

By Senator Jones

13-02879-08

20081420__

1 A bill to be entitled

2 An act relating to financial responsibility of physicians
3 and osteopathic physicians; amending s. 395.0191, F.S.;
4 requiring each licensed facility to ensure that certain
5 physicians and osteopathic physicians are in compliance
6 with financial responsibility requirements; requiring the
7 licensed facility to be responsible for fulfilling the
8 financial responsibility requirements of a physician or
9 osteopathic physician under certain circumstances;
10 requiring a physician or osteopathic physician to
11 indemnify a licensed facility for any liabilities incurred
12 by the facility in satisfaction of the physician's or
13 osteopathic physician's financial responsibility
14 requirements; creating s. 627.41496, F.S.; providing that
15 it is contrary to public policy for an insurer to issue
16 legal defense coverage for medical malpractice under
17 certain circumstances; providing exceptions; requiring
18 that financial responsibility be maintained at the time
19 any legal defense coverage is issued by the insurer or
20 invoked by the physician or osteopathic physician;
21 providing that legal defense coverage is void if a
22 physician or osteopathic physician fails to maintain
23 financial responsibility; requiring that a physician or
24 osteopathic physician demonstrate proof of financial
25 responsibility before an insurer may issue legal defense
26 coverage or provide legal defense services; prohibiting an
27 insurer from issuing or providing legal defense coverage
28 to a physician or osteopathic physician contrary to the
29 act; providing that the issuance of professional liability

13-02879-08

20081420__

30 coverage for medical malpractice or medical negligence
31 which includes legal defense coverage in conjunction with
32 indemnity is not prohibited; providing that the issuance
33 of legal defense coverage for the purpose of defense of
34 certain actions by a regulatory board or agency or public
35 or private entity is not prohibited; providing an
36 effective date.

37
38 Be It Enacted by the Legislature of the State of Florida:

39
40 Section 1. Subsection (11) is added to section
41 395.0191, Florida Statutes, to read::

42 395.0191 Staff membership and clinical privileges.--

43 (11) Each licensed facility is responsible for
44 ensuring that each doctor of medicine licensed under chapter
45 458, or doctor of osteopathic medicine licensed under chapter
46 459, who is on the facility staff or who has been granted
47 clinical privileges at the facility complies with the
48 financial responsibility requirements applicable to such
49 licensed professional at all times while the licensed
50 professional is a member of the staff or has clinical
51 privileges in effect at the facility. In the event of a claim
52 against a licensed professional to whom this subsection
53 applies who is a member of the staff or who has been granted
54 clinical privileges at the facility where the claim arises
55 out of the rendering of, or the failure to render,
56 professional care or services, if the licensed professional
57 is not in compliance with the financial responsibility
58 requirements with respect to the claim, the facility is

13-02879-08

20081420__

59 responsible for meeting the licensed professional's financial
60 responsibility requirements as set forth in the respective
61 licensing provisions. A licensed professional to whom this
62 subsection applies shall indemnify a licensed facility for
63 any judgments, settlements, or other liabilities incurred by
64 the licensed facility pursuant to this subsection in
65 satisfaction of the licensed professional's financial
66 responsibility requirements.

67 Section 2. Section 627.41496, Florida Statutes, is
68 created to read:

69 627.41496 Medical malpractice legal defense coverage;
70 prohibited issue.--

71 (1) It is contrary to public policy in this state for
72 any insurer to issue legal defense coverage for the purpose
73 of providing legal defense services in conjunction with a
74 claim for medical negligence or medical malpractice under any
75 theory of law, unless such coverage is issued to a physician
76 licensed under chapter 458, or an osteopathic physician
77 licensed under chapter 459, who has in effect at the time
78 such coverage is issued financial responsibility in
79 accordance with one of the following methods in the per-claim
80 amount applicable to such physician or osteopathic physician:

81 (a) Establishing and maintaining an escrow account in
82 accordance with s. 458.320(1)(a) or (2)(a) or s. 459.0085
83 (1)(a) or (2)(a);

84 (b) Maintaining professional liability coverage in
85 accordance with s. 458.320(1)(b) or (2)(b) or s.
86 459.0085(1)(b) or (2)(b); or

13-02879-08

20081420__

87 (c) Obtaining and maintaining an unexpired,
88 irrevocable letter of credit in accordance with s.
89 458.320(1)(c) or (2)(c) or s. 459.0085(1)(c) or (2)(c),

90
91 unless such physician or osteopathic physician is otherwise
92 exempt from the financial responsibility requirements as
93 stated under s. 458.320(5)(a), (b), (c), or (e) or s.
94 459.0085(5)(a), (b), (c), or (e).

95 (2) The required financial responsibility must be in
96 effect at the time any legal defense coverage is issued by
97 the insurer or invoked by the physician or osteopathic
98 physician and must remain in effect throughout the period of
99 legal representation provided under such legal defense
100 coverage.

101 (3) If a physician or osteopathic physician fails to
102 maintain financial responsibility as required by this section
103 for purposes of purchasing legal defense coverage, such
104 coverage shall be null and void and such insurer is not
105 liable for providing legal defense services.

106 (4) Any insurer issuing legal defense coverage in
107 accordance with this section shall require a physician or
108 osteopathic physician to show proof that he or she maintains
109 financial responsibility in accordance with subsection (1)
110 before any coverage is issued to such physician or
111 osteopathic physician. The physician or osteopathic physician
112 shall also notify the insurer of any change in the status of
113 his or her financial responsibility.

114 (5) Any insurer who has issued legal defense coverage
115 in accordance with this section shall require a physician or

13-02879-08

20081420__

116 osteopathic physician to show proof that he or she maintains
117 financial responsibility before providing legal defense
118 services.

119 (6) An insurer may not issue or provide legal defense
120 coverage to any physician or osteopathic physician licensed
121 in this state in contravention of this section.

122 (7) This section does not prohibit the issuance of
123 professional liability coverage for medical malpractice or
124 medical negligence which includes legal defense coverage in
125 conjunction with indemnity.

126 (8) This section does not prohibit the issuance of
127 legal defense coverage to any physician or osteopathic
128 physician for purposes of the defense of any disciplinary,
129 administrative, contractual, or criminal action brought by
130 any federal or state regulatory board or agency, or public or
131 private entity, including, but not limited to, any health
132 care provider, health plan, or health insurer.

133 Section 3. This act shall take effect upon becoming a law
134 and applies to contracts entered into, issued, or renewed on or
135 after that date.