

1920

2015-2016 Regular Sessions

I N   S E N A T E

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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

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

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

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

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

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

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

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

50 (G) UPON THE CONVERSION OF ANY DOMESTIC RECIPROCAL MEDICAL MALPRACTICE  
51 INSURER, ALL SUBSCRIBERS SHALL BE ENTITLED TO THE CONDITIONAL WITHDRAWAL  
52 OF THEIR ACCUMULATED OPERATING RESERVES ON DEPOSIT WITH THE RECIPROCAL  
53 INSURER AS OF THE DATE OF CONVERSION BUT A SUFFICIENT AMOUNT THEREOF  
54 SHALL BE RETAINED BY THE CORPORATION AS A DEPOSIT UNTIL ALL OF THE OBLI-  
55 GATIONS INCURRED ON ITS BEHALF HAVE BEEN EXTINGUISHED. WHEN ALL OF SUCH  
56 OBLIGATIONS HAVE BEEN PAID, DISCHARGED OR TERMINATED, AND THE SUPER-

1 INTENDENT AFTER AN EXAMINATION SHALL HAVE SO CERTIFIED, SUCH SUBSCRIB-  
2 ERS' DEPOSITS OR THE BALANCES THEREOF REMAINING TO THEIR CREDIT SHALL BE  
3 RETURNED AND RELEASED, WHEREUPON THE POWERS OF THE ATTORNEY-IN-FACT  
4 RELATING THERETO SHALL CEASE AND TERMINATE.

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

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

25 S 3. Section 40 of chapter 266 of the laws of 1986, amending the civil  
26 practice law and rules and other laws relating to malpractice and  
27 professional medical conduct, as amended by section 21 of part B of  
28 chapter 60 of the laws of 2014, is amended to read as follows:

29 S 40. The superintendent of [insurance] FINANCIAL SERVICES shall  
30 establish rates for policies providing coverage for physicians and  
31 surgeons medical malpractice for the periods commencing July 1, 1985 and  
32 ending June 30, 2015; provided, however, that ANY INSURER FOR WHICH AT  
33 LEAST NINETY PERCENT OF ITS PREMIUM WRITINGS IN THE YEAR ENDING DECEMBER  
34 31 PRIOR TO MAKING A FILING WERE DERIVED FROM INSURING PHYSICIANS OR  
35 DENTISTS WHO HAD AN ACADEMIC APPOINTMENT AT ANY STATE UNIVERSITY OF NEW  
36 YORK MEDICAL SCHOOL OR FACILITY, OR WHO HAD AN ACADEMIC APPOINTMENT AT  
37 NEW YORK MEDICAL COLLEGE, MAY FILE ITS MEDICAL MALPRACTICE PREMIUM RATES  
38 WITH THE DEPARTMENT OF FINANCIAL SERVICES. SUCH RATES SHALL BECOME  
39 EFFECTIVE WITHOUT PRIOR APPROVAL PROVIDED THAT THE OVERALL EFFECT OF THE  
40 FILING DOES INCREASE OR DECREASE SUCH INSURER'S AGGREGATE PREMIUM RATES  
41 BY MORE THAN FIVE PERCENT OVER THE PREMIUM RATES ESTABLISHED BY THE  
42 SUPERINTENDENT OF FINANCIAL SERVICES FOR SUCH INSURER AS OF JULY 1 OF  
43 SUCH PRECEDING YEAR. PROVIDED, FURTHER, THAT notwithstanding any other  
44 provision of law, the superintendent shall not establish or approve any  
45 increase in rates for the period commencing July 1, 2009 and ending June  
46 30, 2010. The superintendent shall direct insurers to establish segre-  
47 gated accounts for premiums, payments, reserves and investment income  
48 attributable to such premium periods and shall require periodic reports  
49 by the insurers regarding claims and expenses attributable to such peri-  
50 ods to monitor whether such accounts will be sufficient to meet incurred  
51 claims and expenses. On or after July 1, 1989, the superintendent shall  
52 impose a surcharge on premiums to satisfy a projected deficiency that is  
53 attributable to the premium levels established pursuant to this section  
54 for such periods; provided, however, that such annual surcharge shall  
55 not exceed eight percent of the established rate until July 1, 2015, at  
56 which time and thereafter such surcharge shall not exceed twenty-five

1 percent of the approved adequate rate, and that such annual surcharges  
2 shall continue for such period of time as shall be sufficient to satisfy  
3 such deficiency. The superintendent shall not impose such surcharge  
4 during the period commencing July 1, 2009 and ending June 30, 2010. On  
5 and after July 1, 1989, the surcharge prescribed by this section shall  
6 be retained by insurers to the extent that they insured physicians and  
7 surgeons during the July 1, 1985 through June 30, 2015 policy periods;  
8 in the event and to the extent physicians and surgeons were insured by  
9 another insurer during such periods, all or a pro rata share of the  
10 surcharge, as the case may be, shall be remitted to such other insurer  
11 in accordance with rules and regulations to be promulgated by the super-  
12 intendent. Surcharges collected from physicians and surgeons who were  
13 not insured during such policy periods shall be apportioned among all  
14 insurers in proportion to the premium written by each insurer during  
15 such policy periods; if a physician or surgeon was insured by an insurer  
16 subject to rates established by the superintendent during such policy  
17 periods, and at any time thereafter a hospital, health maintenance  
18 organization, employer or institution is responsible for responding in  
19 damages for liability arising out of such physician's or surgeon's prac-  
20 tice of medicine, such responsible entity shall also remit to such prior  
21 insurer the equivalent amount that would then be collected as a  
22 surcharge if the physician or surgeon had continued to remain insured by  
23 such prior insurer. In the event any insurer that provided coverage  
24 during such policy periods is in liquidation, the property/casualty  
25 insurance security fund shall receive the portion of surcharges to which  
26 the insurer in liquidation would have been entitled. The surcharges  
27 authorized herein shall be deemed to be income earned for the purposes  
28 of section 2303 of the insurance law. The superintendent, in establish-  
29 ing adequate rates and in determining any projected deficiency pursuant  
30 to the requirements of this section and the insurance law, shall give  
31 substantial weight, determined in his discretion and judgment, to the  
32 prospective anticipated effect of any regulations promulgated and laws  
33 enacted and the public benefit of stabilizing malpractice rates and  
34 minimizing rate level fluctuation during the period of time necessary  
35 for the development of more reliable statistical experience as to the  
36 efficacy of such laws and regulations affecting medical, dental or  
37 podiatric malpractice enacted or promulgated in 1985, 1986, by this act  
38 and at any other time. Notwithstanding any provision of the insurance  
39 law, rates already established and to be established by the superinten-  
40 dent pursuant to this section are deemed adequate if such rates would be  
41 adequate when taken together with the maximum authorized annual  
42 surcharges to be imposed for a reasonable period of time whether or not  
43 any such annual surcharge has been actually imposed as of the establish-  
44 ment of such rates.

45 S 4. This act shall take effect immediately.