

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5067

By Delegates E. Pritt, Kump, Young,

Forsht, and Hillenbrand

[Originating in the Committee on the Judiciary;

Reported on February 14, 2024]

1 A BILL to amend and reenact §55-7B-4 of the Code of West Virginia, 1931, as amended, relating
2 to clarifying when a minor may bring a medical malpractice cause of action.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-4. Health care injuries; limitations of actions; exceptions; venue.

1 (a) A cause of action for medical injury to a person alleging medical professional liability
2 against a health care provider, except a nursing home, assisted living facility, their related entities
3 or employees, or a distinct part of an acute care hospital providing intermediate care or skilled
4 nursing care or its employees, arises as of the date of medical injury, except as provided in
5 subsection (c) of this section, and must be commenced within two years of the date of such injury
6 or death, or within two years of the date when such person discovers, or with the exercise of
7 reasonable diligence, should have discovered such medical injury, whichever last occurs:
8 *Provided*, That in no event shall any such action be commenced more than 10 years after the date
9 of medical injury.

10 (b) A cause of action for medical injury to a person alleging medical professional liability
11 against a nursing home, assisted living facility, their related entities or employees, or a distinct part
12 of an acute care hospital providing intermediate care or skilled nursing care or its employees
13 arises as of the date of medical injury, except as provided in subsection (c) of this section, and
14 must be commenced within one year of the date of such medical injury, or within one year of the
15 date when such person discovers, or with the exercise of reasonable diligence, should have
16 discovered such injury or death, whichever last occurs: *Provided*, That in no event shall any such
17 action be commenced more than 10 years after the date of medical injury. With the amendments to
18 this subsection enacted in the regular session of the Legislature, 2022, that intends to reinstate
19 and codify a one-year statute of limitations for any cause of action for medical injury resulting in
20 injury or death to a person alleging medical professional liability against a nursing home, assisted

21 living facility, their related entities or employees or a distinct part of an acute care hospital
22 providing intermediate care or skilled nursing care or its employees.

23 (c) A cause of action, brought by or on behalf of a minor, for medical injury to a minor,
24 ~~brought by or on behalf of a minor who was under the age of 10 years at the time of such injury,~~
25 shall be commenced ~~within two years of the date of such injury, or prior to the minor's 12th~~
26 ~~birthday, whichever provides the longer period~~ within two years after the minor turns 18 years old.

27 (d) The periods of limitation set forth in this section shall be tolled for any period during
28 which the health care provider or its representative has committed fraud or collusion by concealing
29 or misrepresenting material facts about the injury.

30 (e) Any medical professional liability action against a nursing home, assisted living facility,
31 related entity or employee, or a distinct part of an acute care hospital providing intermediate care
32 or skilled nursing care or its employees shall be brought in the circuit court of the county in which
33 the nursing home, assisted living facility, or acute care hospital providing intermediate care or
34 skilled nursing care, at which the alleged act of medical professional liability occurred is located,
35 unless otherwise agreed upon by the nursing home, assisted living facility, related entity, or a
36 distinct part of an acute care hospital providing intermediate care or skilled nursing care, and the
37 plaintiff. Nothing in this subsection shall prohibit a party from removing the action to federal court.

NOTE: The purpose of this bill is to clarify when a minor may bring a medical malpractice cause of action.

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