S T A T E O F N E W Y O R K

8274

I N S E N A T E

June 18, 2010

Introduced by Sen. BRESLIN -- (at request of the Governor) -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to establishing a medical malpractice insurance rate recommendation association; and to amend the state finance law, in relation to creating the medical malpractice insurance fund

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The insurance law is amended by adding a new section 2352 to read as follows:

S 2352. PHYSICIANS AND SURGEONS DATA COLLECTION AND ADVISORY ASSOCIATION. IN THIS SECTION:

(A)(1) "PHYSICIANS AND SURGEONS DATA COLLECTION AND ADVISORY ASSOCIATION" OR "ASSOCIATION" MEANS THE ASSOCIATION ESTABLISHED PURSUANT TO THIS SECTION.

(2) "MEDICAL MALPRACTICE INSURANCE" HAS THE MEANING ASCRIBED TO IT BY SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER.

(B) A NON-PROFIT, UNINCORPORATED ASSOCIATION IS HEREBY CREATED CONSISTING OF ALL INSURERS AUTHORIZED TO WRITE PERSONAL INJURY LIABILITY INSURANCE AND ENGAGED IN WRITING, WITHIN THIS STATE, ON A DIRECT BASIS, INSURANCE POLICIES PROVIDING PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE INSURANCE. A PLAN APPROVED BY THE SUPERINTENDENT PURSUANT TO SUBPARAGRAPH (D) OF PARAGRAPH TWO OF SUBSECTION (C) OF SECTION FIVE THOUSAND FIVE HUNDRED TWO OF THIS CHAPTER SHALL ALSO BE A MEMBER. EVERY SUCH INSURER SHALL BE A MEMBER OF THE ASSOCIATION AND SHALL REMAIN A MEMBER AS A CONDITION OF ITS AUTHORITY TO CONTINUE TO TRANSACT PERSONAL INJURY LIABILITY INSURANCE IN THIS STATE.

(C)(1) THE ASSOCIATION SHALL, PURSUANT TO THE PROVISIONS OF THIS ARTICLE AND THE PLAN OF OPERATIONS:

(A) COLLECT AND COMPILE PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE PREMIUM EXPOSURE, LOSS AND EXPENSE STATISTICS, AND SUCH OTHER INFORMA-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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TION AS THE SUPERINTENDENT MAY DEEM NECESSARY OR EXPEDIENT WITH RESPECT TO PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE INSURANCE; AND

(B) PROVIDE TO THE SUPERINTENDENT PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE RATES OR RATE INFORMATION PURSUANT TO SUBSECTION (F) OF THIS SECTION.

(2) THE ASSOCIATION SHALL BE A RATE SERVICE ORGANIZATION FOR ALL PURPOSES UNDER THIS CHAPTER EXCEPT FOR SUBSECTIONS (B), (C), (D), (F), (G), (H), (I), (J), (K), (L), (P), (Q), (R), (S), AND (T) OF SECTION TWO THOUSAND THREE HUNDRED THIRTEEN, SECTION TWO THOUSAND THREE HUNDRED FIFTEEN, AND PARAGRAPH NINE OF SUBSECTION (A) OF SECTION TWO THOUSAND THREE HUNDRED SIXTEEN OF THIS CHAPTER.

(D)(1) WITHIN SIXTY DAYS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, THE GOVERNING BODY OF THE ASSOCIATION SHALL SUBMIT TO THE SUPERINTENDENT, FOR APPROVAL, A PROPOSED PLAN OF OPERATION, WHICH SHALL INCLUDE: (A) PRELIMINARY ASSESSMENT OF ALL MEMBERS FOR INITIAL EXPENSES NECESSARY TO COMMENCE OPERATIONS; (B) ESTABLISHMENT OF NECESSARY FACILITIES; (C) MANAGEMENT OF THE ASSOCIATION; (D) ALLOCATION OF SUFFICIENT RESOURCES FOR DATA-GATHERING; AND (E) ASSESSMENT OF MEMBERS TO DEFRAY EXPENSES.

(2) THE GOVERNING BODY OF THE ASSOCIATION MAY AMEND THE PLAN OF OPERATION SUBJECT TO THE SUPERINTENDENT'S APPROVAL, OR SHALL AMEND IT AT THE SUPERINTENDENT'S DIRECTION.

(3) THE ASSOCIATION SHALL, FOR EXPENSES THAT IT INCURS IN ITS OPERATION, ASSESS MEMBERS ON THE BASIS OF DIRECT WRITTEN PREMIUMS, LESS RETURNS, RECEIVED BY THE MEMBER DURING THE PRIOR CALENDAR YEAR, ON POLICIES OF PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE INSURANCE, WITH RESPECT TO RISKS RESIDENT IN THIS STATE. NOTHING IN THIS PARAGRAPH SHALL PREVENT THE ASSOCIATION FROM ALSO OBTAINING FUNDS FROM ANY OTHER SOURCE.

(E)(1)(A) THE GOVERNING BODY OF THE ASSOCIATION SHALL BE COMPRISED OF SEVEN VOTING MEMBERS. THREE MEMBERS SHALL REPRESENT THE INSURERS AUTHORIZED TO WRITE PERSONAL INJURY LIABILITY INSURANCE AND ENGAGED IN WRITING, WITHIN THIS STATE, ON A DIRECT BASIS, INSURANCE POLICIES PROVIDING PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE INSURANCE, AND SHALL BE SELECTED IN SUCH MANNER AS IS DETERMINED BY THE MEMBERS OF THE ASSOCIATION. ONE MEMBER SHALL BE A REPRESENTATIVE OF A PLAN APPROVED BY THE SUPERINTENDENT FOR THE EQUITABLE DISTRIBUTION OF POLICIES FROM THE ASSOCIATION AUTHORIZED PURSUANT TO SUBPARAGRAPH (D) OF PARAGRAPH TWO OF SUBSECTION (C) OF SECTION FIVE THOUSAND FIVE HUNDRED TWO OF THIS CHAPTER. THE REMAINING THREE MEMBERS SHALL BE APPOINTED BY THE SUPERINTENDENT AND REPRESENT THE INTERESTS OF: (I) INJURED PARTIES; (II) PHYSICIANS AND SURGEONS; AND (III) HOSPITALS.

(B) ANY VACANCY IN THE GOVERNING BODY SHALL BE FILLED IN THE SAME MANNER AS THE INITIAL APPOINTMENT.

(C) THE GOVERNING BODY SHALL SELECT A CHIEF EXECUTIVE OFFICER WHO SHALL SERVE AT THE PLEASURE OF THE GOVERNING BODY, AND WHOSE TERMS AND CONDITIONS OF EMPLOYMENT SHALL BE APPROVED BY THE GOVERNING BODY.

(D) NO RESTRICTION IN THIS SUBSECTION SHALL APPLY IF COMPLIANCE IS PREVENTED BY THE FAILURE OF ANY APPOINTING AUTHORITY TO MAKE AN APPOINTMENT OR OF THE SUPERINTENDENT TO APPROVE SUCH APPOINTMENT.

(2) THE GOVERNING BODY OF THE ASSOCIATION SHALL HAVE CHARGE OF THE GENERAL ACTIVITIES OF THE ASSOCIATION, INCLUDING CONTROL AND SUPERVISION OVER ITS FINANCES, AND AUTHORITY TO ESTABLISH BUDGETS, APPROVE ASSESSMENTS, AND IMPOSE FINES ON MEMBERS OF THE ASSOCIATION.

(3)(A) THE ASSOCIATION SHALL HAVE AN ACTUARIAL COMMITTEE. THE ACTUARIAL COMMITTEE SHALL REVIEW METHODOLOGY AND DATA COLLECTION PROCESSES USED

TO DEVELOP RATES AND OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUIRE.

(B) THE MEMBERS OF THE GOVERNING BODY REPRESENTING THE INJURED PARTIES, PHYSICIANS AND SURGEONS, AND HOSPITALS SHALL TOGETHER APPOINT ONE INDEPENDENT CASUALTY ACTUARY WHO IS A FELLOW OR ASSOCIATE OF THE CASUALTY ACTUARIAL SOCIETY TO SERVE AS A MEMBER OF THE ACTUARIAL COMMITTEE. THE APPOINTMENT OF THE ACTUARY AND THE ACTUARY'S COMPENSATION AND TERMS AND CONDITIONS OF RETENTION SHALL BE REASONABLE AND CUSTOMARY FOR SUCH PROFESSIONAL. THE ASSOCIATION SHALL PAY THE ACTUARY, WHO SHALL HAVE THE SAME ACCESS TO THE ASSOCIATION DATA AND DOCUMENTS AS THE OTHER MEMBERS OF THAT COMMITTEE.

(F)(1) EVERY MEMBER SHALL FILE WITH THE ASSOCIATION A STATISTICAL REPORT, AS REQUIRED BY THE SUPERINTENDENT, BUT NOT LESS THAN ANNUALLY, SHOWING A CLASSIFICATION SCHEDULE OF ITS PREMIUMS AND LOSSES ON ITS PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE INSURANCE, AND SUCH OTHER INFORMATION AS THE SUPERINTENDENT MAY DEEM NECESSARY OR EXPEDIENT FOR THE ADMINISTRATION OF THE PROVISIONS OF THIS ARTICLE. THE SUPERINTENDENT FROM TIME TO TIME MAY PRESCRIBE THE FORM OF THE REPORT, INCLUDING STATISTICAL DATA CONFORMING TO ESTABLISHED CLASSIFICATIONS.

(2) THE ASSOCIATION SHALL RETAIN ALL DATA USED IN ITS CALCULATIONS AND ANY OTHER DATA AS THE SUPERINTENDENT MAY REQUIRE FOR SUCH PERIOD OF TIME AS THE SUPERINTENDENT SHALL DIRECT.

(3) IN ORDER TO ASSIST THE SUPERINTENDENT TO ESTABLISH PHYSICIANS AND SURGEONS MEDICAL MALPRACTICE RATES, THE ASSOCIATION SHALL PROVIDE TO THE SUPERINTENDENT ON OR BEFORE APRIL FIRST OF EACH YEAR A REPORT IN A FORM PRESCRIBED BY THE SUPERINTENDENT CONTAINING SUCH RATING AND OTHER INFORMATION AS THE SUPERINTENDENT MAY REQUEST.

S 2. The insurance law is amended by adding a new section 9112 to read as follows:

S 9112. MEDICAL MALPRACTICE INSURANCE FUND ASSESSMENT. (A) FOR PURPOSES OF THIS SECTION:

(1) "CLOSED BOOK" SHALL MEAN THE MEDICAL MALPRACTICE INSURANCE POOL'S ACTUAL AND ESTIMATED LIABILITIES WITH RESPECT TO POLICIES OF MEDICAL MALPRACTICE ISSUED THROUGH THE POOL FROM JULY FIRST, TWO THOUSAND THROUGH JUNE THIRTIETH, TWO THOUSAND TEN.

(2) "MEDICAL MALPRACTICE INSURANCE" SHALL HAVE THE MEANING ASCRIBED TO IT BY SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER.

(3) "MEDICAL MALPRACTICE INSURANCE POOL" OR "POOL" SHALL MEAN THE ENTITY ESTABLISHED PURSUANT TO SUBPARAGRAPH (D) OF PARAGRAPH TWO OF SUBSECTION (C) OF SECTION FIVE THOUSAND FIVE HUNDRED TWO OF THIS CHAPTER.

(4) "LIABILITY INSURANCE" SHALL MEAN "PERSONAL INJURY LIABILITY INSURANCE" AND "PROPERTY DAMAGE LIABILITY INSURANCE," AS DEFINED IN PARAGRAPHS THIRTEEN AND FOURTEEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER.

(5) "NET DIRECT WRITTEN PREMIUMS" SHALL MEAN GROSS DIRECT PREMIUMS WRITTEN ON POLICIES OF LIABILITY INSURANCE, INCLUDING THE LIABILITY COMPONENT OF MULTIPLE PERIL PACKAGE POLICIES AS COMPUTED BY THE SUPERINTENDENT, LESS RETURN PREMIUMS FOR THE UNUSED OR UNABSORBED PORTIONS OF PREMIUM DEPOSITS AND DIVIDENDS PAID TO POLICYHOLDERS ON SUCH DIRECT BUSINESS.

(B)(1) THE MEDICAL MALPRACTICE INSURANCE POOL SHALL SUBMIT TO THE SUPERINTENDENT NO LATER THAN AUGUST THIRTY-FIRST, TWO THOUSAND TEN, OR THIRTY DAYS AFTER THE ENACTMENT OF THIS SECTION, WHICHEVER IS LATER, A

PLAN TO OPERATE THE CLOSED BOOK FOR THE EXCLUSIVE BENEFIT OF THE POLICIES AND CONTRACTS INCLUDED THEREIN.

(2) TO THE CLOSED BOOK SHALL BE ALLOCATED ALL ASSETS OF THE POOL AS OF JUNE THIRTIETH, TWO THOUSAND TEN, AND ANY EARNINGS THEREON, AS WELL AS OTHER ASSETS, NOT INCONSISTENT WITH SECTION ONE THOUSAND THREE HUNDRED ONE OF THIS CHAPTER, DEEMED BY THE SUPERINTENDENT AVAILABLE FOR THE PAYMENT OF LOSSES AND CLAIMS, AT VALUES DETERMINED BY THE SUPERINTENDENT.

(3) NONE OF THE ASSETS, INCLUDING THE REVENUE THEREFROM, ALLOCATED IN ACCORDANCE WITH PARAGRAPH TWO OF THIS SUBSECTION SHALL REVERT TO THE BENEFIT OF POLICYHOLDERS WITH RESPECT TO POLICIES ISSUED ON OR AFTER JULY FIRST, TWO THOUSAND TEN.

(C) THE SUPERINTENDENT SHALL ANNUALLY, ON OR BEFORE APRIL FIRST, DETERMINE WHETHER THE CLOSED BOOK HAS SUFFICIENT MONIES TO FUND ITS ESTIMATED CLAIM PAYMENTS, CLAIM ADJUSTMENT EXPENSES, AND ALL OTHER EXPENSES FOR THE SUBSEQUENT TWELVE MONTHS, WITH RESPECT TO POLICIES OF MEDICAL MALPRACTICE INSURANCE ISSUED THROUGH THE POOL FROM JULY FIRST, TWO THOUSAND THROUGH JUNE THIRTIETH, TWO THOUSAND TEN. IF THE SUPERINTENDENT DETERMINES THAT THE MONIES ARE INSUFFICIENT TO FUND THE ESTIMATED EXPENSES AND PAYMENTS, THE SUPERINTENDENT SHALL ASSESS EACH INSURANCE COMPANY AUTHORIZED TO WRITE LIABILITY INSURANCE PRIOR TO IMPOSING A SURCHARGE ON PREMIUMS FOR POLICIES PROVIDING COVERAGE FOR PHYSICIANS' AND SURGEONS' MEDICAL MALPRACTICE INSURANCE PURSUANT TO SECTION FORTY OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX AS AMENDED.

(D) THE SUPERINTENDENT SHALL DETERMINE THE ASSESSMENT IMPOSED PURSUANT TO SUBSECTION (A) OF THIS SECTION ON THE BASIS OF NET DIRECT WRITTEN PREMIUMS RECEIVED BY INSURERS DURING THE PRIOR CALENDAR YEAR, ON POLICIES OF LIABILITY INSURANCE, WITH RESPECT TO PROPERTY OR RISKS RESIDENT IN THIS STATE; PROVIDED, HOWEVER, THAT THE ASSESSMENT ON EACH INSURER SHALL NOT EXCEED ONE-HALF PERCENT OF THE INSURANCE COMPANY'S NET DIRECT WRITTEN PREMIUMS RECEIVED DURING THE PRIOR CALENDAR YEAR. AN INSURANCE COMPANY SHALL PAY THE ASSESSMENT ON A QUARTERLY BASIS IN A MANNER PRESCRIBED BY THE SUPERINTENDENT ON THE FIFTEENTH DAY OF FEBRUARY, MAY, AUGUST AND NOVEMBER OF EACH YEAR.

(E) AN INSURANCE COMPANY SHALL INCLUDE A SURCHARGE ON PREMIUMS FOR LIABILITY INSURANCE POLICIES ON PROPERTIES OR RISKS LOCATED OR RESIDENT IN THIS STATE TO OFFSET THE ASSESSMENTS PAID UNDER THIS SECTION BY THE INSURANCE COMPANY. THE AMOUNT OF THE PREMIUM SURCHARGE SHALL BE EQUIVALENT TO THE SUPERINTENDENT'S DETERMINATION PURSUANT TO SUBSECTION (B) OF THIS SECTION. THE AMOUNT CHARGED ON THE POLICY SHALL BE SEPARATELY SHOWN FROM THE PREMIUM FOR COVERAGE ON THE POLICY AND CLEARLY IDENTIFIED.

(F) AN AMOUNT EQUAL TO ANY ASSESSMENT IMPOSED BY THIS SECTION AND PAID TO THE SUPERINTENDENT BY AN INSURANCE COMPANY:

(1) SHALL BE DEDUCTED FROM GROSS DIRECT PREMIUMS FOR ALL PURPOSES UNDER ARTICLE THIRTY-THREE OF THE TAX LAW;

(2) SHALL BE ALLOWED AS A CREDIT AGAINST AMOUNTS IMPOSED PURSUANT TO SECTION ONE THOUSAND ONE HUNDRED TWELVE OF THIS CHAPTER; AND

(3) IF APPLIED AS A CREDIT AGAINST AMOUNTS IMPOSED PURSUANT TO SECTION ONE THOUSAND ONE HUNDRED TWELVE OF THIS CHAPTER, SHALL ALSO NOT BE REFUNDABLE UNDER SECTION NINE THOUSAND ONE HUNDRED NINE OF THIS ARTICLE.

(G) IF ANY INSURANCE COMPANY DOES NOT PAY THE ASSESSMENT IMPOSED BY THIS SECTION, THE PROVISIONS OF SECTION NINE THOUSAND ONE HUNDRED NINE OF THIS ARTICLE SHALL APPLY.

(H) ALL MONIES RECEIVED BY THE SUPERINTENDENT THAT ARE COLLECTED FROM INSURANCE COMPANIES SHALL BE PAID TO THE MEDICAL MALPRACTICE INSURANCE FUND ESTABLISHED PURSUANT TO SECTION EIGHTY-NINE-H OF THE STATE FINANCE LAW BY THE TENTH DAY OF THE QUARTER FOLLOWING RECEIPT OF THE COLLECTIONS.

S 3. The state finance law is amended by adding a new section 89-h to read as follows:

S 89-H. MEDICAL MALPRACTICE INSURANCE FUND. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE A SPECIAL FUND TO BE KNOWN AS THE MEDICAL MALPRACTICE INSURANCE FUND.

2. THE FUND SHALL CONSIST OF ALL MONIES RECEIVED BY THE STATE PURSUANT TO SECTION NINE THOUSAND ONE HUNDRED TWELVE OF THE INSURANCE LAW, AND ALL OTHER GRANTS, BEQUESTS OR OTHER MONIES APPROPRIATED, CREDITED OR TRANSFERRED THERETO FROM ANY OTHER FUND OR SOURCE.

3. MONIES IN THE MEDICAL MALPRACTICE INSURANCE FUND SHALL BE KEPT SEPARATE AND APART AND SHALL NOT BE COMMINGLED WITH ANY OTHER MONIES IN THE CUSTODY OF THE COMPTROLLER AND SHALL ONLY BE EXPENDED AS SPECIFIED IN THIS SECTION AND IN SUCH AMOUNTS AS APPROVED BY THE DIVISION OF THE BUDGET.

4. THE MONIES RECEIVED BY THE FUND SHALL BE EXPENDED TO PAY CLAIMS AND NECESSARY EXPENSES, AS CERTIFIED BY THE SUPERINTENDENT OF INSURANCE, ARISING FROM POLICIES OF MEDICAL MALPRACTICE INSURANCE, AS SUCH TERM IS DEFINED IN SUBSECTION (B) OF SECTION FIVE THOUSAND FIVE HUNDRED ONE OF THE INSURANCE LAW, ISSUED THROUGH THE MEDICAL MALPRACTICE INSURANCE POOL FROM JULY FIRST, TWO THOUSAND THROUGH JUNE THIRTIETH, TWO THOUSAND TEN. FOR PURPOSES OF THIS SECTION, "MEDICAL MALPRACTICE INSURANCE POOL" SHALL MEAN THE ENTITY ESTABLISHED PURSUANT TO SUBPARAGRAPH (D) OF PARAGRAPH TWO OF SUBSECTION (C) OF SECTION FIVE THOUSAND FIVE HUNDRED TWO OF THE INSURANCE LAW.

S 4. This act shall take effect immediately.