

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 this state. 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 in 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 under
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.
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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. Each board member
5 shall be appointed to a 4-year term and may be reappointed to
6 subsequent terms.

7 (b) The board shall submit a plan of operation, which
8 must be approved by the Office of Insurance Regulation of the
9 Financial Services Commission. The plan of operation and other
10 actions of the board are not rules that are subject to chapter
11 120, Florida Statutes.

12 (c) Except as otherwise provided by this section, the
13 fund is subject to the requirements of state law which apply
14 to authorized insurers.

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

1 (e) The fund may employ or contract with such staff
2 and professionals as the board deems necessary for the
3 administration of the fund.

4 (f) A member of the board, its agent, or any employee
5 of the state may not be held liable for any action taken in
6 performing the powers and duties of this section. This
7 immunity does not apply to any willful tort or to a breach of
8 contract or agreement.

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

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

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

1 (a) The rates may not include any factor for profits;
2 and

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

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

27 (7) INITIAL CAPITALIZATION.--By July 1, 2006, the
28 Legislature shall provide by law for adequate initial
29 capitalization of the Florida Medical Malpractice Insurance
30 Fund.

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1 (8) RULES.--The Financial Services Commission may
2 adopt rules to administer this section.

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

11 Section 2. (1) Notwithstanding any law to the
12 contrary, if the Florida Medical Malpractice Insurance Fund
13 begins offering coverage as provided in this act, all
14 physicians licensed under chapter 458 or chapter 459, Florida
15 Statutes, as a condition of licensure shall be required to
16 maintain financial responsibility by obtaining and maintaining
17 professional liability coverage in an amount not less than
18 \$250,000 per claim, with a minimum annual aggregate of not
19 less than \$500,000, from an authorized insurer as defined
20 under section 624.09, Florida Statutes, from a surplus lines
21 insurer as defined under section 626.914(2), Florida Statutes,
22 from a risk retention group as defined under section 627.942,
23 Florida Statutes, from the Joint Underwriting Association
24 established under section 627.351(4), Florida Statutes,
25 through a plan of self-insurance as provided in section
26 627.357 or section 624.462, Florida Statutes, or from the
27 Florida Medical Malpractice Insurance Fund.

28 (2) Physicians and osteopathic physicians who are
29 exempt from the financial responsibility requirements under
30 section 458.320(5)(a), (b), (c), (d), (e), and (f) and section
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1 459.0085(5)(a), (b), (c), (d), (e), and (f), Florida Statutes,
2 are not subject to the requirements of this section.

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

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7 SENATE SUMMARY

8 Creates the Florida Medical Malpractice Insurance Fund.
9 Provides for oversight by a board of governors and the
10 Office of Insurance Regulation of the Financial Services
11 Commission. Provides for the fund to issue medical
12 malpractice policies to any physician regardless of
13 specialty. Provides for initial capitalization of the
14 fund. Authorizes the Financial Services Commission to
15 adopt rules. Provides for the fund to terminate in 10
16 years. Requires specified physicians to obtain
17 professional liability coverage in an amount of at least
18 \$250,000 per claim, with an annual aggregate of at least
19 \$500,000, as a condition of licensure. (See bill for
20 details.)
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