

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5316

By Delegates Steele, Dean, Kirby, McGeehan,
Phillips, C. Pritt, Chiarelli, Holstein, Worrell, Foggin,
and Heckert

[Introduced January 29, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §55-7B-4 of the Code of West Virginia, 1931, as amended, related to
2 limiting the applicability of this article to certain practices by medical care providers.

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 for injury to a minor, brought by or on behalf of a minor who was under
24 the age of ~~40~~ 18 years at the time of such injury, shall be commenced within two years of the date
25 of such injury, or prior to the minor's ~~42th~~ 20th birthday, whichever provides the longer period.

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

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

37 (f) The provisions of this article shall not apply to the provision of services relating to the
38 performance of an abortion, which does not include care provided by a separate medical provider
39 to treat an injury resulting from the provision of abortion services, the provision of pharmaceuticals
40 to induce an abortion, the provision of services to carry out or perform euthanasia, the
41 performance of a surgery or provision of medical care, to include the provision of hormone therapy
42 designed to change the gender attributes of a person, or the provision of medical care under
43 Chapter 16A of this code. Any cause of action brought by a plaintiff due to the circumstances
44 outlined in this subsection shall not be subject to the provisions of §55-7B-1 et seq. of this code.

NOTE: The purpose of this bill is to limit the applicability of this article to certain practices by medical care providers.

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