

SENATE FILE NO. SF0153

Medical court.

Sponsored by: Senator(s) Scott

A BILL

for

1 AN ACT relating to the judiciary; establishing the Wyoming
2 medical court; providing for jurisdiction and venue of the
3 medical court; providing for appointment, terms,
4 qualifications, salaries and confirmation of medical court
5 judges; providing authority to dismiss cases with prejudice
6 as specified; providing for a budget, for clerical
7 assistants and legal assistants; providing powers of the
8 medical courts; providing for enforcement of judgments,
9 judgment liens and appeals; providing filing fees;
10 providing for transfer of cases to the district court;
11 providing for reporting of proceedings; providing for
12 handling of funds, bank accounts and audits as specified;
13 granting rulemaking authority; providing definitions;
14 providing an appropriation; and providing for an effective
15 date.

16

17 *Be It Enacted by the Legislature of the State of Wyoming:*

1

2 **Section 1.** W.S. 5-11-101 through 5-11-137 are created

3 to read:

4

5

CHAPTER 11

6

MEDICAL COURT

7

8 **5-11-101. Definitions; construction of provisions.**

9

10 (a) As used in this act:

11

12 (i) "Health care facility" means as defined in
13 W.S. 35-2-901;

14

15 (ii) "Health care provider" means a person
16 licensed pursuant to title 33 of the Wyoming statutes as a
17 podiatrist, chiropractor, dentist, dental hygienist, nurse,
18 including advance practice nurse, registered nurse,
19 licensed practical nurse or certified nursing assistant,
20 nursing home administrator, optometrist, pharmacist,
21 physical therapist or physical therapy assistant,
22 physician, physician's assistant, psychologist, speech
23 pathologist or audiologist, hearing aid specialist,
24 emergency medical technician, radiologic technologist,

1 occupations therapist or certified occupational therapy
2 assistant or respiratory care practitioner or health care
3 facility or any person employed by a health care facility
4 who, in accordance with law or a license granted by a state
5 agency, provides health care;

6

7 (iii) "Medical malpractice claim" means any
8 claim against a health care provider for alleged medical or
9 health care treatment, alleged lack of medical or health
10 care treatment or other alleged departure from accepted
11 standards of health care which results in death or injury
12 to the patient caused by medical error as opposed to being
13 an expected outcome or expected risk of the care or lack
14 thereof.

15

16 **5-11-102. Medical court established; jurisdiction;**
17 **venue; funding.**

18

19 (a) Pursuant to the provisions of section 1 of
20 article 5 of the Wyoming Constitution, a medical court is
21 hereby established.

22

1 (b) The court shall have statewide jurisdiction, but
2 shall maintain a physical location and conduct proceedings
3 in each of a northern, central and southern district.

4
5 (c) To the extent practical, proceedings shall be
6 held in the location of the medical court closest to where
7 the alleged malpractice occurred.

8
9 (d) The judicial salaries, salaries of the clerical
10 staff, supplies, operating costs, jury expenses and other
11 expenses of the medical court shall be paid by the state.

12

13 **5-11-103. Number of judges and commissioners.**

14

15 The medical court shall consist of five (5) judges and five
16 (5) court commissioners appointed as provided in this act.

17

18 **5-11-104. Term of judges.**

19

20 Two judges shall be appointed for an initial term of six
21 (6) years, two judges for an initial term of four (4) years
22 and one (1) judge for an initial term of two (2) years.
23 Thereafter, judges shall be appointed to terms of six (6)
24 years. Each judge shall serve as an acting judge for one

1 (1) year after his appointment and until the first Monday
2 in January following the next general election after the
3 expiration of such year. He shall, at such general
4 election, stand for retention in office throughout the
5 state as provided in article 5, section 4, of the Wyoming
6 Constitution.

7

8 **5-11-105. Judges to be nonpartisan; nomination and**
9 **appointment.**

10

11 Judges of the medical court shall be nonpartisan, shall be
12 appointed by the governor and shall be confirmed by the
13 senate as provided in chapter 12 of title 28 of the Wyoming
14 statutes.

15

16 **5-11-106. Qualifications for appointment.**

17

18 (a) To be eligible for appointment to the office of
19 judge of a medical court, a person shall be:

20

21 (i) A qualified elector of the state; and

22

23 (ii) Authorized to practice one of the health
24 care professions listed in W.S. 5-11-101(a)(ii).

1

2 **5-11-107. Appointment to fill vacancies in office.**

3

4 Vacancies occurring in the office of judge of a medical
5 court shall be filled by appointment of the governor for
6 the unexpired portion of the judge's term.

7

8 **5-11-108. Supreme court to adopt rules; establish**
9 **fees and court costs; rules of civil procedure to govern**
10 **courts.**

11

12 The Wyoming supreme court is vested with management and
13 supervisory powers over the medical courts of the state of
14 Wyoming and shall establish procedures by rule and
15 regulation for the effective and expeditious administration
16 of the business of the medical court. The supreme court
17 shall establish fees and costs for the medical court. The
18 Wyoming Rules of Civil Procedure, as amended and
19 supplemented from time to time, shall govern the medical
20 court to the extent not inconsistent with this act.

21

22 **5-11-109. Medical courts; jurisdiction.**

23

1 The medical court shall be a court of record and shall have
2 original exclusive jurisdiction over lawsuits involving
3 medical malpractice claims filed after December 31, 2005.

4

5 **5-11-110. Salaries of judges; traveling expenses.**

6

7 Medical court judges and commissioners shall receive the
8 same annual salary provided for district court judges.
9 When a new salary is effective for any judge of a district
10 court upon new appointment or the commencement of a new
11 term, it shall be effective for all judges of the medical
12 court. In addition to salary, the state shall reimburse a
13 judge of the medical court for those traveling expenses
14 actually incurred when the business of the medical court
15 requires the judge's attendance more than five (5) miles
16 from the medical court location nearest the judge's base
17 office.

18

19 **5-11-111. Oath.**

20

21 Before assuming the duties of office, a medical court judge
22 shall take and subscribe before a district judge or a clerk
23 of a court of record the oath of office prescribed by the
24 constitution of Wyoming.

1

2 **5-11-112. Private practice of health care profession**
3 **prohibited.**

4

5 A medical court judge shall devote full time to the office
6 and may not engage in the private practice of a health care
7 profession for remuneration and except as a medical court
8 judge. A medical court commissioner who is otherwise
9 licensed to practice a health care profession in Wyoming,
10 may engage in the private practice of that profession so
11 long as that practice does not conflict with the
12 commissioner's medical court duties.

13

14 **5-11-113. Preliminary proceedings; automatic**
15 **dismissal hearing; optional three judge panels.**

16

17 (a) No medical malpractice complaint shall be filed
18 in the medical court until it has been reviewed as provided
19 in the Wyoming Medical Review Panel Act.

20

21 (b) If the determination of a medical review panel
22 was that there is no reasonable inference of medical
23 malpractice in the matters complained of by the plaintiff,
24 the medical court shall forthwith schedule a hearing to

1 determine if the matter should be dismissed. The hearing
2 shall be held at least thirty (30) days and not more than
3 sixty (60) days after filing of the complaint in the
4 medical court, unless the court for cause shown authorizes
5 an extension.

6

7 (c) If the determination of a medical review panel
8 was that there is a reasonable inference of medical
9 malpractice in the matters complained of by the plaintiff,
10 the court shall hold a hearing as provided in subsection
11 (b) of this section upon motion of any defendant filed with
12 that defendant's initial responsive pleading.

13

14 (d) In any dismissal hearing pursuant to subsection
15 (b) or (c) of this section where the issue is the existence
16 of a reasonable inference of medical malpractice, the
17 hearing, upon request of any party, shall be held before a
18 three (3) judge panel, which shall decide the issue by a
19 majority decision. One (1) member of the panel may be a
20 medical court commissioner.

21

22 (e) If the medical judge or panel of judges
23 determines that the plaintiff has not made a prima facie

1 showing of the existence of medical malpractice, the court
2 shall dismiss the matter with prejudice.

3

4 **5-11-114. Discovery proceedings.**

5

6 Before a dismissal hearing pursuant to W.S. 5-11-113,
7 discovery proceedings shall be available only upon written
8 order of the medical judge upon a finding by the judge that
9 the discovery is necessary to make a ruling on the motion
10 to dismiss.

11

12 **5-11-115. Transfer to district court.**

13

14 At any time following the hearing on dismissal pursuant to
15 W.S. 5-11-113, the medical court on its own motion may
16 transfer a case to the appropriate district court if it
17 appears that disposition of the case will not depend
18 primarily on the evaluation of medical testimony.

19

20 **5-11-116. Judicial robe.**

21

22 While holding court, judges of the medical court shall wear
23 a black judicial robe.

24

1 **5-11-117. Seal of court.**

2

3 The medical court shall have a seal having upon it the
4 inscription: "Medical Court of the State of Wyoming." The
5 seal shall be affixed by a stamp that reproduces legibly
6 under photographic processes. A judge of the medical court
7 shall affix his seal to every jurat or certificate of his
8 official acts without additional fee.

9

10 **5-11-118. Budget, facilities.**

11

12 (a) The supreme court shall submit one (1) budget for
13 the operation of the medical court to the legislature for
14 appropriation for each biennial period using forms and
15 following procedures provided by law for state agencies
16 funded by legislative appropriation.

17

18 (b) The state shall provide suitable quarters to
19 house the medical court and shall provide necessary
20 furniture and fixtures to enable it to function in
21 accordance with this act. Each judge shall be furnished
22 by the state of Wyoming, without charge, the American and
23 Wyoming state flags, the latest edition of the Wyoming
24 statutes with cumulative supplements and the latest Session

1 Laws of Wyoming. All property furnished to a judge shall
2 remain the property of the state and, upon termination of a
3 judge's term of office, shall be transmitted to his
4 successor in office.

5

6 **5-11-119. Clerical and legal assistants.**

7

8 A judge of the medical court may appoint clerical
9 assistants as necessary for the efficient operation of the
10 court and one (1) or more legal advisers to assist with the
11 resolution of legal issues and conduct of proceedings.

12

13 **5-11-120. Court continuously in session; hours;**
14 **process.**

15

16 The medical court shall be continuously in session and
17 shall be open for the transaction of business during
18 regular business hours. The process of the medical court
19 shall extend throughout the state.

20

21 **5-11-121. Powers generally.**

22

23 (a) The supreme court shall adopt rules of procedure
24 for the medical court, including procedures to:

1

2 (i) Preserve and enforce order in its immediate
3 presence and in the proceedings before it;

4

5 (ii) Compel obedience to its judgments, orders
6 and processes;

7

8 (iii) Control, in furtherance of justice, the
9 conduct of its ministerial officers and of all other
10 persons in any manner connected with judicial proceedings
11 before it;

12

13 (iv) Issue summonses, subpoenas or other process
14 in civil cases;

15

16 (v) Refer matters involving criminal contempt or
17 criminal process to the circuit court or district court, as
18 appropriate;

19

20 (vi) Administer oaths and affirmations and take
21 bonds, acknowledgments, affidavits and depositions;

22

23 (vii) Amend and control its process and orders
24 to make them conformable to law and justice;

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(viii) Proceed to trial, render judgment and grant writs of execution to carry into effect any order or judgment of the court.

5-11-122. Filing fees; request for jury trial; jury lists.

(a) Filing fees in the medical court shall be the same as for civil matters in the district court.

(b) The right to a jury shall be considered waived unless demand is made by either party and a jury fee is paid as provided in the rules for the medical court.

(c) Jurors shall be selected from the jury lists selected for the district courts of the state pursuant to the provisions of W.S. 1-11-101 through 1-11-204.

5-11-123. Abstract of judgment; lien of judgment on real estate; lien on real estate in another county.

(a) At any time while the papers in any case in which a judgment has been rendered by a medical court are

1 retained by the court, the judge shall certify and deliver
2 an abstract of the judgment to any person on the payment of
3 a five dollar (\$5.00) fee.

4

5 (b) The judgment creditor in any judgment rendered in
6 medical court may file with the clerk of the district court
7 and record with the county clerk of the county in which the
8 judgment was rendered a transcript thereof, certifying
9 therein the amount paid thereon, if any. The clerk of the
10 district court shall enter the case on the execution
11 docket, together with the amount of the judgment. If
12 within ten (10) days after the judgment was rendered, the
13 judgment debtor pays the same or gives bond for stay of
14 execution, the medical judge shall immediately certify that
15 fact to the clerk of the district court and the county
16 clerk. The clerk of the district court shall enter a
17 memorandum thereof upon the execution docket. The cost of
18 the transcript, the filing, recording and the entry on the
19 docket shall be paid by the party who files and records the
20 transcript and may be taxed to the other party. The
21 judgment shall be a lien on the real estate of the judgment
22 debtor within the county from the day and time the
23 transcript is recorded with the county clerk. Execution
24 may be issued on the judgment at any time after filing the

1 transcript with the clerk of the district court as if the
2 judgment had been rendered in the district court.

3

4 (c) The judgment creditor in any judgment rendered by
5 any medical court in this state and filed in the judgment
6 record of the district court, may file a transcript of the
7 judgment record of the district court with the clerk of the
8 district court and record a transcript of the judgment with
9 the county clerk in any other county within this state
10 where the judgment debtor owns real estate. The judgment
11 is a lien upon all real estate of the judgment debtor in
12 any county in which the transcript is recorded with the
13 county clerk from the date of recording with the county
14 clerk. The clerk of the district court of any county in
15 which the transcript is filed shall enter the judgment upon
16 the judgment records of the court in the same manner as
17 judgments are rendered in that court.

18

19 **5-11-124. Reporting of proceedings; preservation**
20 **thereof.**

21

22 (a) In any judicial proceedings before the medical
23 court, unless waived by the parties whenever the presiding
24 judge of the medical court shall deem it necessary, or upon

1 the request of either party, the court shall provide for
2 the reporting of the testimony and proceedings, with
3 objections made, the rulings of the court, and oral and
4 written charges. The reporting may be made by stenographic
5 reporting, electronic recording or other appropriate means
6 authorized by the court.

7

8 (b) The testimony and proceedings shall be retained
9 and preserved for at least twelve (12) months after entry
10 of final judgment, sentence, or order on appeal if an
11 appeal is taken.

12

13 **5-11-125. Appointment of special reporters;**
14 **certification of transcript.**

15

16 If the record is to be made by a stenographic reporter, the
17 judge shall appoint a special stenographic reporter to
18 report the testimony and proceedings. If the record is
19 made by means of electronic recording, the judge shall
20 appoint a special reporter to make the electronic
21 recording, and in those cases in which it is required, the
22 judge shall appoint an official stenographer to furnish
23 with reasonable diligence a typewritten transcript of the
24 testimony and proceedings. The report of the official

1 stenographer, when typewritten and certified by him as a
2 correct transcript of the testimony and proceedings in the
3 case, shall be prima facie a correct statement of such
4 testimony and proceedings. The signature of the
5 stenographer on the certification of the transcript shall
6 be duly acknowledged by him before a notary public or
7 judicial officer of this state.

8

9 **5-11-126. Stay of execution on judgment; bond.**

10

11 In a civil matter no execution on a judgment may be stayed
12 unless and until the party applying for the appeal, or
13 someone for him, gives bond in an amount and with
14 sufficient surety approved by the judge of the medical
15 court or the clerk of the supreme court, to abide by such
16 judgment as may be rendered on appeal if such appeal is
17 perfected, or if not so perfected, then to satisfy the
18 judgment of the medical court. If such bond is furnished by
19 or on behalf of any party against whom the judgment has
20 been rendered for money or property or both, the bond shall
21 be conditioned for the performance and satisfaction of such
22 judgment or order as may be entered against such party on
23 appeal, and for the payment of all costs and damages which
24 may be awarded against him in the supreme court. If the

1 appeal is by a party against whom there is no recovery
2 except for costs, the bond shall be conditioned for the
3 payment of such costs and damages as may be awarded against
4 him on the appeal.

5

6 **5-11-127. Security on appeal.**

7

8 The supreme court may on motion for good cause shown, after
9 five (5) days notice to the appellant, require the
10 appellant to give new or additional security. If the
11 security is not given within the time prescribed by the
12 supreme court, the appeal shall be dismissed with costs,
13 and the judgment of the medical court shall remain in
14 effect, and the medical court shall enter judgment and
15 award execution thereon, with costs, against the appellant
16 and his surety.

17

18 **5-11-128. Receipts for money paid into court.**

19

20 When any money is paid into a medical court, a receipt for
21 said amount shall be issued promptly upon a form prescribed
22 by the director of the state department of audit. The
23 receipts shall be prenumbered in numerical sequence. The
24 original copy shall be delivered to a payor making payment

1 by cash or in person, otherwise the original shall be
2 attached to the court file. A copy shall be filed in the
3 office of the issuing judge. The receipts shall be
4 prenumbered by the printer, and the printer shall give to
5 the director a receipt showing the numbers so printed.
6 Except as provided in W.S. 5-9-106, the medical court shall
7 pay all fines, forfeitures and other penalties to the
8 county treasurer and all fees, costs and other receipts to
9 the state treasurer. The court automation fee prescribed by
10 W.S. 5-9-135 or established by court rule shall be
11 deposited by the state treasurer into the judicial systems
12 automation account established by W.S. 5-2-120.

13

14 **5-11-129. Failure of judge to give receipt**
15 **constitutes cause for removal from office.**

16

17 Failure, refusal or neglect of a judge of the medical court
18 to give a receipt as required by W.S. 5-9-144, for any
19 money paid into the medical court is misconduct, which
20 constitutes cause for removal from office.

21

22 **5-11-130. Deposit of money with county or state**
23 **treasurer.**

24

1 When any fines, forfeitures, costs or fees are deposited
2 with the judge of the medical court pursuant to any action
3 or proceedings in the court, or pursuant to any order,
4 decree or judgment of the court, the money in his
5 possession shall be deposited no later than the tenth day
6 following the month of receipt with the state treasurer,
7 except as provided in W.S. 5-9-106. If the money has not
8 been so deposited by the tenth day of the month and no just
9 cause is shown, said judge shall forfeit twenty-five
10 dollars (\$25.00) a day for each day after the tenth day of
11 the month during which the deposits have not been made.

12

13 **5-11-131. Director to establish uniform accounting**
14 **system.**

15

16 The director of the state department of audit shall
17 establish, supervise, and as necessary from time to time,
18 modify a uniform system of accounting, including a system
19 of regular audits for the medical court, to provide for the
20 proper and uniform accounting of all money received and
21 disbursed by the medical court, and all judges of the
22 medical court shall comply therewith.

23

1 **5-11-132. Failure to keep accounts or account for**
2 **money.**

3

4 Failure to keep accounts pursuant to the system established
5 by the director of the state department of audit or failure
6 to account for money paid into and disbursed by the medical
7 court is misconduct, which may constitute cause for removal
8 from office.

9

10 **5-11-133. Bank accounts.**

11

12 The accounting system established by the director of the
13 state department of audit may provide for bank accounts for
14 the medical court in which money received by the medical
15 court may be deposited and disbursed as provided therein,
16 and for such records, reports and procedures as the
17 director requires. Money received as fines, forfeitures or
18 court costs may not be deposited in the same bank account
19 as money received in civil matters. If a bank account is
20 established into which fines, costs or forfeitures are
21 deposited, the accounting system established by the
22 director shall require, where available, the use of
23 accounts in a financial institution listed in W.S.
24 9-4-817(a) which may earn interest, in which the deposits

1 are subject to payment upon demand and which are insured or
2 secured as provided in W.S. 9-4-817(c). Interest earned on
3 deposits of fines and forfeitures in such accounts shall be
4 forwarded monthly to the county treasurer and credited to
5 the county public school fund. Interest earned on all other
6 deposits in such accounts shall be forwarded to the state
7 treasurer quarterly and credited to the victim's
8 compensation account within the earmarked revenue fund.

9

10 **5-11-134. Examination of accounts.**

11

12 The accounts of the medical court shall be examined in
13 accordance with W.S. 16-4-122 and 16-4-123.

14

15 **5-11-135. Annual accounts submitted to director.**

16

17 The medical court shall submit annual accounts to the
18 director of the state department of audit under regulations
19 prescribed by the director.

20

21 **5-11-136. Suit to enforce collection or transmittal**
22 **of fines; failure to transmit constitutes cause for removal**
23 **from office; liability on judge's bond.**

24

1 (a) If it is apparent through examination conducted
2 by the director of the state department of audit or his
3 designee, or by other means, that any fines or forfeitures
4 have not been transmitted, the county attorney shall bring
5 suit to enforce the collection or transmittal, or both.
6 Failure to transmit fines, forfeitures or costs is
7 misconduct which constitutes cause for removal from office.

8

9 (b) The official bond of a judge of the medical court
10 shall secure, and there shall be a liability thereon, for
11 his failure to transmit such fines, forfeitures, or costs
12 imposed by him.

13

14 **5-11-137. Examination of court records by public,**
15 **director, attorney general and county attorneys permitted.**

16

17 The records kept by a judge of the medical court shall be
18 public and available for examination during the regular
19 business hours of the court. The director of the state
20 department of audit, the attorney general or the county
21 attorney of the particular county in which the medical
22 court is situated may examine them at any time upon demand.

23

24 **Section 2.**

1

2 (a) There is appropriated to the supreme court from
3 the general fund one million two hundred fifty thousand
4 dollars (\$1,250,000.00) for the purposes of this act,
5 including training of appointed judges.

6

7 (b) There is appropriated to the legislative service
8 office sixteen thousand dollars (\$16,000.00) for the
9 purpose of holding a special session of the senate to
10 consider confirmation of judges appointed pursuant to this
11 act.

12

13 **Section 3.** This act is effective July 1, 2005.

14

15

(END)