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I N   S E N A T E

May 3, 2012

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Introduced by Sen. LIBOUS -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to reciprocal insurance companies, and medical malpractice premium rates and surcharges; and to amend chapter 266 of the laws of 1986, amending the civil practice law and rules and other laws relating to malpractice and professional medical conduct, in relation to medical malpractice premium rates and surcharges

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

1     Section 1. Section 7308 of the insurance law is amended to read as  
2 follows:  
3     S 7308. Conversion of domestic reciprocal insurers into stock  
4 property/casualty insurance companies. (a) AS USED IN THIS ARTICLE:  
5     (1) "DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER" MEANS ANY DOMES-  
6 TIC RECIPROCAL INSURER ORGANIZED PURSUANT TO ARTICLE SIXTY-ONE OF THIS  
7 CHAPTER FOR WHICH, IN THE YEAR ENDING DECEMBER THIRTY-FIRST PRIOR TO  
8 CONVERTING TO A STOCK PROPERTY/CASUALTY INSURANCE COMPANY, AT LEAST  
9 NINETY PERCENT OF ITS PREMIUM WRITINGS WERE DERIVED FROM INSURING PHYSI-  
10 CIANS OR DENTISTS WHO HAD AN ACADEMIC APPOINTMENT AT ANY STATE UNIVERSI-  
11 TY OF NEW YORK MEDICAL SCHOOL OR FACILITY, OR WHO HAD AN ACADEMIC  
12 APPOINTMENT AT NEW YORK MEDICAL COLLEGE;  
13     (2) "CLINICAL PRACTICE PLAN" MEANS (A) A CLINICAL PRACTICE PLAN AS  
14 DEFINED IN SUBPARAGRAPH (III) OF PARAGRAPH (B) OF SUBDIVISION FOURTEEN  
15 OF SECTION TWO HUNDRED SIX OF THE PUBLIC HEALTH LAW AND WHICH PLAN IS  
16 SUBJECT TO REGULATION BY THE BOARD OF REGENTS, AND (B) WESTCHESTER  
17 MEDICAL CENTER.  
18     (B) Any domestic reciprocal insurer doing business under the  
19 provisions of this article may, EITHER (1) by the affirmative vote of  
20 its subscribers holding two-thirds of its operating reserve accumu-  
21 lations at the date of the meeting at which the proposal to convert is  
22 voted upon, OR (2) IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALPRAC-  
23 TICE INSURER, BY THE UNANIMOUS AFFIRMATIVE VOTE OF ITS ADVISORY COMMIT-  
24 TEE, be converted into and licensed as a stock property/casualty insur-

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

LBD15715-01-2

1   ance company, in the manner prescribed by this section and subject to  
2   any other requirements of law. The advisory committee of any such recip-  
3   rocal insurer proposing so to convert shall cause the attorney-in-fact  
4   of such reciprocal insurer to give to [each subscriber of record at the  
5   close of business on the last day of the quarter year next preceding the  
6   issue of such notice] THE SUPERINTENDENT not less than thirty days  
7   notice by mail of [the meeting at which the] SUCH proposed conversion  
8   [is to be voted upon and of a hearing of the subscribers before the  
9   superintendent]. [At such hearing or any adjournment thereof, the] THE  
10   superintendent shall pass upon the fairness of the terms and conditions  
11   of the proposed conversion and of the issuance of shares of the corpo-  
12   ration and he OR SHE shall approve [or disapprove] the same IN THE  
13   ABSENCE OF CLEAR EVIDENCE THAT SUCH CONVERSION WOULD BE DETRIMENTAL TO  
14   THE INTERESTS OF THE PEOPLE OF THE STATE. The provisions of this chap-  
15   ter relative to a similar domestic insurance company organized to do the  
16   same kinds of insurance business shall apply to the organization and  
17   licensing of such corporation.

18   [(b)] (C) If converted into a stock insurance corporation,  
19   subscriptions to the capital shares may be made, in whole or in part, by  
20   the subscribers of the reciprocal insurer, and their subscriptions may  
21   be paid in to the extent of their operating reserve accumulations by a  
22   transfer thereof or any portion thereof to such corporation. The contin-  
23   gent surplus of the reciprocal insurer accumulated pursuant to  
24   subsection (a) of section six thousand one hundred five of this chapter  
25   shall be included in the capital and surplus of the corporation and  
26   shares representing the same shall be issued to existing subscribers, at  
27   the rate determined as provided in the next sentence for each dollar of  
28   par value of the shares of such new corporation, in proportion to their  
29   shares in the aggregate operating reserves at the time when the proposal  
30   to convert is adopted. The rate of payment for each dollar of par value  
31   of the stock of such new corporation shall be determined by agreement  
32   between the advisory committee of the reciprocal insurer and the board  
33   of directors of the stock insurance company. Every such subscriber  
34   shall be entitled in the subscription to the capital shares of such  
35   corporation to a priority in subscribing thereto for thirty days after  
36   the opening of the books of subscription in proportion to his interest  
37   in such reciprocal insurer at such date but at the rate of payment fixed  
38   by the board of directors. At the expiration of such thirty days the  
39   board of directors may sell and dispose of the capital shares which have  
40   not been taken or subscribed, as aforesaid, but at not less than the  
41   same rate of payment. [(c)] THIS SUBSECTION SHALL NOT APPLY TO DOMESTIC  
42   RECIPROCAL MEDICAL MALPRACTICE INSURERS.

43   (D) IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALPRACTICE INSURER,  
44   IF CONVERTED INTO A STOCK INSURANCE CORPORATION, SUBSCRIPTIONS TO THE  
45   CAPITAL SHARES MAY BE MADE, IN WHOLE OR IN PART, ONLY BY THE CLINICAL  
46   PRACTICE PLANS REPRESENTED ON ITS ADVISORY COMMITTEE, AND THEIR  
47   SUBSCRIPTIONS MAY BE PAID IN TO THE EXTENT OF THEIR RESPECTIVE SUBSCRIB-  
48   ERS' OPERATING RESERVE ACCUMULATIONS BY A TRANSFER THEREOF OR ANY  
49   PORTION THEREOF TO SUCH CORPORATION. THE CONTINGENT SURPLUS OF THE  
50   RECIPROCAL INSURER ACCUMULATED PURSUANT TO SUBSECTION (A) OF SECTION SIX  
51   THOUSAND ONE HUNDRED FIVE OF THIS CHAPTER SHALL BE INCLUDED IN THE CAPI-  
52   TAL AND SURPLUS OF THE CORPORATION AND SHARES REPRESENTING THE SAME  
53   SHALL BE ISSUED TO SUCH CLINICAL PRACTICE PLANS AT THE RATE DETERMINED  
54   AS PROVIDED IN THE NEXT SENTENCE FOR EACH DOLLAR OF PAR VALUE OF THE  
55   SHARES OF SUCH NEW CORPORATION, IN PROPORTION TO THEIR RESPECTIVE  
56   SUBSCRIBERS' SHARE IN THE AGGREGATE OPERATING RESERVES AT THE TIME WHEN

1 THE PROPOSAL TO CONVERT IS ADOPTED. THE RATE OF PAYMENT FOR EACH DOLLAR  
2 OF PAR VALUE OF THE STOCK OF SUCH NEW CORPORATION SHALL BE DETERMINED BY  
3 AGREEMENT BETWEEN THE ADVISORY COMMITTEE OF THE RECIPROCAL INSURER AND  
4 THE BOARD OF DIRECTORS OF THE STOCK INSURANCE COMPANY. EVERY SUCH CLIN-  
5 ICAL PRACTICE PLAN SHALL BE ENTITLED IN THE SUBSCRIPTION TO THE CAPITAL  
6 SHARES OF SUCH CORPORATION TO A PRIORITY IN SUBSCRIBING THERETO FOR  
7 THIRTY DAYS AFTER THE OPENING OF THE BOOKS OF SUBSCRIPTION IN PROPORTION  
8 TO ITS INTEREST IN SUCH RECIPROCAL INSURER AT SUCH DATE BUT AT THE RATE  
9 OF PAYMENT FIXED BY THE BOARD OF DIRECTORS. AT THE EXPIRATION OF SUCH  
10 THIRTY DAYS THE BOARD OF DIRECTORS MAY SELL AND DISPOSE OF THE CAPITAL  
11 SHARES WHICH HAVE NOT BEEN TAKEN OR SUBSCRIBED, AS AFORESAID, BUT AT NOT  
12 LESS THAN THE SAME RATE OF PAYMENT.

13 (E) If after examination, the superintendent finds that the  
14 proceedings for the conversion to a corporation of any such insurer have  
15 been regularly taken in conformity with law, and that the corporation  
16 meets with the requirements of this chapter, he may issue a license to  
17 such insurer to do business under the provisions of this chapter. There-  
18 upon, the remaining assets shall be forthwith transferred to it, and the  
19 predecessor reciprocal insurer or insurers shall cease to have authority  
20 to do business as such and shall be deemed extinguished. Every such new  
21 corporation formed by conversion shall assume and succeed to all of the  
22 obligations and liabilities of the converting reciprocal insurer and be  
23 held liable to pay and discharge all such debts and liabilities in the  
24 same manner as if they had been incurred or contracted by the corpo-  
25 ration, but, EXCEPT IN THE CASE OF A DOMESTIC RECIPROCAL MEDICAL MALP-  
26 RACTICE INSURER, the subscribers of the reciprocal insurer shall contin-  
27 ue subject to all the liabilities, claims and demands which shall then  
28 exist, or which may thereafter accrue against them, or any of them, by  
29 reason of any obligations incurred by them or in their behalf as such  
30 subscribers before the date of conversion.

31 (F) Upon the conversion of any reciprocal insurer, OTHER THAN A DOMES-  
32 TIC RECIPROCAL MEDICAL INSURER, dissenting subscribers, meaning thereby  
33 subscribers who shall not within thirty days after the opening of the  
34 books of subscription have subscribed to shares of the corporation and  
35 applied their accumulated operating reserves to payment therefor as  
36 provided in subsection (b) [hereof] OF THIS SECTION, shall be entitled  
37 to the conditional withdrawal of their accumulated operating reserves on  
38 deposit with the reciprocal insurer as of the date of conversion but a  
39 sufficient amount thereof shall be retained by the corporation as a  
40 deposit until all of the obligations incurred on its behalf have been  
41 extinguished. When all of such obligations have been paid, discharged or  
42 terminated, and the superintendent after an examination shall have so  
43 certified, the said subscribers' deposits or the balances thereof  
44 remaining to their credit shall be returned and released, whereupon the  
45 powers of the attorney-in-fact relating thereto shall cease and termi-  
46 nate.

47 (G) UPON THE CONVERSION OF ANY DOMESTIC RECIPROCAL MEDICAL MALPRACTICE  
48 INSURER, ALL SUBSCRIBERS SHALL BE ENTITLED TO THE CONDITIONAL WITHDRAWAL  
49 OF THEIR ACCUMULATED OPERATING RESERVES ON DEPOSIT WITH THE RECIPROCAL  
50 INSURER AS OF THE DATE OF CONVERSION BUT A SUFFICIENT AMOUNT THEREOF  
51 SHALL BE RETAINED BY THE CORPORATION AS A DEPOSIT UNTIL ALL OF THE OBLI-  
52 GATIONS INCURRED ON ITS BEHALF HAVE BEEN EXTINGUISHED. WHEN ALL OF SUCH  
53 OBLIGATIONS HAVE BEEN PAID, DISCHARGED OR TERMINATED, AND THE SUPER-  
54 INTENDENT AFTER AN EXAMINATION SHALL HAVE SO CERTIFIED, SUCH SUBSCRIB-  
55 ERS' DEPOSITS OR THE BALANCES THEREOF REMAINING TO THEIR CREDIT SHALL BE

1 RETURNED AND RELEASED, WHEREUPON THE POWERS OF THE ATTORNEY-IN-FACT  
2 RELATING THERETO SHALL CEASE AND TERMINATE.

3 S 2. Paragraph 2 of subsection (c) of section 5502 of the insurance  
4 law is amended by adding a new subparagraph (E) to read as follows:

5 (E) THE SURCHARGES ON PREMIUMS IMPOSED PURSUANT TO SECTION FORTY, AS  
6 AMENDED, OF CHAPTER TWO HUNDRED SIXTY-SIX OF THE LAWS OF NINETEEN  
7 HUNDRED EIGHTY-SIX SHALL APPLY TO ANY PLAN OR POOL ESTABLISHED IN  
8 ACCORDANCE WITH SUBPARAGRAPH (D) OF THIS PARAGRAPH TO SATISFY ANY ACTU-  
9 ARIALLY PROJECTED DEFICIENCY THAT IS ATTRIBUTABLE TO THE PREMIUM LEVELS  
10 FOR POLICIES PROVIDING COVERAGE FOR PHYSICIANS AND SURGEONS MEDICAL  
11 MALPRACTICE FOR THE PERIODS COMMENCING JULY FIRST, NINETEEN HUNDRED  
12 EIGHTY-FIVE AND ENDING JUNE THIRTIETH, TWO THOUSAND FIFTEEN. NO MEMBER  
13 OF SUCH PLAN OR POOL SHALL BE REQUIRED TO SATISFY ANY PORTION OF SUCH  
14 DEFICIENCY FROM ITS OWN ASSETS UNLESS THE SUPERINTENDENT OF FINANCIAL  
15 SERVICES IMPOSES SUCH A SURCHARGE, AND THE AMOUNT OF SUCH DEFICIENCY IS  
16 NOT SATISFIED WITHIN TWENTY-FOUR MONTHS OF THE DATE THE SURCHARGE IS  
17 IMPOSED, AND IN THAT EVENT SUCH MEMBERS SHALL ONLY BE LIABLE FOR THEIR  
18 PROPORTIONATE SHARE OF ANY DEFICIENCY REMAINING AFTER SUCH PLAN OR POOL  
19 HAS BEEN LIQUIDATED IN ACCORDANCE WITH ARTICLE SEVENTY-FOUR OF THIS  
20 CHAPTER, AND THEN ONLY TO THE EXTENT CLAIMS AGAINST INSUREDS COVERED BY  
21 SUCH PLAN OR POOL ARE NOT COVERED BY THE PROPERTY AND LIABILITY INSUR-  
22 ANCE SECURITY FUND ESTABLISHED BY ARTICLE SEVENTY-SIX OF THIS CHAPTER.

23 S 3. Section 40 of chapter 266 of the laws of 1986, amending the civil  
24 practice law and rules and other laws relating to malpractice and  
25 professional medical conduct, as amended by section 18 of part C of  
26 chapter 59 of the laws of 2011, is amended to read as follows:

27 S 40. The superintendent of [insurance] FINANCIAL SERVICES shall  
28 establish rates for policies providing coverage for physicians and  
29 surgeons medical malpractice for the periods commencing July 1, 1985 and  
30 ending June 30, 2014; provided, however, that ANY INSURER FOR WHICH AT  
31 LEAST NINETY PERCENT OF ITS PREMIUM WRITINGS IN THE YEAR ENDING DECEMBER  
32 31 PRIOR TO MAKING A FILING WERE DERIVED FROM INSURING PHYSICIANS OR  
33 DENTISTS WHO HAD AN ACADEMIC APPOINTMENT AT ANY STATE UNIVERSITY OF NEW  
34 YORK MEDICAL SCHOOL OR FACILITY, OR WHO HAD AN ACADEMIC APPOINTMENT AT  
35 NEW YORK MEDICAL COLLEGE, MAY FILE ITS MEDICAL MALPRACTICE PREMIUM RATES  
36 WITH THE DEPARTMENT OF FINANCIAL SERVICES. SUCH RATES SHALL BECOME  
37 EFFECTIVE WITHOUT PRIOR APPROVAL PROVIDED THAT THE OVERALL EFFECT OF THE  
38 FILING DOES INCREASE OR DECREASE SUCH INSURER'S AGGREGATE PREMIUM RATES  
39 BY MORE THAN FIVE PERCENT OVER THE PREMIUM RATES ESTABLISHED BY THE  
40 SUPERINTENDENT OF FINANCIAL SERVICES FOR SUCH INSURER AS OF JULY 1 OF  
41 SUCH PRECEDING YEAR. PROVIDED, FURTHER, THAT notwithstanding any other  
42 provision of law, the superintendent shall not establish or approve any  
43 increase in rates for the period commencing July 1, 2009 and ending June  
44 30, 2010. The superintendent shall direct insurers to establish segre-  
45 gated accounts for premiums, payments, reserves and investment income  
46 attributable to such premium periods and shall require periodic reports  
47 by the insurers regarding claims and expenses attributable to such peri-  
48 ods to monitor whether such accounts will be sufficient to meet incurred  
49 claims and expenses. On or after July 1, 1989, the superintendent shall  
50 impose a surcharge on premiums to satisfy a projected deficiency that is  
51 attributable to the premium levels established pursuant to this section  
52 for such periods; provided, however, that such annual surcharge shall  
53 not exceed eight percent of the established rate until July 1, 2014, at  
54 which time and thereafter such surcharge shall not exceed twenty-five  
55 percent of the approved adequate rate, and that such annual surcharges  
56 shall continue for such period of time as shall be sufficient to satisfy

1 such deficiency. The superintendent shall not impose such surcharge  
2 during the period commencing July 1, 2009 and ending June 30, 2010. On  
3 and after July 1, 1989, the surcharge prescribed by this section shall  
4 be retained by insurers to the extent that they insured physicians and  
5 surgeons during the July 1, 1985 through June 30, 2014 policy periods;  
6 in the event and to the extent physicians and surgeons were insured by  
7 another insurer during such periods, all or a pro rata share of the  
8 surcharge, as the case may be, shall be remitted to such other insurer  
9 in accordance with rules and regulations to be promulgated by the super-  
10 intendent. Surcharges collected from physicians and surgeons who were  
11 not insured during such policy periods shall be apportioned among all  
12 insurers in proportion to the premium written by each insurer during  
13 such policy periods; if a physician or surgeon was insured by an insurer  
14 subject to rates established by the superintendent during such policy  
15 periods, and at any time thereafter a hospital, health maintenance  
16 organization, employer or institution is responsible for responding in  
17 damages for liability arising out of such physician's or surgeon's prac-  
18 tice of medicine, such responsible entity shall also remit to such prior  
19 insurer the equivalent amount that would then be collected as a  
20 surcharge if the physician or surgeon had continued to remain insured by  
21 such prior insurer. In the event any insurer that provided coverage  
22 during such policy periods is in liquidation, the property/casualty  
23 insurance security fund shall receive the portion of surcharges to which  
24 the insurer in liquidation would have been entitled. The surcharges  
25 authorized herein shall be deemed to be income earned for the purposes  
26 of section 2303 of the insurance law. The superintendent, in establish-  
27 ing adequate rates and in determining any projected deficiency pursuant  
28 to the requirements of this section and the insurance law, shall give  
29 substantial weight, determined in his discretion and judgment, to the  
30 prospective anticipated effect of any regulations promulgated and laws  
31 enacted and the public benefit of stabilizing malpractice rates and  
32 minimizing rate level fluctuation during the period of time necessary  
33 for the development of more reliable statistical experience as to the  
34 efficacy of such laws and regulations affecting medical, dental or  
35 podiatric malpractice enacted or promulgated in 1985, 1986, by this act  
36 and at any other time. Notwithstanding any provision of the insurance  
37 law, rates already established and to be established by the superinten-  
38 dent pursuant to this section are deemed adequate if such rates would be  
39 adequate when taken together with the maximum authorized annual  
40 surcharges to be imposed for a reasonable period of time whether or not  
41 any such annual surcharge has been actually imposed as of the establish-  
42 ment of such rates.

43 S 4. This act shall take effect immediately.