COMMITTEE ON HEALTH, HOSPITALS AND HUMAN SERVICES

10/22/2026-REPORTED OUT TO THE FLOOR
09/29/2026-AMENDED AND REPORTED OUT TO THE COMMITTEE ON RULES AND JUDICIARY

BILL NO. 36-0048

Thirty-Sixth Legislature of the Virgin Islands

March 28, 2025

An Act amending title 22, Virgin Islands Code, chapter 3 relating to annual rate changes for medical malpractice liability insurance and amending title 27, Virgin Islands Code, chapter 1 by increasing the limitation on recovery in medical malpractice actions from $250,000 to $400,000; designating the records and testimony gathered by quality improvement committees as confidential; and establishing additional requirements for filing medical malpractice claims

PROPOSED BY: Senator Novelle E. Francis, Jr.
Sponsor: Avery L. Lewis

Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 27 Virgin Islands Code, chapter 1, subchapter IX is amended in the following instances:

(a) in section 166i:

(1) in subsection (a):

(A) in the introductory language, strike "The members of the Committee shall be the:" and insert "The Committee consists of the following members:";

(B) in paragraph (1), insert "the" before "Commissioner" and insert a semicolon after "Chairman";

(C) in paragraph (2), insert "the" before "President" and strike ", and" after "territory" and insert a semicolon;

(B) designate the introductory language as paragraph (1);

(C) strike paragraph (3) and redesignate paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(D) add subparagraphs (C) through (F):

"(C) the President of the Virgin Islands Medical Society or his designee;

(D) a physician who shall be a healthcare provider licensed to practice in the Virgin Islands;

(E) a non-professional appointed by the Commissioner of Health. The term "non-professional" means a person who is not a healthcare provider, licensed to practice law, or associated with the insurance industry; and

(F) the Chair of the Virgin Islands Board of Nurse Licensure or his designee if only a nurse, or a nurse and institution, is named as a defendant."

(E) Add paragraphs (2) and (3):

"(2) All members except the Commissioner of Insurance shall serve a term of two years.

(3) No member of the Committee will be permitted to serve as an expert witness during their tenure on the Committee."

(2) in subsection (b), strike "ninety" and insert "180" and insert "if the complaint is accompanied by an Affidavit of Merit consistent with section 166n" after "provider in court".

(3) designate subsection (e) as subsection (f) and insert a new subsection (e):

"(e) In an action subsequently brought by a claimant in court after a finding by the expert under subsection (d)(1) that the health care provider acted within the appropriate standards of care as charged in the proposed complaint, the claimant shall file an Affidavit of Merit, consistent with 166n, and post a bond with the filing of the complaint."

(b) add sections 166n through 166p:

"§166n. Affidavit of Merit

(a) Except as provided in subsection (c), the claimant shall file the Affidavit of Merit required to be filed under section 166i subsections (b) and (e) as to each named defendant, signed by an expert witness, as defined in section 166p(b), and accompanied by a current curriculum vitae of the expert witness, stating that:

(1) the expert is competent under section 166p(b) to express an opinion or opinions in the case; and

(2) there are reasonable grounds and a good faith basis to maintain an action consistent with the requirements of section166p(a) as to each named defendant.

(b) The failure of a claimant to file an Affidavit of Merit in compliance with this section, upon motion, makes the action subject to dismissal with prejudice. The court may, upon timely motion of the claimant and for extraordinary cause shown, grant a single 60-day extension to file the Affidavit of Merit. Extraordinary causes include the inability to obtain, despite reasonable efforts, relevant medical records for expert review. A motion to extend the time for filing an Affidavit of Merit is timely only if filed within 60 days of the filing date of the complaint. The filing of a motion to extend the time for filing an Affidavit of Merit tolls the time period within which the affidavit must be filed until the court rules on the motion. If a complaint is filed without an Affidavit of Merit, the defendant is not required to take any action with respect to the complaint until 20 days after the time

to file the motion for an extension of time to file the Affidavit of Merit has expired. If a motion for an extension of time to file the Affidavit of Merit is filed, the defendant is not required to take any action with respect to the complaint until 20 days after the court rules on the motion and the claimant files the Affidavit of Merit.

(c) An Affidavit of Merit is not required if the complaint alleges a rebuttable inference of medical negligence, the grounds of which are set forth in subsection (d).

(d)(1) A rebuttable inference that personal injury or death was caused by medical negligence arises where evidence is presented that the personal injury or death occurred in any one or more of the following circumstances:

(A) A foreign object was unintentionally left within the body of the patient following surgery;

(B) An explosion or fire originating in a substance used in treatment occurred during treatment; or

(C) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of the patient's body.

(2) Except as otherwise provided in paragraph (1), there may be no inference or presumption of negligence on the part of a health care provider.

§166o. Requirement of a Bond

(a) The bond required to be filed under section 166i(e) must be in the amount of three percent of the maximum total amount recoverable for any injury of patient under section 166b(a), secured by cash or its equivalent, and filed with the clerk of the Superior Court of the Virgin Islands, payable to the defendant in the case for costs assessed, including witness and experts fees and attorney's fees if the claimant does not prevail in the final judgment. If the bond is not posted when the complaint is filed, the action shall be dismissed.

(b) Upon motion filed by the claimant, and a determination by the court that the claimant is indigent, the judge may reduce the amount of the bond but may not eliminate the requirement of a bond.

§166p. Claimant's burden in medical malpractice action, expert testimony

(a) In a malpractice action, the claimant has the burden of proving by expert testimony, the qualifications of which are described in subsection (b), the following:

(1) The recognized standard of acceptable professional practice in the profession and the specialty thereof, if any, that the defendant practices in the community in which the defendant practices or in a similar community at the time the alleged injury or wrongful action occurred;

(2) That the defendant acted with less than or failed to act with ordinary and reasonable care in accordance with the standard in paragraph (1); and

(3) As a proximate result of the defendant's negligent act or omission, the claimant suffered injuries which would not otherwise have occurred.

(b) No person in a health care profession requiring licensure under the laws of this territory is competent to testify in any court of law to establish the facts required to be established by subsection (a), unless the person:

(1) is licensed to practice in any U.S. state or territory;

(2) is board certified in the profession or specialty which would make the person's expert testimony relevant to the issues in the case;

(3) is currently engaged in at least 50% clinical practice; and

(4) has practiced this profession or specialty and has been engaged in the treatment of patients in a relevant field of medicine to the issues in the case in a U.S. state or territory during the year immediately preceding the date that the alleged injury or wrongful act occurred."

SECTION 2. Title 33 Virgin Islands Code, subtitle 3, chapter 111, section 3042, subsection (a) is amended by striking the last sentence and inserting:

Disbursements from the fund shall be made by the Commissioner of Finance to the Commissioner of Health for purposes of this section.

BILL SUMMARY

The bill amends title 22 Virgin Islands Code, chapter 3 by adding section 53b requiring the Commissioner of the Division of Banking and Insurance to prescribe, by regulation, a designated range of annual rate change for medical malpractice liability insurance and restricting insurers offering malpractice insurance to one proposed rate change filing every 12 months. The bill also amends title 27 Virgin Islands Code, chapter 1 by: designating the records and testimony of healthcare quality improvement committees to be confidential and privileged and offering immunity to persons offering this information who act in good faith and without malice and offering immunity protection to persons serving on committees, commissions, or boards involving patient care and treatment who act in good faith and without malice; increasing the limitation on recovery in malpractice actions and increasing the amount required for malpractice liability insurance coverage, from $250,0000 to $400,000; requiring the Director of the Office of Management and Budget, with the assistance of the VI Bureau of Economic Research, to adjust for inflation, the recovery limitation amount for malpractice suits over the next five years; requiring a claimant to file an Affidavit of Merit in cases where the Medical Malpractice Action Review Committee ("Committee") fails to receive an expert opinion within 90 days from the filing date of the complaint and requiring a patient to file an Affidavit of Merit and a bond in the amount of $6,000 in cases where the expert selected by the Committee renders an opinion that a health care provider acted within the appropriate standards of medical care and the patient proceeds to file a malpractice suit in court; establishing the requirements for an Affidavit of Merit and requiring the affidavit to be signed

by an expert witness and accompanied by a current curriculum vitae of the expert witness; allowing a judge to reduce the amount of the $6,000 bond upon filing of a motion by the claimant and a determination by the court that the claimant is indigent; establishing the factors to be proven to establish a rebuttable inference that personal injury or death was caused by medical negligence and providing that an Affidavit of Merit is not required in cases where this inference exists; and establishing a claimant's burden in a malpractice action and the jury instructions to be given by the court in a jury or bench trial.

BR25-0189/March 25, 2025/GC

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