

By Senator Geller

31-1056-04

1 A bill to be entitled
2 An act relating to medical malpractice
3 insurance; creating the Florida Medical
4 Malpractice Insurance Fund; providing the
5 purpose of the fund; providing for governance
6 by a board of governors; requiring the board to
7 submit a plan of operation for approval by the
8 Office of Insurance Regulation; providing
9 investment requirements; authorizing the board
10 to employ staff and other professionals;
11 providing immunity from liability for members
12 of the board, its agents, and employees of the
13 state; providing for the fund to issue medical
14 malpractice policies to any physician
15 regardless of specialty; providing requirements
16 for premium rates; providing for the tax-exempt
17 status of the fund; requiring the Financial
18 Services Commission to seek an opinion from the
19 Internal Revenue Service; providing for initial
20 capitalization; authorizing the Financial
21 Services Commission to adopt rules; providing
22 for termination of the fund; requiring
23 practitioners licensed under ch. 458 or ch.
24 459, F.S., to obtain and maintain professional
25 liability coverage of a specified amount as a
26 condition of licensure; providing certain
27 exceptions; providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Florida Medical Malpractice Insurance
2 Fund.--

3 (1) FINDINGS AND PURPOSES.--The Legislature finds and
4 declares that there is a compelling state interest in
5 maintaining the availability and affordability of health care
6 services to the people of Florida. This state interest is
7 seriously threatened by the increased cost and decreased
8 availability of medical malpractice insurance to physicians.
9 To the extent that the private sector is unable to maintain a
10 viable and orderly market for medical malpractice insurance,
11 state actions to maintain the availability and affordability
12 of medical malpractice insurance are a valid and necessary
13 exercise of the police power.

14 (2) DEFINITIONS.--As used in this section, the term:

15 (a) "Fund" means the Florida Medical Malpractice
16 Insurance Fund, as created pursuant to this section.

17 (b) "Physician" means a physician licensed under
18 chapter 458 or chapter 459, Florida Statutes.

19 (3) FLORIDA MEDICAL MALPRACTICE INSURANCE FUND
20 CREATED.--There is created the Florida Medical Malpractice
21 Insurance Fund, which shall be subject to the requirements of
22 this section. The fund shall begin offering coverage when
23 initial capitalization is provided for the fund pursuant to
24 subsection (7).

25 (a) The fund shall be administered by a board of
26 governors consisting of seven members who are appointed as
27 follows:

- 28 1. Three members by the Governor;
- 29 2. Three members by the Chief Financial Officer; and
- 30 3. One member by the other six board members.

1 Board members shall serve at the pleasure of the appointing
2 authority. Two board members must be physicians licensed in
3 this state and the Governor and the Chief Financial Officer
4 shall each appoint one of these physicians.

5 (b) The board shall submit a plan of operation, which
6 must be approved by the Office of Insurance Regulation of the
7 Financial Services Commission. The plan of operation and other
8 actions of the board shall not be considered rules subject to
9 the requirements of chapter 120, Florida Statutes.

10 (c) Except as otherwise provided by this section, the
11 fund shall be subject to the requirements of state law which
12 apply to authorized insurers.

13 (d) Moneys in the fund may not be expended, loaned, or
14 appropriated except to pay obligations of the fund arising out
15 of medical malpractice insurance policies issued to physicians
16 and the costs of administering the fund, including the
17 purchase of reinsurance as the board deems prudent. The board
18 shall enter into an agreement with the State Board of
19 Administration, which shall invest one-third of the moneys in
20 the fund pursuant to sections 215.44-215.52, Florida Statutes.
21 The board shall enter into an agreement with the Division of
22 Treasury of the Department of Financial Services, which shall
23 invest two-thirds of the moneys in the fund pursuant to the
24 requirements for the investment of state funds in chapter 17,
25 Florida Statutes. Earnings from all investments shall be
26 retained in the fund, except as otherwise provided in this
27 section.

28 (e) The fund may employ or contract with such staff
29 and professionals as the board deems necessary for the
30 administration of the fund.

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1 (f) There shall be no liability on the part of any
2 member of the board, its agents, or any employee of the state
3 for any action taken by them in the performance of their
4 powers and duties under this section. Such immunity does not
5 apply to any willful tort or to breach of any contract or
6 agreement.

7 (g) The fund is not a member insurer of the Florida
8 Insurance Guaranty Association established pursuant to part II
9 of chapter 631, Florida Statutes. The fund is not subject to
10 sections 624.407, 624.408, 624.4095, and 624.411, Florida
11 Statutes.

12 (4) MEDICAL MALPRACTICE INSURANCE POLICIES.--The board
13 must offer medical malpractice insurance to any physician,
14 regardless of his or her specialty, but may adopt underwriting
15 requirements, as specified in its plan of operation. The fund
16 shall offer limits of coverage of \$250,000 per claim/\$500,000
17 annual aggregate; \$500,000 per claim/\$1 million annual
18 aggregate; and \$1 million per claim/\$2 million annual
19 aggregate. The fund shall also allow policyholders to select
20 from policies with deductibles of \$100,000, \$200,000, and
21 \$250,000; excess coverage limits of \$250,000 per claim and
22 \$750,000 annual aggregate; \$1 million per claim and \$3 million
23 annual aggregate; or \$2 million and \$4 million annual
24 aggregate. The fund shall offer such other limits as specified
25 in its plan of operation.

26 (5) PREMIUM RATES.--The premium rates for coverage
27 offered by the fund must be actuarially sound and shall be
28 subject to the same requirements that apply to authorized
29 insurers issuing medical malpractice insurance, except that:

30 (a) The rates shall not include any factor for
31 profits; and

1 (b) The anticipated future investment income of the
2 fund, as projected in its rate filing, must be approximately
3 equal to the actual investment income that the fund has
4 earned, on average, for the prior 7 years. For those years of
5 the prior 7 years during which the fund was not in operation,
6 the anticipated future investment income must be approximately
7 equal to the actual average investment income earned by the
8 State Board of Administration for the moneys available for
9 investment under sections 215.44-215.53, Florida Statutes, and
10 the average annual investment income earned by the Division of
11 Treasury of the Department of Financial Services for the
12 investment of state funds under chapter 17, Florida Statutes,
13 in the same proportion as specified in paragraph (3)(d).

14 (6) TAX EXEMPTION.--The fund shall be a political
15 subdivision of the state and is exempt from the corporate
16 income tax under chapter 220, Florida Statutes, and the
17 premiums shall not be subject to the premium tax imposed by
18 section 624.509, Florida Statutes. It is also the intent of
19 the Legislature that the fund be exempt from federal income
20 taxation. The Financial Services Commission and the fund shall
21 seek an opinion from the Internal Revenue Service as to the
22 tax-exempt status of the fund and shall make such
23 recommendations to the Legislature as the board deems
24 necessary to obtain tax-exempt status.

25 (7) INITIAL CAPITALIZATION.--By July 1, 2005, the
26 Legislature shall provide by law for adequate initial
27 capitalization of the Florida Medical Malpractice Insurance
28 Fund.

29 (8) RULES.--The Financial Services Commission may
30 adopt rules to implement and administer the provisions of this
31 section.

1 (9) REVERSION OF FUND ASSETS UPON TERMINATION.--The
2 fund and the duties of the board under this section shall
3 stand repealed on a date 10 years after the date the Florida
4 Medical Malpractice Insurance Fund begins offering coverage
5 pursuant to this section, unless reviewed and saved from
6 repeal through reenactment by the Legislature. Upon
7 termination of the fund, all assets of the fund shall revert
8 to the General Revenue Fund.

9 Section 2. (1) Notwithstanding any law to the
10 contrary, if the Florida Medical Malpractice Insurance Fund
11 begins offering coverage as provided in this act, all
12 physicians licensed under chapter 458 or chapter 459, Florida
13 Statutes, as a condition of licensure shall be required to
14 maintain financial responsibility by obtaining and maintaining
15 professional liability coverage in an amount not less than
16 \$250,000 per claim, with a minimum annual aggregate of not
17 less than \$500,000, from an authorized insurer as defined
18 under section 624.09, Florida Statutes, from a surplus lines
19 insurer as defined under section 626.914(2), Florida Statutes,
20 from a risk retention group as defined under section 627.942,
21 Florida Statutes, from the Joint Underwriting Association
22 established under section 627.351(4), Florida Statutes,
23 through a plan of self-insurance as provided in section
24 627.357 or section 624.462, Florida Statutes, or from the
25 Florida Medical Malpractice Insurance Fund.

26 (2) Physicians and osteopathic physicians who are
27 exempt from the financial responsibility requirements under
28 section 458.320(5)(a), (b), (c), (d), (e), and (f) and section
29 459.0085(5)(a), (b), (c), (d), (e), and (f), Florida Statutes,
30 shall not be subject to the requirements of this section.

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1 Section 3. This act shall take effect upon becoming a
 2 law.

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5 SENATE SUMMARY

6 Creates the Florida Medical Malpractice Insurance Fund.
 7 Provides for oversight by a board of governors and the
 8 Office of Insurance Regulation of the Financial Services
 9 Commission. Provides for the fund to issue medical
 10 malpractice policies to any physician regardless of
 11 specialty. Provides for initial capitalization of the
 12 fund. Authorizes the Financial Services Commission to
 13 adopt rules. Provides for the fund to terminate in 10
 14 years. Requires physicians to obtain professional
 15 liability coverage in an amount of at least \$250,000 per
 16 claim, with an annual aggregate of at least \$500,000, as
 17 a condition of licensure. (See bill for details.)

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.