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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004

ENROLLED

House Bill No. 4740

(By Delegates Michael, Doyle, Campbell, Leach,
Boggs, Stalnaker and Warner)

Passed March 13, 2004

In Effect Ninety Days from Passage

FILED

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E N R O L L E D

H. B. 4740

(BY DELEGATES MICHAEL, DOYLE, CAMPBELL, LEACH,
BOGGS, STALNAKER AND WARNER)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-12D-1, §29-12D-2 and §29-12D-3, all relating to the establishment, initial funding and operation of a patient injury compensation fund; creating a patient injury compensation fund; providing initial funding; providing the fund is not an insurer or insurance company under the code; providing for administration by the board of risk and insurance management; specifying certain powers and authority of the board; protecting the assets of the fund; requiring an annual audit of the fund by an independent actuary; providing immunity for the state and its agents for the debts, liabilities or obligations of the fund; providing for payments from the fund to qualified claimants; providing limits on the amount on payment in respect of any occurrence; authorizing payments from the fund either in lump sums or periodic payments; establishing procedures; providing for proration of payments under certain circumstances; authorizing the payment of reasonable attorney fees; and providing for appeals.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §29-12D-1, §29-12D-2 and §29-12D-3, all to read as follows:

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1. Creation of patient injury compensation fund; purpose; initial funding of patient injury compensation fund.

1 (a) There is created the West Virginia patient injury
2 compensation fund, for the purpose of providing fair and
3 reasonable compensation to claimants in medical malpractice
4 actions for any portion of economic damages awarded that is
5 uncollectible as a result of limitations on economic damage
6 awards for trauma care, or as a result of the operation of the
7 joint and several liability principles and standards, set forth in
8 article seven-b, chapter fifty-five of this code. The fund shall
9 consist of all contributions, revenues and moneys which may be
10 paid into the fund from time to time by the state of West
11 Virginia or from any other source whatsoever, together with
12 any and all interest, earnings, dividends, distributions, moneys
13 or revenues of any nature whatsoever accruing to the fund.

14 (b) Initial funding for the fund shall be provided as follows:
15 during fiscal year two thousand five, two million two hundred
16 thousand dollars of the revenues that would otherwise be
17 transferred to the tobacco account established at subsection (b),
18 section two, article eleven-a, chapter four of this code pursuant
19 to the provisions of section fourteen, article three, chapter
20 thirty-three of this code shall be transferred to the fund; during
21 fiscal year two thousand six, two million two hundred thousand
22 dollars of the revenues that would otherwise be transferred to
23 the tobacco account established at subsection (b), section two,
24 article eleven-a, chapter four of this code pursuant to the
25 provisions of section fourteen, article three, chapter thirty-three

26 of this code, shall be transferred to the fund; and during fiscal
27 year two thousand seven, two million two hundred thousand
28 dollars of the revenues that would otherwise be transferred to
29 the tobacco account established at subsection (b), section two,
30 article eleven-a, chapter four of this code pursuant to the
31 provisions of section fourteen, article three, chapter thirty-three
32 of this code shall be transferred to the fund. Beginning fiscal
33 year two thousand eight, if and to the extent additional funding
34 for the fund is required from time to time to maintain the
35 actuarial soundness of the fund, the additional funding may be
36 provided by further act of the legislature, either from the
37 revenue stream identified in this subsection or otherwise.
38 Payments to the tobacco fund shall be extended until the
39 tobacco fund is repaid in full.

40 (c) The fund is not and shall not be considered a defendant
41 in any civil action arising under article seven-b, chapter fifty-
42 five of this code.

43 (d) The fund is not and shall not be considered an insurance
44 company or insurer for any purpose under this code.

**§29-12D-2. Administration of fund; investment of fund assets;
annual actuarial review and audit; fund assets
and liabilities not assets and liabilities of the state.**

1 (a) The patient injury compensation fund shall be imple-
2 mented, administered and operated by the board of risk and
3 insurance management. In addition to any other powers and
4 authority expressly or impliedly conferred on the board of risk
5 and insurance management in this code, the board may:

6 (1) Receive, collect and deposit all revenues and moneys
7 due the fund;

8 (2) Employ, or in accordance with the provisions of law
9 applicable contract for personal, professional or consulting

10 services, retain the services of a qualified competent actuary to
11 perform the annual actuarial study of the fund required by this
12 section and advise the board on all aspects of the fund's
13 administration, operation and defense which require application
14 of the actuarial science;

15 (3) Contract for any services necessary or advisable to
16 implement the authority and discharge the responsibilities
17 conferred and imposed on the board by this article;

18 (4) Employ, or contract with, legal counsel of the board's
19 choosing to advise and represent the board and represent the
20 fund in respect of any and all matters relating to the operation
21 of the fund and payments out of the fund;

22 (5) Employ necessary or appropriate clerical personnel to
23 carry out the responsibilities of the board under this part; and

24 (6) Promulgate rules, in accordance with article three,
25 chapter twenty-nine-a of this code as it considers necessary or
26 advisable to implement the authority of and discharge the
27 responsibilities conferred and imposed on the board by this
28 article.

29 (b) The assets of the fund, and any and all income, divi-
30 dends, distributions or other income or moneys earned by or
31 accruing to the benefit of the fund, shall be held in trust for the
32 purposes contemplated by this article, and shall not be spent for
33 any other purpose: *Provided*, That the assets of the fund may be
34 used to pay for all reasonable costs and expenses of any nature
35 whatsoever associated with the ongoing administration and
36 operation of the fund. All assets of the fund from time to time
37 shall be deposited with, held and invested by, and accounted for
38 separately by the investment management board. All moneys
39 and assets of the fund shall be invested and reinvested by the
40 investment management board in the same manner as provided

41 by law for the investment of other trust fund assets held and
42 invested by the investment management board.

43 (c) The board shall cause an annual review of the assets and
44 liabilities of the fund to be conducted on an annual basis by a
45 qualified, independent actuary.

46 (d) The board shall cause an audit of the fund to be con-
47 ducted on an annual basis by a qualified, independent auditor.

48 (e) The state of West Virginia is not liable for any liabilities
49 of the fund. Claims or expenses against the fund are not a debt
50 of the state of West Virginia or a charge against the general
51 revenue fund of the state of West Virginia.

§29-12D-3. Payments from the patient injury compensation fund.

1 (a) Other than payments in connection with the ongoing
2 operation and administration of the fund, no payments may be
3 made from the fund other than in satisfaction of claims for
4 economic damages to qualified claimants who would have
5 collected economic damages but for the operation of the limits
6 on economic damages set forth in article seven-b, chapter fifty-
7 five of this code.

8 (b) For purposes of this article, a qualified claimant must be
9 both a “patient” and a “plaintiff” as those terms are defined in
10 article seven-b, chapter fifty-five of this code.

11 (c) Any qualified claimant seeking payment from the fund
12 must establish to the satisfaction of the board that he or she has
13 exhausted all reasonable means to recover from all applicable
14 liability insurance an award of economic damages, following
15 procedures prescribed by the board by legislative rule.

16 (d) Upon a determination by the board that a qualified
17 claimant to the fund for compensation has exhausted all

18 reasonable means to recover from all applicable liability
19 insurance an award of economic damages arising under article
20 seven-b, chapter fifty-five of this code, the board shall make a
21 payment or payments to the claimant for economic damages.
22 The economic damages must have been awarded but be
23 uncollectible after the exhaustion of all reasonable means of
24 recovery of applicable insurance proceeds. In no event shall the
25 amount paid by the board in respect to any one occurrence
26 exceed one million dollars or the maximum amount of money
27 that could have been collected from all applicable insurance
28 prior to the creation of the patient injury compensation fund
29 under this article, regardless of the number of plaintiffs or the
30 number of defendants or, in the case of wrongful death,
31 regardless of the number of distributees.

32 (e) The board, in its discretion, may make payments to a
33 qualified claimant in a lump sum amount or in the form of
34 periodic payments. Periodic payments are to be based upon the
35 present value of the total amount to be paid by the fund to the
36 claimant by using federally approved qualified assignments.

37 (f) In its discretion, the board may make a payment or
38 payments out of the fund to a qualified claimant in connection
39 with the settlement of claims arising under article seven-b,
40 chapter fifty-five of this code, all according to rules promul-
41 gated by the board. The board shall prior to making payment
42 determine that payment from the fund to a qualified claimant is
43 in the best interests of the fund. When the claimant and the
44 board agree upon a settlement amount, the following procedure
45 shall be followed:

46 (1) A petition shall be filed by the claimant with the court
47 in which the action is pending, or if none is pending, in a court
48 of appropriate jurisdiction, for approval of the agreement
49 between the claimant and the board.

50 (2) The court shall set the petition for hearing as soon as the
51 court's calendar permits. Notice of the time, date and place of
52 hearing shall be given to the claimant and to the board.

53 (3) At the hearing the court shall approve the proposed
54 settlement if the court finds it to be valid, just and equitable.

55 (g) If and to the extent that any payment to one or more
56 qualified claimants under this section would deplete the fund
57 during any fiscal year, payments to and among qualified
58 claimant's shall be prorated during the fiscal year according to
59 the rules promulgated by the board. Any amounts due and
60 unpaid to qualified claimants shall be paid in subsequent fiscal
61 years from available funds, but only to the extent funds are
62 available in any fiscal year, according to the board's rules.

63 (h) Payments out of the fund may be used to pay reasonable
64 attorney fees of attorneys representing qualified claimants
65 receiving compensation in respect of economic damages as
66 established by the board of risk and insurance management.

67 (i) The claimant may appeal a final decision made by the
68 board pursuant to the provisions of article five, chapter twenty-
69 nine-a of this code.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 2nd
day of April, 2004.

Governor

PRESENTED TO THE
GOVERNOR
DATE 4.1.04
TIME 4:35 pm