

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

2908

2015-2016 Regular Sessions

I N A S S E M B L Y

January 20, 2015

Introduced by M. of A. WEPRIN -- Multi-Sponsored by -- M. of A. BRENNAN
-- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing the medical liability insurance association; and repealing certain provisions of such law relating thereto

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

Section 1. Article 55 of the insurance law is REPEALED and a new article 55 is added to read as follows:

ARTICLE 55

MEDICAL LIABILITY INSURANCE ASSOCIATION

SECTION 5500. TITLE AND PURPOSE.

5501. DEFINITIONS.

5502. MEDICAL LIABILITY INSURANCE ASSOCIATION.

5503. PLAN OF OPERATION.

5504. POLICIES.

5505. RATES.

5506. PROCEDURES.

5507. PARTICIPATION.

5508. DIRECTORS.

5509. APPEALS.

5510. ANNUAL STATEMENT.

5511. EXAMINATIONS.

5512. IMMUNITY.

5513. OTHER PROVISIONS.

5514. EVALUATION.

S 5500. TITLE AND PURPOSE. THIS ARTICLE MAY BE CITED AS THE "MEDICAL LIABILITY INSURANCE ASSOCIATION ACT". THE PURPOSE OF THIS ARTICLE IS TO ESTABLISH THE MEDICAL LIABILITY INSURANCE ASSOCIATION AS THE PROVIDER OF MEDICAL MALPRACTICE INSURANCE, TO THOSE INSURED UNABLE TO OBTAIN SUCH COVERAGE IN THE VOLUNTARY MARKET.

S 5501. DEFINITIONS. IN THIS ARTICLE:

(A) "ASSOCIATION" MEANS THE MEDICAL LIABILITY INSURANCE ASSOCIATION.

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

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(B) "MEDICAL MALPRACTICE INSURANCE" MEANS INSURANCE AGAINST LEGAL LIABILITY OF THE INSURED, AND AGAINST LOSS, DAMAGE, OR EXPENSE INCIDENT TO A CLAIM OF SUCH LIABILITY ARISING OUT OF THE DEATH OR INJURY OF ANY PERSON DUE TO MEDICAL, DENTAL, PODIATRIC, CERTIFIED NURSE-MIDWIFERY OR HOSPITAL MALPRACTICE BY ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST, CERTIFIED NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR HOSPITAL.

(C) "HOSPITAL" MEANS:

(1) ANY FACILITY DEFINED AS A HOSPITAL UNDER SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW AND ISSUED AN OPERATING CERTIFICATE AS A HOSPITAL OR NURSING HOME, AND THOSE DISTINCT PARTS OF A FACILITY WHICH ARE SUBJECT TO THE POWERS OF VISITATION, EXAMINATION, INSPECTION AND INVESTIGATION OF THE DEPARTMENT OF MENTAL HYGIENE WHICH PROVIDE HOSPITAL OR NURSING HOME SERVICE.

(2) ANY AMBULANCE SERVICE WHICH IS REGISTERED OR CERTIFIED UNDER ARTICLE THIRTY OF THE PUBLIC HEALTH LAW AND WHICH IS DESIGNED AND EQUIPPED TO PROVIDE DEFINITIVE ACUTE MEDICAL CARE PURSUANT TO RULES AND REGULATIONS OF THE COMMISSIONER OF HEALTH IN ACCORDANCE WITH SUCH ARTICLE CONCERNING THE REQUIREMENTS FOR AN ADVANCED LIFE SUPPORT SYSTEM. SUCH A SERVICE MUST INCLUDE, BUT NOT BE LIMITED TO, THE PROVISION OF ADVANCED LIFE SUPPORT SERVICES.

(3) ANY COMMUNITY MENTAL HEALTH CENTER OPERATED BY A COUNTY, CITY, TOWN OR VILLAGE, HOLDING AN OPERATING CERTIFICATE ISSUED BY AN OFFICE OF THE DEPARTMENT OF MENTAL HYGIENE.

(4) ANY CERTIFIED PUBLIC OR VOLUNTARY NON-PROFIT HOME CARE SERVICE AGENCY WHICH POSSESSES A VALID CERTIFICATE OF APPROVAL ISSUED UNDER ARTICLE TWENTY-EIGHT OR THIRTY-SIX OF THE PUBLIC HEALTH LAW.

(D) "NET DIRECT PREMIUMS" MEANS GROSS DIRECT PREMIUMS WRITTEN ON PERSONAL INJURY 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.

(E) "PERSONAL INJURY LIABILITY INSURANCE" MEANS ALL FORMS OF INSURANCE WRITTEN UNDER PARAGRAPH THIRTEEN OF SUBSECTION (A) OF SECTION ONE THOUSAND ONE HUNDRED THIRTEEN OF THIS CHAPTER, INCLUDING THE LIABILITY COMPONENT OF MULTIPLE PERIL PACKAGE POLICIES.

S 5502. MEDICAL LIABILITY INSURANCE ASSOCIATION. (A) THE MEDICAL LIABILITY INSURANCE ASSOCIATION IS ESTABLISHED, CONSISTING OF ALL INSURERS AUTHORIZED TO WRITE AND ENGAGED IN WRITING, WITHIN THIS STATE, ON A DIRECT BASIS, MEDICAL MALPRACTICE INSURANCE. EVERY SUCH INSURER SHALL BE AND REMAIN A MEMBER OF THE ASSOCIATION AS A CONDITION OF ITS AUTHORITY TO TRANSACT MEDICAL MALPRACTICE INSURANCE IN THIS STATE.

(B) THE ASSOCIATION SHALL BE A NON-PROFIT UNINCORPORATED ASSOCIATION CONSTITUTING A LEGAL ENTITY SEPARATE AND DISTINCT FROM ITS MEMBERS. ALL FUNDS AND RESERVES OF THE ASSOCIATION SHALL BE SEPARATELY HELD AND INVESTED. IT SHALL MAINTAIN COMPLETE ACCOUNTS OF ALL MONIES RECEIVED AND ALL LOSSES AND EXPENSES INCURRED IN CONNECTION WITH ITS OPERATIONS, INCLUDING INVESTMENT INCOME ON PREMIUMS RECEIVED FROM INSURED.

(C) THE PURPOSE OF THE ASSOCIATION IS TO PROVIDE A MARKET FOR MEDICAL MALPRACTICE INSURANCE FOR THOSE INSURED UNABLE TO OBTAIN SUCH COVERAGE IN THE VOLUNTARY MARKET AND SUBJECT TO REGULATION PURSUANT TO SECTION TWO THOUSAND THREE HUNDRED SEVENTEEN OF THIS CHAPTER.

(D) THE MEDICAL MALPRACTICE INSURANCE POOL OF NEW YORK STATE IS DISSOLVED AS OF THE EFFECTIVE DATE OF THIS ARTICLE AND ALL OF THE POOL'S ASSETS AND LIABILITIES WILL BE ASSUMED BY THE MEDICAL LIABILITY INSURANCE ASSOCIATION AS OF SUCH DATE. THE MEDICAL LIABILITY INSURANCE ASSO-

1 CIATION SHALL ENTER INTO ANY NECESSARY AGREEMENTS WITH THE MEDICAL MALP-
2 RACTICE INSURANCE POOL OF NEW YORK STATE TO ACCOMPLISH: THE DISSOLUTION
3 OF THE POOL; THE ASSUMPTION BY THE ASSOCIATION OF THE POOL'S ASSETS AND
4 LIABILITIES; AND, THE REMOVAL OF THE POOL'S ASSETS AND LIABILITIES FROM
5 MEMBERS' BOOKS. THE HISTORICAL NET IMPACT OF THE POOL ON A MEMBER'S
6 FINANCIAL STATEMENT AS OF THE EFFECTIVE DATE OF THIS ARTICLE SHALL BE
7 REMOVED BY REDUCING TO ZERO ANY ASSET OR LIABILITY DIRECTLY RELATING TO
8 THE POOL AND REFLECTED IN THE MEMBER'S MOST RECENT FILED STATUTORY
9 FINANCIAL STATEMENT, WITH ANY NET DIFFERENCE REFLECTED AS A CHARGE OR
10 CREDIT TO SURPLUS.

11 (E) THE ASSOCIATION SHALL, PURSUANT TO THE PROVISIONS OF THIS ARTICLE
12 AND THE PLAN OF OPERATION WITH RESPECT TO MEDICAL MALPRACTICE INSURANCE,
13 HAVE THE POWER:

14 (1) TO ISSUE, OR TO CAUSE TO BE ISSUED, POLICIES OF INSURANCE TO
15 PHYSICIAN, DENTIST AND PODIATRIST APPLICANTS SUBJECT TO PRIMARY LIMITS
16 SPECIFIED IN THE PLAN OF OPERATION NOT IN EXCESS OF ONE MILLION THREE
17 HUNDRED THOUSAND DOLLARS FOR EACH CLAIMANT UNDER ONE POLICY AND THREE
18 MILLION NINE HUNDRED THOUSAND DOLLARS FOR ALL CLAIMANTS UNDER ONE POLICY
19 IN ANY ONE YEAR, AND EXCESS COVERAGE AS PROVIDED IN THIS PARAGRAPH. EACH
20 APPLICANT SHALL BE ENTITLED TO PURCHASE A POLICY PROVIDING PRIMARY
21 LIMITS NOT TO EXCEED ONE MILLION THREE HUNDRED THOUSAND DOLLARS FOR EACH
22 CLAIMANT AND THREE MILLION NINE HUNDRED THOUSAND DOLLARS FOR ALL CLAIM-
23 ANTS IN ANY ONE YEAR. IN ADDITION, ANY APPLICANT INSURED BY THE ASSOCI-
24 ATION IN AN AMOUNT EQUAL TO OR GREATER THAN ONE MILLION THREE HUNDRED
25 THOUSAND DOLLARS FOR EACH CLAIMANT AND THREE MILLION NINE HUNDRED THOU-
26 SAND DOLLARS FOR ALL CLAIMANTS IN ANY ONE YEAR OR ANY OTHER APPLICANT
27 COVERED UNDER A POLICY OR POLICIES PROVIDING SUCH PRIMARY LEVELS OF
28 INSURANCE AGAINST LIABILITY FOR MEDICAL, DENTAL OR PODIATRIC MALPRACTICE
29 THAT IS ISSUED BY AN AUTHORIZED INSURER, SHALL BE ENTITLED TO PURCHASE A
30 POLICY FROM THE ASSOCIATION PROVIDING EXCESS COVERAGE OF AT LEAST ONE
31 MILLION DOLLARS PER CLAIMANT AND THREE MILLION DOLLARS FOR ALL CLAIMANTS
32 IN ANY ONE YEAR.

33 (2) TO ISSUE, OR CAUSE TO BE ISSUED, POLICIES OF INSURANCE, INCLUDING
34 INCIDENTAL LIABILITY COVERAGES, TO HOSPITAL APPLICANTS SUBJECT TO LIMITS
35 SPECIFIED IN THE PLAN OF OPERATION WITH LIMITS NOT IN EXCESS OF ONE
36 MILLION DOLLARS FOR EACH CLAIMANT AND SIX MILLION DOLLARS FOR ALL CLAIM-
37 ANTS IN ANY ONE YEAR; PROVIDED THAT POLICIES FOR COVERAGE IN EXCESS OF
38 ONE MILLION DOLLARS FOR EACH CLAIMANT AND THREE MILLION DOLLARS FOR ALL
39 CLAIMANTS IN ANY ONE YEAR SHALL BE ISSUED ONLY UPON THE OBTAINING OF
40 REINSURANCE FOR SUCH EXCESS COVERAGE FOR THE TERM OF THE POLICY AND THE
41 EXCESS COVERAGE SHALL REMAIN IN EFFECT ONLY SO LONG AS REINSURANCE IS IN
42 EFFECT. THE ASSOCIATION SHALL OBTAIN SUCH REINSURANCE, IF AVAILABLE, FOR
43 COVERAGE IN EXCESS OF ONE MILLION DOLLARS FOR EACH CLAIMANT AND THREE
44 MILLION DOLLARS FOR ALL CLAIMANTS IN ANY ONE YEAR. IF THE ASSOCIATION
45 FAILS TO OBTAIN SUCH REINSURANCE, THE SUPERINTENDENT MAY ORDER IT TO DO
46 SO FOR THE TERM OF THE POLICY FROM SOURCES FOUND BY HIM OR HER TO BE
47 AVAILABLE. THE RATES CHARGED BY THE ASSOCIATION FOR COVERAGE IN EXCESS
48 OF THREE MILLION DOLLARS SHALL NOT BE SUBJECT TO PRIOR APPROVAL BY THE
49 SUPERINTENDENT, AND SHALL EQUAL THE CHARGES TO THE ASSOCIATION FOR SUCH
50 REINSURANCE.

51 (3) TO UNDERWRITE SUCH INSURANCE AND TO ADJUST AND PAY LOSSES OR TO
52 APPOINT SERVICE COMPANIES TO PERFORM THOSE FUNCTIONS.

53 S 5503. PLAN OF OPERATION. (A) THE ASSOCIATION SHALL OPERATE IN
54 ACCORDANCE WITH A PLAN OF OPERATION APPROVED BY THE SUPERINTENDENT WHICH
55 PROVIDES FOR ECONOMIC, FAIR AND NONDISCRIMINATORY ADMINISTRATION AND FOR
56 THE PROMPT AND EFFICIENT PROVISION OF MEDICAL MALPRACTICE INSURANCE.

(B) THE PLAN SHALL CONTAIN OTHER PROVISIONS INCLUDING BUT NOT LIMITED TO ESTABLISHMENT OF NECESSARY FACILITIES, MANAGEMENT OF THE ASSOCIATION, ASSESSMENT OF MEMBERS TO DEFRAY LOSSES AND EXPENSES, SERVICE CHARGES, ACCEPTANCE AND CESSION OF REINSURANCE, APPOINTMENT OF SERVICING CARRIERS OR OTHER SERVICING ARRANGEMENTS AND PROCEDURES FOR DETERMINING AMOUNTS OF INSURANCE TO BE PROVIDED BY THE ASSOCIATION.

(C) AMENDMENTS TO THE PLAN OF OPERATION MAY BE MADE BY THE BOARD OF DIRECTORS OF THE ASSOCIATION, SUBJECT TO THE APPROVAL OF THE SUPERINTENDENT, OR SHALL BE MADE AT THE DIRECTION OF THE SUPERINTENDENT.

(D) THE ASSOCIATION SHALL BE SUBJECT TO THE PROVISIONS OF THIS CHAPTER APPLICABLE TO PROPERTY/CASUALTY INSURERS IN THE CONDUCT OF ITS BUSINESS, IN ORDER TO PROVIDE FOR THE FAIR TREATMENT OF POLICYHOLDERS AND CLAIMANTS.

(E) THE ASSOCIATION SHALL, ON THE EFFECTIVE DATE OF THIS ARTICLE, ASSUME THE PLAN OF OPERATION PREVIOUSLY APPROVED FOR THE MEDICAL MALPRACTICE INSURANCE ASSOCIATION OF NEW YORK STATE UNTIL SUCH TIME AS THE PLAN MAY BE AMENDED.

S 5504. POLICIES. (A) NO POLICY FORM SHALL BE USED BY THE ASSOCIATION UNLESS IT HAS BEEN FILED WITH THE SUPERINTENDENT AND EITHER HE OR SHE HAS APPROVED IT, OR THIRTY DAYS HAVE ELAPSED AND HE OR SHE HAS NOT DISAPPROVED IT AS MISLEADING OR VIOLATIVE OF PUBLIC POLICY.

(B)(1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION, NO CANCELLATION NOTICE OR NONRENEWAL NOTICE SHALL BE EFFECTIVE UNLESS THE ASSOCIATION, AT LEAST FORTY-FIVE DAYS PRIOR TO THE EFFECTIVE DATE OF SUCH CANCELLATION OR THE END OF THE POLICY PERIOD, AS THE CASE MAY BE, MAILED OR DELIVERS SUCH NOTICE TO THE INSURED AT THE ADDRESS SHOWN ON THE POLICY AND TO SUCH INSURED'S LICENSED REPRESENTATIVE.

(2) WHERE THE CANCELLATION IS FOR NONPAYMENT OF PREMIUM OR LOSS OF LICENSE TO PRACTICE OR, IF THE INSURED IS A HOSPITAL, IT NO LONGER POSSESSES A VALID OPERATING CERTIFICATE UNDER SECTION TWENTY-EIGHT HUNDRED ONE-A OF THE PUBLIC HEALTH LAW, SUCH CANCELLATION NOTICE MUST BE MAILED OR DELIVERED AT LEAST FIFTEEN DAYS PRIOR TO THE EFFECTIVE DATE OF THE CANCELLATION.

(3) UPON WRITTEN REQUEST BY AN INSURED OR SUCH INSURED'S LICENSED REPRESENTATIVE, THE ASSOCIATION SHALL MAIL OR DELIVER LOSS INFORMATION AS PROVIDED IN SUBSECTION (G) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS CHAPTER TO SUCH INSURED OR SUCH INSURED'S LICENSED REPRESENTATIVE WITHIN TEN BUSINESS DAYS OF SUCH REQUEST.

(4) ALL CANCELLATION NOTICES OR NONRENEWAL NOTICES SHALL STATE THE GROUNDS UPON WHICH THE POLICY IS CANCELLED OR NONRENEWED AND THAT, UPON WRITTEN REQUEST OF AN INSURED OR SUCH INSURED'S LICENSED REPRESENTATIVE, THE ASSOCIATION WILL FURNISH THE FACTS ON WHICH THE CANCELLATION OR NONRENEWAL IS BASED. GROUNDS FOR NONRENEWAL SHALL BE LIMITED TO THE SAME GROUND AS FOR CANCELLATION. ALL CANCELLATION NOTICES OR NONRENEWAL NOTICES SHALL ALSO PROVIDE OR BE ACCOMPANIED BY A STATEMENT ADVISING THE INSURED OF THE AVAILABILITY OF THE LOSS INFORMATION SPECIFIED IN SUBSECTION (G) OF SECTION THREE THOUSAND FOUR HUNDRED TWENTY-SIX OF THIS CHAPTER.

(C) A POLICY OF INSURANCE ISSUED BY THE ASSOCIATION MAY BE TERMINATED OTHER THAN FOR NON-PAYMENT OF PREMIUMS IF THE INSURED:

(1) IS NOT COMPLYING SUBSTANTIALLY WITH ANY TERM OR CONDITION OF SUCH CONTRACT.

(2) HAS KNOWINGLY MADE, OR CAUSED TO BE MADE, ANY FALSE STATEMENT OR MISREPRESENTATION OF A MATERIAL FACT FOR USE IN APPLYING FOR INSURANCE.

(D) ANY TERMINATION SHALL APPLY TO CARE OR SERVICES PROVIDED AFTER THE EFFECTIVE DATE OF TERMINATION, EXCEPT THAT INSURANCE COVERAGE MAY

1 CONTINUE FOR UP TO THIRTY DAYS AFTER TERMINATION WITH RESPECT TO CARE OR
2 SERVICES TO PATIENTS WHICH ARE A CONTINUATION OF A TREATMENT BEGUN PRIOR
3 TO THE EFFECTIVE DATE OF TERMINATION.

4 (E)(1) THE ASSOCIATION SHALL ISSUE OR RENEW POLICIES OF MEDICAL MALP-
5 RACTICE INSURANCE FOR PHYSICIANS ON A CLAIMS-MADE OR OCCURRENCE BASIS,
6 AS PRESCRIBED BY THE SUPERINTENDENT BY REGULATION.

7 (2) A CLAIMS-MADE POLICY SHALL CONTAIN THE FOLLOWING PROVISIONS:

8 (A) IF THE INSURED HAS PURCHASED A CLAIMS-MADE POLICY FROM AN ADMITTED
9 INSURER OR THE ASSOCIATION FOR A PERIOD OF FIVE OR MORE CONSECUTIVE
10 YEARS AND THE INSURED, AFTER ATTAINING THE AGE OF SIXTY-FIVE OR OLDER,
11 RETIRES PERMANENTLY AND TOTALLY FROM THE PRACTICE OF MEDICINE OR IF THE
12 INSURED HAS PURCHASED A CLAIMS-MADE POLICY FOR A PERIOD OF TEN OR MORE
13 CONSECUTIVE YEARS AND THE INSURED, AFTER ATTAINING THE AGE OF FIFTY-FIVE
14 OR OLDER, RETIRES PERMANENTLY FROM THE PRACTICE OF MEDICINE, THE ASSOCI-
15 ATION SHALL, WITHOUT CHARGING AN ADDITIONAL PREMIUM THEREFOR AT THE TIME
16 OF, OR SUBSEQUENT TO, SUCH RETIREMENT, ALSO COVER ALL OCCURRENCES
17 BETWEEN THE INCEPTION DATE OF THE FIRST SUCH CONSECUTIVE POLICY FROM
18 SUCH ASSOCIATION AND SUCH RETIREMENT DATE WHICH, SUBSEQUENT TO THE
19 TERMINATION DATE, ARE REPORTED IN ACCORDANCE WITH STATUTORY AND POLICY
20 REQUIREMENTS;

21 (B) IF THE INSURED DIES OR BECOMES PERMANENTLY DISABLED AND UNABLE TO
22 PRACTICE MEDICINE WHILE COVERED BY SUCH POLICY THE ASSOCIATION SHALL,
23 WITHOUT CHARGING AN ADDITIONAL PREMIUM THEREFOR AT THE TIME OF, OR
24 SUBSEQUENT TO, SUCH EVENT, ALSO COVER ALL OCCURRENCES BETWEEN THE INCEP-
25 TION DATE OF THE FIRST SUCH CONSECUTIVE POLICY FROM SUCH ASSOCIATION AND
26 THE DEATH OR DISABILITY OF THE INSURED; AND

27 (C) THE ASSOCIATION SHALL MAKE AVAILABLE AND SHALL ADVISE THE INSURED
28 OF THE AVAILABILITY AND COST OF COVERAGE FOR OCCURRENCES BETWEEN THE
29 INCEPTION DATE OF THE FIRST SUCH CONSECUTIVE POLICY FROM SUCH ASSOCI-
30 ATION AND THE TERMINATION OF SUCH POLICY WHICH, SUBSEQUENT TO THE TERMI-
31 NATION DATE, ARE REPORTED IN ACCORDANCE WITH STATUTORY AND POLICY
32 REQUIREMENTS, PURSUANT TO SUCH TERMS AND CONDITIONS AS MAY BE SPECIFIED
33 BY THE SUPERINTENDENT BY REGULATION. THE INSURED SHALL HAVE THE OPTION
34 OF PURCHASING SUCH COVERAGE EITHER IN A SINGLE PAYMENT OR IN THREE ANNU-
35 AL INSTALLMENTS WITH AN ADDITIONAL FINANCE CHARGE.

36 (3) SUCH REGULATION SHALL ALSO PROVIDE THAT IF THE COVERAGE OF AN
37 INSURED WHO CONTINUES TO PRACTICE IN THIS STATE IS TRANSFERRED FROM AN
38 ADMITTED INSURER OR THE ASSOCIATION TO ANOTHER ADMITTED INSURER OR THE
39 ASSOCIATION WITHOUT ANY GAP IN COVERAGE, THE INSURED SHALL BE ENTITLED
40 TO THE BENEFITS OF THIS PROVISION AS IF SUCH INSURED HAD BEEN CONTIN-
41 UOUSLY COVERED BY THE SUCCESSOR ENTITY DURING THE ENTIRE PERIOD OF
42 CONSECUTIVE YEARS OF COVERAGE.

43 (F) THE ASSOCIATION SHALL, ON THE EFFECTIVE DATE OF THIS ARTICLE,
44 ASSUME AND UTILIZE THE POLICY FORMS APPROVED FOR THE MEDICAL MALPRACTICE
45 INSURANCE POOL OF NEW YORK STATE UNTIL SUCH TIME AS THEY MAY BE AMENDED
46 BY THE ASSOCIATION.

47 S 5505. RATES. (A) THE RATES, RATING PLANS, RATING RULES, RATING CLAS-
48 SIFICATIONS, TERRITORIES AND STATISTICS APPLICABLE TO THE INSURANCE
49 WRITTEN BY THE ASSOCIATION SHALL BE SUBJECT TO ARTICLE TWENTY-THREE OF
50 THIS CHAPTER, GIVING DUE CONSIDERATION TO THE PAST AND PROSPECTIVE LOSS
51 AND EXPENSE EXPERIENCE FOR MEDICAL MALPRACTICE INSURANCE WRITTEN AND TO
52 BE WRITTEN IN THIS STATE, TRENDS IN THE FREQUENCY AND SEVERITY OF LOSS-
53 ES, THE INVESTMENT INCOME OF THE ASSOCIATION, AND SUCH OTHER INFORMATION
54 AS THE SUPERINTENDENT MAY REQUIRE.

55 (B) ALL RATES SHALL BE ON AN ACTUARIALLY SOUND BASIS, BE CALCULATED TO
56 BE SELF-SUPPORTING, BE BASED UPON REASONABLE STANDARDS, AND MAY GIVE

1 CONSIDERATION TO SUCH FACTORS AS THE EXPERIENCE OF THE INSURED,
2 GEOGRAPHICAL AREA AND SPECIALTIES OF PRACTICE. THE SUPERINTENDENT SHALL
3 TAKE ALL APPROPRIATE STEPS TO MAKE AVAILABLE TO THE ASSOCIATION THE LOSS
4 AND EXPENSE EXPERIENCE OF INSURERS PREVIOUSLY WRITING MEDICAL MALPRAC-
5 TICE INSURANCE IN THIS STATE. THE PREMIUMS SHALL BE FIXED AT THE LOWEST
6 POSSIBLE RATES CONSISTENT WITH THE MAINTENANCE OF SOLVENCY OF THE ASSO-
7 CIATION AND OF REASONABLE RESERVES AND SURPLUS THEREFOR.

8 (C) THE ASSOCIATION SHALL, ON THE EFFECTIVE DATE OF THIS ARTICLE,
9 ASSUME AND UTILIZE THE RATES, RATING PLANS, RATING RULES, RATING CLASSI-
10 FICATIONS TERRITORIES AND STATISTICS APPROVED FOR AND APPLICABLE TO THE
11 MEDICAL MALPRACTICE INSURANCE POOL OF NEW YORK STATE UNTIL SUCH TIME AS
12 THEY MAY BE AMENDED BY THE ASSOCIATION.

13 S 5506. PROCEDURES. (A) ANY LICENSED PHYSICIAN, DENTIST, PODIATRIST,
14 CERTIFIED NURSE-MIDWIFE, CERTIFIED REGISTERED NURSE ANESTHETIST OR
15 HOSPITAL IS ENTITLED TO APPLY TO THE ASSOCIATION FOR COVERAGE PURSUANT
16 TO THIS ARTICLE. APPLICATION MAY BE MADE DIRECTLY TO THE ASSOCIATION BY
17 THE APPLICANT, IN WHICH EVENT NO SERVICE FEE SHALL BE CHARGED. IF THE
18 APPLICANT AUTHORIZES A BROKER OR AGENT TO MAKE THE APPLICATION, THE ONLY
19 CHARGE FOR SUCH SERVICES SHALL BE A SERVICE FEE AS LIMITED BY THE PLAN
20 OF OPERATION AND IN COMPLIANCE WITH THE PROCEDURE ESTABLISHED IN
21 SUBSECTIONS (C) AND (D) OF SECTION TWO THOUSAND ONE HUNDRED NINETEEN OF
22 THIS CHAPTER.

23 (B) A POLICY SHALL BE ISSUED WHEN THE ASSOCIATION DETERMINES THAT THE
24 APPLICANT IS DULY LICENSED AND RECEIVES THE PREMIUM OR THE PORTION
25 PRESCRIBED IN THE PLAN OF OPERATION.

26 S 5507. PARTICIPATION. EVERY MEMBER OF THE ASSOCIATION SHALL BE
27 SUBJECT TO ASSESSMENT ON THE BASIS DESCRIBED IN SUBSECTION (C) OF
28 SECTION FIVE THOUSAND FIVE HUNDRED THIRTEEN OF THIS ARTICLE IN THE
29 PROPORTION THAT THE NET DIRECT PREMIUMS OF THE MEMBER (EXCLUDING THAT
30 PORTION OF PREMIUMS ATTRIBUTABLE TO THE OPERATION OF THE ASSOCIATION)
31 WRITTEN DURING THE PRECEDING CALENDAR YEAR BEARS TO THE AGGREGATE NET
32 DIRECT PREMIUMS WRITTEN IN THIS STATE BY ALL MEMBERS OF THE ASSOCIATION.
33 EACH MEMBER'S PARTICIPATION IN THE ASSOCIATION SHALL BE DETERMINED ANNU-
34 ALLY ON THE BASIS OF SUCH NET DIRECT PREMIUMS WRITTEN DURING THE PRECED-
35 ING CALENDAR YEAR, AS REPORTED IN THE ANNUAL STATEMENTS AND OTHER
36 REPORTS FILED BY THE MEMBER WITH THE SUPERINTENDENT.

37 S 5508. DIRECTORS. (A) THE ASSOCIATION SHALL BE GOVERNED BY A BOARD OF
38 SEVEN VOTING DIRECTORS. THE SUPERINTENDENT OR HIS OR HER DULY AUTHOR-
39 IZED REPRESENTATIVE SHALL SERVE AS A NON-VOTING DIRECTOR. THE SEVEN
40 DIRECTORS SHALL BE ELECTED BY CUMULATIVE VOTING BY THE MEMBERS OF THE
41 ASSOCIATION, WHOSE VOTES IN SUCH ELECTION SHALL BE WEIGHED IN ACCORDANCE
42 WITH EACH MEMBER'S NET DIRECT PREMIUMS WRITTEN DURING THE PRECEDING
43 CALENDAR YEAR. THE SEVEN DIRECTORS SERVING ON THE BOARD SHALL BE ELECTED
44 ANNUALLY AT A MEETING OF THE MEMBERS.

45 (B) THE DIRECTORS SHALL SERVE WITHOUT COMPENSATION BUT SHALL BE REIM-
46 BURED FOR THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORM-
47 ANCE OF THEIR DUTIES UNDER THIS ARTICLE.

48 S 5509. APPEALS. ANY APPLICANT TO THE ASSOCIATION, ANY PERSON INSURED
49 UNDER THIS ARTICLE, OR THEIR REPRESENTATIVES, OR ANY AFFECTED INSURER,
50 MAY APPEAL TO THE SUPERINTENDENT WITHIN THIRTY DAYS AFTER ANY RULING,
51 ACTION OR DECISION BY OR ON BEHALF OF THE ASSOCIATION, WITH RESPECT TO
52 THOSE ITEMS THE PLAN OF OPERATION DEFINED AS APPEALABLE MATTERS.

53 S 5510. ANNUAL STATEMENT. (A) THE ASSOCIATION SHALL ANNUALLY FILE A
54 STATEMENT IN THE OFFICE OF THE SUPERINTENDENT ON OR BEFORE THE FIRST DAY
55 OF MARCH. THE STATEMENT SHALL BE IN A FORM APPROVED BY AND CONTAIN

1 INFORMATION PRESCRIBED BY THE SUPERINTENDENT WITH RESPECT TO ITS TRANS-
2 ACTIONS, CONDITION, OPERATIONS AND AFFAIRS DURING THE PRECEDING YEAR.

3 (B) THE SUPERINTENDENT MAY, AT ANY TIME, REQUIRE THE ASSOCIATION TO
4 FURNISH ADDITIONAL INFORMATION WITH RESPECT TO ITS TRANSACTIONS, CONDI-
5 TION OR ANY MATTER CONNECTED THEREWITH WHICH HE OR SHE CONSIDERS TO BE
6 MATERIAL AND WHICH WILL ASSIST HIM OR HER IN EVALUATING THE SCOPE, OPER-
7 ATION AND EXPERIENCE OF THE ASSOCIATION.

8 S 5511. EXAMINATIONS. (A) THE SUPERINTENDENT SHALL MAKE AN EXAMINATION
9 INTO THE AFFAIRS OF THE ASSOCIATION AT LEAST ANNUALLY. THE EXAMINATION
10 SHALL BE CONDUCTED AND THE REPORT FILED IN THE MANNER PRESCRIBED IN
11 ARTICLE THREE OF THIS CHAPTER.

12 (B) THE EXPENSES OF THE EXAMINATION SHALL BE PAID BY THE ASSOCIATION.
13 S 5512. IMMUNITY. NO LIABILITY OR CAUSE OF ACTION SHALL EXIST AGAINST
14 THE ASSOCIATION, ITS AGENTS OR EMPLOYEES, THE SUPERINTENDENT OR HIS OR
15 HER AUTHORIZED REPRESENTATIVES OR ANY LICENSED AGENT OR BROKER FOR ANY
16 STATEMENTS MADE IN GOOD FAITH BY THEM DURING ANY PROCEEDINGS OR CONCERN-
17 ING ANY MATTERS WITHIN THE SCOPE OF THIS ARTICLE.

18 S 5513. OTHER PROVISIONS. (A) THE ASSOCIATION SHALL NOT BE CONSIDERED
19 AN AUTHORIZED INSURER FOR THE PURPOSES OF ARTICLE SEVENTY-SIX OF THIS
20 CHAPTER.

21 (B) THE ASSOCIATION SHALL NEITHER BE SUBJECT TO THE PROVISIONS OF
22 ARTICLE SEVENTY-FOUR OF THIS CHAPTER NOR BE REQUIRED TO MAINTAIN ANY
23 MINIMUM SURPLUS.

24 (C) THE ASSOCIATION SHALL CONDUCT ITS BUSINESS SO LONG AS IT HAS
25 ASSETS SUFFICIENT TO PAY ITS EXPENSES AND CLAIMS ARISING UNDER EITHER
26 POLICIES ISSUED BY THE ASSOCIATION OR ASSUMED FROM THE MEDICAL MALPRAC-
27 TICE INSURANCE POOL OF NEW YORK STATE. THE ASSOCIATION IS AUTHORIZED,
28 SUBJECT TO THE WRITTEN PRIOR APPROVAL OF THE SUPERINTENDENT AND AS
29 CIRCUMSTANCES AND CASH FLOW DEMANDS REQUIRE, TO ASSESS AND ISSUE A CASH
30 CALL TO ITS MEMBERS ON AN ANNUAL BASIS SUFFICIENT TO PROVIDE THE ASSOCI-
31 ATION WITH THE FUNDS NECESSARY, WHEN COMBINED WITH PREMIUMS TO BE
32 RECEIVED, TO CONDUCT ITS BUSINESS DURING SUCH YEAR. EACH ASSESSMENT
33 SHALL BE FOR ONE YEAR ONLY AND MEMBERS SHALL NOT ANTICIPATE ANY ASSESS-
34 MENTS NOT APPROVED BY THE SUPERINTENDENT OR ANTICIPATE ANY FUTURE
35 ASSESSMENTS IN PREPARING THEIR FINANCIAL STATEMENTS. ANY SUCH ASSESSMENT
36 ON A MEMBER SHALL BE INCLUDED IN SUCH MEMBER'S FUTURE RATE REQUESTS AND
37 SHALL BE INCLUDED IN ANY POLICY SURCHARGE IMPOSED ON A MEMBER PURSUANT
38 TO THE PROVISIONS OF SECTION FORTY OF CHAPTER TWO HUNDRED SIXTY-SIX OF
39 THE LAWS OF NINETEEN HUNDRED EIGHTY-SIX, AS AMENDED.

40 S 5514. EVALUATION. THE SUPERINTENDENT SHALL FROM TIME TO TIME REPORT
41 TO THE GOVERNOR AND THE LEGISLATURE EVALUATING THE OPERATION OF THIS
42 ARTICLE.

43 S 2. Subsections (b) and (c) of section 7436 of the insurance law, as
44 added by chapter 266 of the laws of 1986, are amended to read as
45 follows:

46 (b) If the order of liquidation, rehabilitation or conservation is
47 entered against an insurer which has issued medical malpractice policies
48 on a claims-made basis, then notwithstanding the entry of such order,
49 the superintendent shall comply with the requirements for claims-made
50 policies as set forth in subsections (b), (c) and (d) of section three
51 thousand four hundred thirty-six of this chapter [and paragraphs two,
52 three and four of subsection (f) of section five thousand five hundred
53 four of this chapter].

54 (c) In the event that an insured, who has been issued a medical malp-
55 ractice policy on a claim-made basis by an insurer against which an
56 order of liquidation has been entered pursuant to this article, chooses

1 to purchase coverage from a successor insurer, the superintendent shall
2 expedite the transfer of coverage that has been accrued, for claims
3 based on occurrences prior to the termination of the policy which are
4 reported after the termination of the policy, to the successor insurer
5 of each insured, in accordance with the requirement for claims-made
6 policies as set forth in subsections (b), (c) and (d) of section three
7 thousand four hundred thirty-six [and paragraphs two, three and four of
8 subsection (f) of section five thousand five hundred four] of this chap-
9 ter.

10 S 3. Subparagraph (H) of paragraph 1 of subsection (a) of section 7603
11 of the insurance law, as amended by chapter 89 of the laws of 1989, is
12 amended to read as follows:

13 (H) any obligation for the return of unearned premiums on any policy
14 specified in subparagraphs (A), (B), (C), (D), (E), (F) and (G) hereof,
15 which shall, for the purposes of this article, be deemed to include the
16 obligations of an insurer and the medical malpractice insurance associ-
17 ation under medical malpractice claims-made policies to pay to successor
18 entities the actuarially appropriate amounts for the provision of cover-
19 age to comply with the requirements of subsections (b), (c) and (d) of
20 section three thousand four hundred thirty-six [and paragraphs two,
21 three and four of subsection (f) of section five thousand five hundred
22 four] of this chapter.

23 S 4. Paragraph 1 of subsection (a) of section 9111-b of the insurance
24 law, as amended by chapter 147 of the laws of 2000, is amended to read
25 as follows:

26 (1) For the privilege of conducting business in this state and in
27 addition to any other requirements therefor, every insurance company
28 subject to the franchise tax imposed by subdivision (a) of section
29 fifteen hundred ten of the tax law, other than insurance companies whose
30 premiums are received solely as consideration for accident and health
31 insurance policies, shall pay a franchise tax of one percent of all
32 gross direct premiums, less return premiums thereon, written during the
33 "event year", as such term is defined in the following sentence, on
34 risks located or residing in this state. For the purposes of this
35 section, "event year" shall mean (A) the calendar year preceding the
36 February fifth on which the superintendent fails to provide a certif-
37 ication to the [state] commissioner of taxation and finance that the
38 return of premium amounts to the hospital excess liability pool that has
39 been authorized by subsection (a) of section five thousand five hundred
40 seventeen-a of this chapter has been made or (B) the calendar year
41 preceding the year in which a final judicial determination invalidating
42 some or all of the provisions of such section five thousand five hundred
43 seventeen-a requires a return from the hospital excess liability pool of
44 any or all of the premium amounts returned to such pool pursuant to such
45 section five thousand five hundred seventeen-a [or (C) calendar year
46 nineteen hundred ninety-nine if the superintendent directs and the asso-
47 ciation fails to make the transfer and deposit to the hospital excess
48 liability pool pursuant to subsection (d) of section five thousand five
49 hundred nine of this chapter or (D) the calendar year preceding the year
50 in which a final judicial determination invalidating some or all of the
51 provisions of such section five thousand five hundred nine requires a
52 return from the hospital excess liability pool of any or all of the
53 amounts transferred and deposited to such pool pursuant to subsection
54 (d) of section five thousand five hundred nine].

55 S 5. This act shall take effect on the first of September next
56 succeeding the date on which it shall have become a law.