

1 **H. B. 4603**

2
3 (By Delegates Ellington, Howell, Rowan,
4 Ferns, Arvon, Pasdon, Staggers and Hamrick)
5

6 [Introduced February 17, 2014; referred to the
7 Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

8
9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §9-10-1, §9-10-2,
12 §9-10-3, §9-10-4, §9-10-5, §9-10-6, §9-10-7, §9-10-8, §9-10-9,
13 §9-10-10 and §9-10-11, all relating to establishing an
14 alternative to medical malpractice litigation whereby patients
15 are compensated for medical injuries; creating the Patient
16 Injury Act; limiting rights and remedies; providing
17 legislative findings and intent; defining terms; establishing
18 the Patient Compensation System; establishing the Patient
19 Compensation Board; providing for members of the board;
20 providing for various committees; providing for members of
21 those committees; establishing the Office of Medical Review;
22 establishing compensation guidelines; providing for an
23 independent medical review panel; providing for an executive
24 director and other officials; providing for the filing of and
25 disposition of applications; providing for review by an

1 administrative law judge; providing for appellate review;
2 providing for payment of administration expenses; requiring an
3 annual report; providing funding; requiring administrative
4 fees; creating the Patient Compensation System Trust Fund; and
5 authorizing rule making.

6 *Be it enacted by the Legislature of West Virginia:*

7 That the Code of West Virginia, 1931, as amended, be amended,
8 by adding thereto a new article, designated §9-10-1, §9-10-2,
9 §9-10-3, §9-10-4, §9-10-5, §9-10-6, §9-10-7, §9-10-8, §9-10-9,
10 §9-10-10 and §9-10-11, all to read as follows:

11 **ARTICLE 10. PATIENT INJURY ACT.**

12 **§9-10-1. Short title.**

13 This article shall be known and may be cited as the "Patient
14 Injury Act."

15 **§9-10-2. Definitions.**

16 For the purposes of this article, the following words and
17 terms are defined as:

18 "Applicant" means a person who files an application under this
19 article requesting the investigation of an alleged occurrence of a
20 medical injury.

21 "Application" means a request for investigation by the Patient
22 Compensation System of an alleged occurrence of a medical injury.

23 "Board" means the Patient Compensation Board as created in

1 section five of this article.

2 "Collateral source" means any payments made to the applicant,
3 or made on his or her behalf, by or pursuant to:

4 (A) The United States Social Security Act, any federal, state,
5 or local income disability act, or any other public programs
6 providing medical expenses, disability payments, or other similar
7 benefits, except as prohibited by federal law.

8 (B) Any health, sickness, or income disability insurance;
9 automobile accident insurance that provides health benefits or
10 income disability coverage; and any other similar insurance
11 benefits, except life insurance benefits available to the
12 applicant, whether purchased by the applicant or provided by
13 others.

14 (C) Any contract or agreement of any group, organization,
15 partnership, or corporation to provide, pay for, or reimburse the
16 costs of hospital, medical, dental, or other health care services.

17 (D) Any contractual or voluntary wage continuation plan
18 provided by employers or by any other system intended to provide
19 wages during a period of disability.

20 "Committee" means, as the context requires, the Medical Review
21 Committee or the Compensation Committee.

22 "Compensation schedule" means a schedule of damages for
23 medical injuries.

24 "Division" means the Division of Human Services.

1 "Independent medical review panel" or "panel" means a
2 multidisciplinary panel convened by the chief medical officer to
3 review each application.

4 "Medical injury" means a personal injury or wrongful death due
5 to medical treatment, including a missed diagnosis, which would
6 have been avoided:

7 (A) For care provided by an individual provider, under the
8 care of an experienced specialist provider practicing in the same
9 field of care under the same or similar circumstances or, for a
10 general practitioner provider, an experienced general practitioner
11 provider practicing under the same circumstances; or

12 (B) For care provided by a provider in a system of care, if
13 rendered within an optimal system of care under the same or similar
14 circumstances. A medical injury shall only include consideration of
15 an alternate course of treatment if the harm could have been
16 avoided through a different but equally effective manner with
17 respect to the treatment of the underlying condition. In addition,
18 a medical injury shall only include consideration of information
19 that would have been known to an experienced specialist or readily
20 available to an optimal system of care at the time of the medical
21 treatment. For purposes of this definition, "medical injury" does
22 not include an injury or wrongful death caused by a product defect
23 in a drug, as defined in section one, article seven, chapter
24 sixteen of this code, or a device, as defined in section eight of

1 that article.

2 "Office" means, as the context requires, the Office of
3 Compensation, the Office of Medical Review or the Office of Quality
4 Improvement, as created and delineated in this article.

5 "Panelist" means a hospital administrator, a person licensed
6 as a chiropractor, counselor, social worker, therapist, dentist,
7 dental hygienist, dietician, nurse, nursing home administrator,
8 occupational therapist, optometrist, physical therapist,
9 acupuncturist, podiatrist, psychologist, pathologist, audiologist,
10 physicians assistant or physician or any other person involved in
11 the management of a health care facility deemed appropriate by the
12 board.

13 "Patient Compensation System" means the organization created
14 pursuant to section five of this article.

15 "Provider" means a hospital or other health care facility
16 licensed in this state, which includes a nursing home or skilled
17 nursing facility among others, or a person licensed as a
18 pharmacist, chiropractor, counselor, social worker, therapist,
19 dentist, dental hygienist, dietician, nurse, nursing home
20 administrator, occupational therapist, optometrist, physical
21 therapist, acupuncturist, podiatrist, psychologist, pathologist,
22 audiologist, physicians assistant or physician. The term also
23 includes any corporation, professional corporation, partnership,
24 limited liability company, limited liability partnership,

1 authority, or other entity comprised of such providers.

2 **§9-10-3. Findings; intentions.**

3 (a) (1) The Legislature finds that the lack of legal
4 representation, and thus compensation, for the vast majority of
5 patients with legitimate injuries is creating an access to courts
6 crisis.

7 (2) The Legislature finds that seeking compensation through
8 medical malpractice litigation is a costly and protracted process,
9 such that legal counsel may only afford to finance a small number
10 of legitimate claims.

11 (3) The Legislature finds that even for patients who are able
12 to obtain legal representation, the delay to obtain compensation is
13 long, creating a significant hardship for patients and their
14 caregivers who often need access to immediate care and
15 compensation.

16 (4) The Legislature finds that, because of continued exposure
17 to liability, an overwhelming majority of physicians practice
18 defensive medicine by ordering unnecessary tests and procedures,
19 driving up the cost of health care for individuals covered by
20 public and private health insurance coverage and exposing patients
21 to unnecessary clinical risks.

22 (5) The Legislature finds that a significant percentage of
23 physicians are continuing to retire from practice as a result of
24 the cost and risk of medical liability in this state.

1 (6) The Legislature finds that recruiting physicians to West
2 Virginia and ensuring that existing West Virginia physicians
3 continue to practice in this state is an overwhelming public
4 necessity.

5 (b) (1) The Legislature intends to create an alternative to
6 medical malpractice litigation whereby patients are fairly and
7 expeditiously compensated for avoidable medical injuries. This
8 alternative, as provided in this article, is intended to
9 significantly reduce the practice of defensive medicine, thereby
10 reducing health care costs, increasing the number of physicians
11 practicing in this state, and providing patients fair and timely
12 compensation without the expense and delay of the court system.

13 (2) The Legislature intends that the definition of "medical
14 injury" encompass a broader range of personal injuries as compared
15 to a negligence standard, such that a greater number of
16 applications qualify for compensation under this article as
17 compared to claims filed under a negligence standard.

18 (3) The Legislature intends that applications filed under this
19 article do not constitute a claim for medical malpractice, and any
20 action on such applications under this article does not constitute
21 a judgment or adjudication for medical malpractice, and thus
22 professional liability carriers are not obligated to report such
23 applications or actions on such applications to the National
24 Practitioner Data Bank of the United States Department of Health

1 and Human Services.

2 (4) The Legislature further intends that because the Patient
3 Compensation System has the primary duty to determine the validity
4 and compensation of each application, an insurer is not subject to
5 a statutory or common law bad faith cause of action relating to an
6 application filed under this article.

7 **§9-10-4. Limitation of rights and remedies.**

8 (a) The rights and remedies granted by this article on account
9 of a medical injury shall exclude all other rights and remedies of
10 the applicant, his or her personal representative, parents,
11 dependents, and the next of kin, at common law or as provided in
12 general law against any provider directly involved in providing the
13 medical treatment from which such injury or death occurred, arising
14 out of or related to a medical negligence claim, whether in tort or
15 in contract, with respect to such injury. Notwithstanding any other
16 law, the provisions of this article shall apply exclusively to
17 applications submitted under this article. An applicant whose
18 injury is excluded from coverage under the article may file a claim
19 for recovery of damages in accordance with the provisions of
20 applicable law.

21 (b) Nothing in this article may be construed to prohibit a
22 self-insured provider or an insurer from providing an early offer
23 of settlement in satisfaction of a medical injury. An individual
24 who accepts a settlement offer may not file an application under

1 this article for the same medical injury. In addition, if an
2 application has been filed prior to the offer of settlement, the
3 acceptance of the settlement offer by the applicant results in the
4 withdrawal of the application.

5 **§9-10-5. Patient Compensation System; board; members; meetings;**
6 **powers and duties; compensation; executive director;**
7 **other officials.**

8 (a) The Patient Compensation System is created and is
9 administratively housed within the Department of Health and Human
10 Resources. The Patient Compensation System is a separate budget
11 entity that is responsible for its administrative functions and
12 not subject to control, supervision, or direction by the division
13 in any manner. The Patient Compensation System shall administer the
14 provisions of this article.

15 (b) The Patient Compensation Board is established to govern
16 the Patient Compensation System.

17 (1) The board shall be composed of eleven members who
18 represent the medical, legal, patient, and business communities
19 from diverse geographic areas throughout the state. All members of
20 the board shall be appointed by, and serve at the pleasure of, the
21 Governor. Three members shall be licensed physicians who actively
22 practice medicine in this state. Two members shall be patient
23 advocates. Two members shall be an executive in the business
24 community. Two members shall be a hospital administrator. One

1 member shall be a certified public accountant who actively
2 practices in this state. One member shall be an attorney.

3 (2) Each member shall be appointed for a four-year term. For
4 the purpose of providing staggered terms, of the initial
5 appointments, the first five members appointed by the Governor
6 shall be appointed to two-year terms and the remaining six members
7 shall be appointed to three-year terms. If a vacancy occurs on the
8 board before the expiration of a term, the Governor shall appoint
9 a successor to serve the unexpired portion of the term.

10 (3) The board shall annually elect from its membership one
11 member to serve as chair of the board and one member to serve as
12 vice chair.

13 (4) The first meeting of the board shall be held no later than
14 August 1, 2015. Thereafter, the board shall meet at least quarterly
15 upon the call of the chair. A majority of the board members
16 constitutes a quorum. Meetings may be held by teleconference, web
17 conference, or other electronic means.

18 (5) Members of the board and the committees shall receive \$50
19 for each day actually spent in attending meetings of the board, or
20 of its committees, and shall also be reimbursed for actual and
21 necessary expenses.

22 (6) The board has the following powers and duties:

23 (A) Ensuring the operation of the Patient Compensation System
24 in accordance with applicable federal and state laws and

1 regulations.

2 (B) Entering into contracts as necessary to administer this
3 article.

4 (C) Employing an executive director and other staff as are
5 necessary to perform the functions of the Patient Compensation
6 System, except that the Governor shall appoint the initial
7 executive director.

8 (D) Approving the hiring of a chief compensation officer and
9 chief medical officer, as recommended by the executive director.

10 (E) Approving a schedule of compensation for medical injuries,
11 as recommended by the Compensation Committee.

12 (F) Approving medical review panelists as recommended by the
13 Medical Review Committee.

14 (G) Approving an annual budget.

15 (H) Annually approving provider contribution amounts.

16 (7) The executive director shall oversee the operation of the
17 Patient Compensation System in accordance with this article. The
18 following staff shall report directly to and serve at the pleasure
19 of the executive director.

20 (A) The advocacy director shall ensure that each applicant is
21 provided high quality individual assistance throughout the process,
22 from initial filing to disposition of the application. The advocacy
23 director shall assist each applicant in determining whether to
24 retain an attorney, which assistance shall include an explanation

1 of possible fee arrangements and the benefits and disadvantages of
2 retaining an attorney. If the applicant seeks to file an
3 application without an attorney, the advocacy director shall assist
4 the applicant in filing the application. In addition, the advocacy
5 director shall regularly provide status reports to the applicant
6 regarding his or her application.

7 (B) The chief compensation officer shall manage the Office of
8 Compensation. The chief compensation officer shall recommend to the
9 Compensation Committee a compensation schedule for each type of
10 injury. The chief compensation officer may not be a licensed
11 physician or an attorney.

12 (C) The chief financial officer shall be responsible for
13 overseeing the financial operations of the Patient Compensation
14 System, including the annual development of a budget.

15 (D) The chief legal officer shall represent the Patient
16 Compensation System in all contested applications, oversee the
17 operation of the Patient Compensation System to ensure compliance
18 with established procedures, and ensure adherence to all applicable
19 federal and state laws and regulations.

20 (E) The chief medical officer shall be a licensed physician
21 who shall manage the Office of Medical Review. The chief medical
22 officer shall recommend to the Medical Review Committee a qualified
23 list of multidisciplinary panelists for independent medical review
24 panels. In addition, the chief medical officer shall convene

1 independent medical review panels as necessary to review
2 applications.

3 (F) The chief quality officer shall manage the Office of
4 Quality Improvement.

5 (c) The following offices are established within the Patient
6 Compensation System:

7 (1) The chief medical officer shall manage the Office of
8 Medical Review. The Office of Medical Review shall evaluate and, as
9 necessary, investigate all applications in accordance with this
10 article. For the purpose of an investigation of an application, the
11 office shall have the power to administer oaths, take depositions,
12 issue subpoenas, compel the attendance of witnesses and the
13 production of papers, documents, and other evidence and obtain
14 patient records pursuant to the applicant's release of protected
15 health information.

16 (2) The chief compensation officer shall manage the Office of
17 Compensation. The office shall allocate compensation for each
18 application in accordance with the compensation schedule.

19 (3) The chief quality officer shall manage the Office of
20 Quality Improvement. The office shall regularly review applications
21 data to conduct root cause analyses in order to develop and
22 disseminate best practices based on such reviews. In addition, the
23 office shall capture and record safety-related data obtained during
24 an investigation conducted by the Office of Medical Review,

1 including the cause of the medical injury, the contributing
2 factors, and any interventions that may have prevented the injury.

3 (d) The board shall create a Medical Review Committee and a
4 Compensation Committee. The board may create additional committees
5 as necessary to assist in the performance of its duties and
6 responsibilities.

7 (1) Each committee shall be composed of three board members
8 chosen by a majority vote of the board.

9 (A) The Medical Review Committee shall be composed of two
10 physicians and a board member who is not an attorney. The board
11 shall designate one of the physician committee members as chair of
12 the committee.

13 (B) The Compensation Committee shall be composed of a
14 certified public accountant and two board members who are not
15 physicians or attorneys. The certified public accountant shall
16 serve as chair of the committee.

17 (2) Members of each committee shall serve two-year terms,
18 within their respective terms as board members. If a vacancy occurs
19 on a committee, the board shall appoint a successor to serve the
20 unexpired portion of the term. A committee member who is removed or
21 resigns from the board shall be removed from the committee.

22 (3) The board shall annually designate a chair of each
23 committee in accordance with this subsection.

24 (4) Each committee shall meet at least quarterly or at the

1 specific direction of the board. Meetings may be held by
2 teleconference, web conference, or other electronic means.

3 (5) (A) The Medical Review Committee shall recommend to the
4 board a comprehensive, multidisciplinary list of panelists who
5 shall serve on the independent medical review panels as needed.

6 (B) The Compensation Committee shall, in consultation with the
7 chief compensation officer, recommend to the board:

8 (i) A compensation schedule formulated such that the initial
9 compensation schedule plus the initial amount of contributions by
10 providers shall not exceed the prior fiscal year aggregate cost of
11 medical malpractice as determined by an independent actuary at the
12 request of the board. In addition, initial damage payments for each
13 type of injury shall be no less than the average indemnity payment
14 reported by the Physician Insurers Association of America or its
15 successor organization for like injuries with like severity for the
16 prior fiscal year. Thereafter, the Compensation Committee shall
17 annually review the compensation schedule, and, if necessary,
18 recommend a revised schedule, such that a projected increase in the
19 upcoming fiscal year aggregate cost of medical malpractice, which
20 shall include insured and self-insured providers, shall not exceed
21 the percentage change from the prior year in the medical care
22 component of the consumer price index for all urban consumers.

23 (ii) Guidelines for the payment of compensation awards through
24 periodic payments.

1 (iii) Guidelines for the apportionment of compensation among
2 multiple providers, which guidelines shall be based on the
3 historical apportionment among multiple providers for like injuries
4 with like severity.

5 (e) The chief medical officer shall convene an independent
6 medical review panel to evaluate whether an application constitutes
7 a medical injury. Each panel shall be composed of an odd number of
8 at least three panelists chosen from the list of panelists
9 recommended by the Medical Review Committee and approved by the
10 board, and shall be convened upon the call of the chief medical
11 officer. Each panelist shall be paid a stipend as determined by the
12 board for his or her service on the panel. In order to expedite the
13 review of applications, the chief medical officer may, whenever
14 practicable, group related applications together for consideration
15 by a single panel.

16 (f) A board member, panelist, or employee of the Patient
17 Compensation System may not engage in any conduct that constitutes
18 a conflict of interest. For purposes of this subsection, a
19 "conflict of interest" means a situation in which the private
20 interest of a board member, panelist, or employee could influence
21 his or her judgment in the performance of his or her duties under
22 this article. A board member, panelist, or employee shall
23 immediately disclose in writing the presence of a conflict of
24 interest when the board member, panelist, or employee knows or

1 should have known that the factual circumstances surrounding a
2 particular application constitutes or constituted a conflict of
3 interest. A board member, panelist, or employee who violates this
4 subsection is subject to disciplinary action as determined by the
5 board. A conflict of interest includes, but is not limited to:

6 (1) Any conduct that would lead a reasonable person having
7 knowledge of all of the circumstances to conclude that a panelist
8 or employee is biased against or in favor of an applicant.

9 (2) Participation in any application in which the board
10 member, panelist, or employee, or the parent, spouse, or child of
11 a board member, panelist, or employee has a financial interest.

12 (g) The board shall promulgate rules to implement the
13 provisions of this article, which shall include rules addressing:

14 (1) The application process, including forms necessary to
15 collect relevant information from applicants.

16 (2) Disciplinary procedures for a board member, panelist or
17 employee who violates the conflicts of interest provisions of this
18 section.

19 (3) Stipends paid to panelists for their service on an
20 independent medical review panel, which stipends may be scaled in
21 accordance with the relative scarcity of the provider's specialty,
22 if applicable.

23 (4) Payment of compensation awards through periodic payments
24 and the apportionment of compensation among multiple providers, as

1 recommended by the Compensation Committee.

2 **§9-10-6. Compensation for medical injuries; application.**

3 (a) In order to obtain compensation for a medical injury, a
4 person, or his or her legal representative, shall file an
5 application with the Patient Compensation System. The application
6 shall include the following:

7 (1) The name and address of the applicant or his or her
8 representative and the basis of the representation.

9 (2) The name and address of any provider who provided medical
10 treatment allegedly resulting in the medical injury.

11 (3) A brief statement of the facts and circumstances
12 surrounding the personal injury or wrongful death that gave rise to
13 the application.

14 (4) An authorization for release to the Office of Medical
15 Review all protected health information that is potentially
16 relevant to the application.

17 (5) Any other information that the applicant believes will be
18 beneficial to the investigatory process, including the names of
19 potential witnesses.

20 (6) Documentation of any applicable private or governmental
21 source of services or reimbursement relative to the personal injury
22 or wrongful death.

23 (b) If an application is not complete, the Patient
24 Compensation System shall, within thirty days after the receipt of

1 the initial application, notify the applicant in writing of any
2 errors or omissions. An applicant shall have thirty days in which
3 to correct the errors or omissions in the initial application.

4 (c) An application shall be filed within the time frames
5 specified for medical malpractice actions.

6 (d) After the filing of an application, the applicant may
7 supplement the initial application with additional information that
8 the applicant believes may be beneficial in the resolution of the
9 application.

10 (e) Nothing in this article prohibits an applicant or
11 provider from retaining an attorney for the purpose of representing
12 the applicant or provider in the review and resolution of an
13 application.

14 **§9-10-7. Determination of medical injury; compensation; review.**

15 (a) Individuals with relevant clinical expertise in the Office
16 of Medical Review shall, within ten days of the receipt of a
17 completed application, determine whether the application, prima
18 facie, constitutes a medical injury.

19 (1) If the Office of Medical Review determines that the
20 application, prima facie, constitutes a medical injury, the office
21 shall immediately notify, by registered or certified mail, each
22 provider named in the application and, for providers that are not
23 self-insured, the insurer that provides coverage for the provider.
24 The notification shall inform the provider that he or she may

1 support the application to expedite the processing of the
2 application. A provider shall have fifteen days from the receipt of
3 notification of an application to support the application. If the
4 provider supports the application, the Office of Medical Review
5 shall review the application in accordance with subsection (b) of
6 this section.

7 (2) If the Office of Medical Review determines that the
8 application does not, prima facie, constitute a medical injury, the
9 office shall send a rejection letter to the applicant by registered
10 or certified mail, which shall inform the applicant of his or her
11 right of appeal. The applicant shall have fifteen days from the
12 date of the receipt of the letter in which to appeal the
13 determination of the office.

14 (b) An application that is supported by a provider in
15 accordance with subsection (a) of this section shall be reviewed by
16 individuals with relevant clinical expertise in the Office of
17 Medical Review within thirty days of the notification of the
18 provider's support of the application, to validate the application.
19 If Office of Medical Review finds that the application is valid,
20 the Office of Compensation shall determine an award of compensation
21 in accordance with subsection (d) of this section. If the Office of
22 Medical Review finds that the application is not valid, the office
23 shall immediately notify the applicant of the rejection of the
24 application and, in the case of fraud, the office shall immediately

1 notify relevant law-enforcement authorities.

2 (c) If the Office of Medical Review determines that the
3 application, prima facie, constitutes a medical injury, and the
4 provider does not elect to support the application, the office
5 shall complete a thorough investigation of the application within
6 sixty days after the determination by the office. The investigation
7 shall be conducted by a multidisciplinary team with relevant
8 clinical expertise and shall include a thorough investigation of
9 all available documentation, witnesses, and other information.
10 Within fifteen days after the completion of the investigation, the
11 chief medical officer shall allow the applicant and the provider to
12 access records, statements, and other information obtained in the
13 course of its investigation, in accordance with relevant state and
14 federal laws. Within thirty days after the completion of the
15 investigation, the chief medical officer shall convene an
16 independent medical review panel to determine whether the
17 application constitutes a medical injury.

18 (d) The independent medical review panel shall have access to
19 all redacted information obtained by the office in the course of
20 its investigation of the application, and shall make a written
21 determination within ten days after the convening of the panel,
22 which written determination shall be immediately provided to the
23 applicant and the provider. The standard of review shall be a
24 preponderance of the evidence.

1 (e) (1) If the independent medical review panel determines that
2 the application constitutes a medical injury, the Office of Medical
3 Review shall immediately notify the provider by registered or
4 certified mail of the right to appeal the determination of the
5 panel. The provider shall have fifteen days from the receipt of the
6 letter in which to appeal the determination of the panel.

7 (2) If the independent medical review panel determines that
8 the application does not constitute a medical injury, the Office of
9 Medical Review shall immediately notify the applicant by registered
10 or certified mail of the right to appeal the determination of the
11 panel. The applicant shall have fifteen days from the receipt of
12 the letter to appeal the determination of the panel.

13 (3) If the independent medical review panel finds that an
14 application constitutes a medical injury pursuant to subsection (c)
15 of this section, and all appeals of that finding have been
16 exhausted by the provider, the Office of Compensation shall, within
17 thirty days after either the finding of the panel or the exhaustion
18 of all appeals of that finding, whichever occurs later, make a
19 written determination of an award of compensation in accordance
20 with the compensation schedule and the findings of the panel. The
21 office shall notify the applicant and the provider by registered or
22 certified mail of the amount of compensation, and shall
23 additionally explain to the applicant the process to appeal the
24 determination of the office. The applicant shall have fifteen days

1 from the receipt of the letter to appeal the determination of the
2 office.

3 (f) Compensation for each application shall be offset by any
4 past and future collateral source payments. In addition,
5 compensation may be paid by periodic payments as determined by the
6 Office of Compensation in accordance with the rules adopted by the
7 board.

8 (g) Within fifteen days after either the acceptance of
9 compensation by the applicant or the conclusion of all appeals, the
10 provider, or for a provider who has insurance coverage, the
11 insurer, shall remit the compensation award to the Patient
12 Compensation System, which shall immediately provide compensation
13 to the applicant in accordance with the final compensation award.
14 Beginning forty-five days after the acceptance of compensation by
15 the applicant or the conclusion of all appeals, whichever occurs
16 later, an unpaid award shall begin to accrue interest at the rate
17 of eighteen percent per year. An applicant may petition the Circuit
18 Court of Kanawha County for enforcement of an award under this
19 article.

20 (h) A physician who is the subject of an application under
21 this article shall be found to have committed medical malpractice
22 only upon a specific finding to that effect by the West Virginia
23 Board of Medicine.

24 (i) The Patient Compensation System shall provide the division

1 with electronic access to applications in which a medical injury
2 was determined to exist, where the provider represents an imminent
3 risk of harm to the public. The division shall review such
4 applications to determine whether any of the incidents that
5 resulted in the application potentially involved conduct by the
6 licensee that is subject to disciplinary action.

7 **§9-10-8. Appeals.**

8 (a) An administrative law judge shall hear and determine
9 appeals filed by applicants or providers and shall exercise the
10 full power and authority granted to him or her, as necessary, to
11 carry out the purposes of such section. The administrative law
12 judge shall be limited in his or her review to determine whether
13 the Office of Medical Review, the independent medical review panel,
14 or Office of Compensation, as appropriate, has faithfully followed
15 the requirements of this article and rules adopted hereunder in
16 reviewing applications. If the administrative law judge determines
17 that such requirements were not followed in reviewing an
18 application, he or she shall require the chief medical officer to
19 either reconvene the original panel or convene a new panel, or
20 require the Office of Compensation to redetermine the compensation
21 amount, in accordance with the determination of the administrative
22 law judge.

23 (b) A determination by an administrative law judge under this
24 section regarding the faithful following of the requirements and

1 rules under this article shall be conclusive and binding as to all
2 questions of fact. Such determination with findings of fact and
3 conclusions of law shall be sent to the applicant and provider in
4 question. An applicant or provider may obtain judicial review of
5 such determination.

6 (c) Upon a written petition by either the applicant or the
7 provider, an administrative law judge may grant, for good cause, an
8 extension of any of the time periods specified in this article.

9 **§9-10-9. Administration fees; system.**

10 (a) The board shall annually determine a contribution that
11 shall be paid by each provider for the expense of the
12 administration of this article. The contribution amount shall be
13 determined by January 1 of each year, and shall be based on the
14 anticipated expenses of the administration of this article for the
15 next state fiscal year.

16 (b) The contribution rate shall not exceed the following
17 amounts:

18 (1) For an individual holding a professional license, not
19 specifically mentioned below, \$100 per licensee.

20 (2) For a hospital, \$200 per bed. The contribution for the
21 initial fiscal year shall be \$100 per bed.

22 (3) For an anesthesiology assistant or physician assistant or
23 a certified registered nurse anesthetist certified under \$250 per
24 licensee.

1 (4) For a physician, \$600 per licensee. The contribution for
2 the initial fiscal year shall be \$500 per licensee.

3 (5) For any other provider not otherwise described in this
4 subsection, \$2,500 per registrant or licensee.

5 (c) The contribution determined under this section shall be
6 payable by each provider on July 1 of the next state fiscal year.
7 Each provider shall pay the contribution amount within thirty days
8 from the date that notice is delivered to the provider. If any
9 provider fails to pay the contribution determined under this
10 section within thirty days, the board shall notify such provider by
11 certified or registered mail that such provider's license shall be
12 subject to revocation if the contribution is not paid within sixty
13 days from the date of the original notice.

14 (d) A provider who fails to pay the contribution amount
15 determined under this section within sixty days from the date of
16 the receipt of the original notice shall be subject to a licensure
17 revocation action by the Department of Health and Human Service or
18 the relevant regulatory board, as appropriate.

19 (e) All amounts collected under the provisions of this section
20 shall be paid into the trust fund established in section eleven of
21 this article.

22 **§9-10-10. Reports of the board.**

23 The board shall annually submit, beginning on October 1, 2015,
24 a report that describes the filing and disposition of applications

1 in the prior fiscal year. The report shall include, in the
2 aggregate, the number of applications, the disposition of such
3 applications, and compensation awarded. The report shall also
4 provide recommendations, if any, regarding legislative changes that
5 would improve the efficiency of the functions of the Patient
6 Compensation System. The report shall be provided to the Governor,
7 the President of the Senate and the Speaker of the House of
8 Delegates.

9 **§9-10-11. Patient Compensation System Trust Fund.**

10 (a) There is created in the State Treasury a special fund to
11 be designated as the Patient Compensation System Trust Fund, which
12 shall be used in the operation of the Patient Compensation System
13 in the performance of the various functions and duties required of
14 it under this article. The trust fund is established for the
15 deposit of contributions required to be paid by providers pursuant
16 to section nine of this article.

17 (b) Any balance in the trust fund at the end of any fiscal
18 year shall remain in the trust fund at the end of the year and
19 shall be available for carrying out the purposes of the trust fund.

NOTE: The purpose of this bill is to establish an alternative to medical malpractice litigation whereby patients are compensated for medical injuries. The bill creates the Patient Injury Act. The

bill limits rights and remedies. The bill provides legislative findings and intent. The bill defines terms. The bill establishes the Patient Compensation System. The bill establishes the Patient Compensation Board. The bill provides for members of the board. The bill provides for various committees. The bill provides for members of those committees. The bill establishes the Office of Medical Review. The bill establishes compensation guidelines. The bill provides for an independent medical review panel. The bill provides for an executive director and other officials. The bill provides for the filing of and disposition of applications. The bill provides for review by an administrative law judge. The bill provides for appellate review. The bill provides for payment of administration expenses. The bill requires an annual report. The bill provides funding. The bill requires administrative fees. The bill creates the Patient Compensation System Trust Fund. The bill authorizes rulemaking.

This article is new; therefore, it has been completely underscored.