health care facility or

71 health care provider arising from a claim of medical professional liability. In order to qualify as
72 medical professional liability insurance for purposes of this article, a self-funding program for an
73 individual physician must meet the requirements and minimum standards set forth in section
74 twelve of this article.

75 (k) "Noneconomic loss" means losses, including, but not limited to, pain, suffering, mental
76 anguish and grief.

77 (l) "Occurrence" means any and all injuries to a patient arising from health care rendered
78 by a health care facility or a health care provider and includes any continuing, additional or follow-
79 up care provided to that patient for reasons relating to the original health care provided, regardless
80 if the injuries arise during a single date or multiple dates of treatment, single or multiple patient
81 encounters, or a single admission or a series of admissions.

82 (m) "Patient" means a natural person who receives or should have received health care
83 from a licensed health care provider under a contract, expressed or implied.

84 (n) "Plaintiff" means a patient or representative of a patient who brings an action for
85 medical professional liability under this article.

86 (o) "Related entity" means any corporation, foundation, partnership, joint venture,
87 professional limited liability company, limited liability company, trust, affiliate or other entity under
88 common control or ownership, whether directly or indirectly, partially or completely, legally,
89 beneficially or constructively, with a health care provider or health care facility; or which owns
90 directly, indirectly, beneficially or constructively any part of a health care provider or health care
91 facility.

92 (p) "Representative" means the spouse, parent, guardian, trustee, attorney or other legal
93 agent of another.

NOTE: The purpose of this bill is to exempt from this article any actions arising from the practice of abortion or abortion related services except for any care or treatment provided by a health care provider to correct any harm or injury received due to an elective abortion or elective abortion related service.

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