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1 AMENDMENT TO SENATE BILL 2241

2 AMENDMENT NO. _____. Amend Senate Bill 2241 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Findings. The General Assembly finds the
5 following:

6 (1) Illinois is in the midst of a medical malpractice
7 insurance crisis of unprecedented magnitude.

8 (2) Illinois is among the states with the highest
9 medical malpractice insurance premiums in the nation.

10 (3) Medical malpractice insurance in Illinois is
11 unavailable or unaffordable for many hospitals and
12 physicians.

13 (4) The high and increasing cost of medical malpractice
14 insurance in Illinois is causing health care providers to
15 eliminate or reduce the provision of medical care
16 throughout the State.

17 (5) The crisis is discouraging medical students from
18 choosing Illinois as the place they will receive their
19 medical education and practice medicine.

20 (6) The increase in medical malpractice liability
21 insurance rates is forcing physicians to practice medicine
22 without professional liability insurance, to leave
23 Illinois, to not perform high-risk procedures, or to retire
24 early from the practice of medicine.

25 (7) The high and increasing cost of medical malpractice

1 insurance is due in large part to the inefficiency and
2 unpredictability of adjudicating claims through the civil
3 justice system.

4 (8) Much of this inefficiency stems from the time and
5 resources needlessly spent on valuing uncertain and
6 unpredictable claims of medical negligence.

7 (9) The public would benefit by making medical
8 liability coverage for hospitals and physicians more
9 affordable, which would make health care more available.

10 (10) This health care crisis, which endangers the
11 public health, safety, and welfare of the citizens of
12 Illinois, requires drastic reforms to the civil justice
13 system currently endangering access to the necessary
14 health care for citizens of Illinois.

15 Section 5. The Illinois Insurance Code is amended by
16 changing Sections 155.18, 155.19, and 1204 and by adding
17 Section 155.18a as follows:

18 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

19 Sec. 155.18. (a) This Section shall apply to insurance on
20 risks based upon negligence by a physician, hospital or other
21 health care provider, referred to herein as medical liability
22 insurance. This Section shall not apply to contracts of
23 reinsurance, nor to any farm, county, district or township
24 mutual insurance company transacting business under an Act
25 entitled "An Act relating to local mutual district, county and
26 township insurance companies", approved March 13, 1936, as now
27 or hereafter amended, nor to any such company operating under a
28 special charter.

29 (b) The following standards shall apply to the making and
30 use of rates pertaining to all classes of medical liability
31 insurance:

32 (1) Rates shall not be excessive or inadequate, as

1 herein defined, nor shall they be unfairly discriminatory.
2 No rate shall be held to be excessive unless such rate is
3 unreasonably high for the insurance provided, ~~and a~~
4 ~~reasonable degree of competition does not exist in the area~~
5 ~~with respect to the classification to which such rate is~~
6 ~~applicable.~~

7 No rate shall be held inadequate unless it is
8 unreasonably low for the insurance provided ~~and continued~~
9 ~~use of it would endanger solvency of the company.~~

10 (2) Consideration shall be given, to the extent
11 applicable, to past and prospective loss experience within
12 and outside this State, to a reasonable margin for
13 underwriting profit and contingencies, to past and
14 prospective expenses both countrywide and those especially
15 applicable to this State, and to all other factors,
16 including judgment factors, deemed relevant within and
17 outside this State.

18 Consideration may also be given in the making and use
19 of rates to dividends, savings or unabsorbed premium
20 deposits allowed or returned by companies to their
21 policyholders, members or subscribers.

22 (3) The systems of expense provisions included in the
23 rates for use by any company or group of companies may
24 differ from those of other companies or groups of companies
25 to reflect the operating methods of any such company or
26 group with respect to any kind of insurance, or with
27 respect to any subdivision or combination thereof.

28 (4) Risks may be grouped by classifications for the
29 establishment of rates and minimum premiums.
30 Classification rates may be modified to produce rates for
31 individual risks in accordance with rating plans which
32 establish standards for measuring variations in hazards or
33 expense provisions, or both. Such standards may measure any
34 difference among risks that have a probable effect upon

1 losses or expenses. Such classifications or modifications
2 of classifications of risks may be established based upon
3 size, expense, management, individual experience, location
4 or dispersion of hazard, or any other reasonable
5 considerations and shall apply to all risks under the same
6 or substantially the same circumstances or conditions. The
7 rate for an established classification should be related
8 generally to the anticipated loss and expense factors of
9 the class.

10 (c) Every company writing medical liability insurance
11 shall file with the Director of Insurance the rates and rating
12 schedules it uses for medical liability insurance.

13 (1) This filing shall occur upon a company's
14 commencement of medical liability insurance business in
15 this State ~~at least annually~~ and thereafter as often as the
16 rates are changed or amended.

17 (2) For the purposes of this Section, any change in
18 premium to the company's insureds as a result of a change
19 in the company's base rates or a change in its increased
20 limits factors shall constitute a change in rates and shall
21 require a filing with the Director. On any filing made
22 pursuant to this Section wherein the company's annual
23 cumulative overall rate increase exceeds 10%, the Director
24 shall convene a public hearing for the purpose of receiving
25 testimony from the company and from any interested persons
26 regarding the company's proposed increase.

27 (3) It shall be certified in such filing by an officer
28 of the company and a qualified actuary that the company's
29 rates, including any risk management plan discount
30 required by subdivision (g) (2) of this Section along with
31 any other discounts that may be provided by the insurer,
32 are based on sound actuarial principles and are not
33 inconsistent with the company's experience. The Director
34 may request any additional statistical data and other

1 pertinent information necessary to determine the manner
2 the company used to set the filed rates and the
3 reasonableness of those rates.

4 (d) If, after an administrative ~~a~~ hearing pursuant to
5 subsection (c) of Section 401 of this Code, the Director finds:

6 (1) that any rate, rating plan or rating system
7 violates the provisions of this Section applicable to it,
8 he shall ~~may~~ issue an order to the company which has been
9 the subject of the hearing specifying in what respects such
10 violation exists and may prohibit ~~stating when, within a~~
11 ~~reasonable period of time,~~ the further use of such rate or
12 rating system by such company in contracts of insurance
13 ~~made thereafter shall be prohibited;~~

14 (2) that the violation of any of the provisions of this
15 Section ~~applicable to it~~ by any company which has been the
16 subject of the hearing was wilful or that any company has
17 repeatedly violated any provision of this Section, he may
18 take either or both of the following actions:

19 (A) Suspend ~~suspend~~ or revoke, in whole or in part,
20 the certificate of authority of such company with
21 respect to the class of insurance which has been the
22 subject of the hearing.

23 (B) Impose a penalty of up to \$1,000 against the
24 company for each violation. Each day during which a
25 violation occurs constitutes a separate violation.

26 (e) Every company writing medical liability insurance
27 shall offer deductibles to each of its medical liability
28 insureds in this State. This offer shall be included in the
29 initial offer or in the first policy renewal occurring after
30 the effective date of this amendatory Act of the 93rd General
31 Assembly.

32 (f) Every company writing medical liability insurance in
33 this State shall offer to each of its medical liability
34 insureds the option to make premium payments in installments as

1 prescribed by and filed with the Director. This offer shall be
2 included in the initial offer or in the first policy renewal
3 occurring after the effective date of this amendatory Act of
4 the 93rd General Assembly.

5 (g) Medical liability insurance risk management plans.

6 (1) Each insurer shall develop and establish a risk
7 management plan. The plan shall provide for discounts, not
8 to exceed 25% of the medical liability premium, for
9 insureds who implement risk management techniques
10 specified by the insurer. This offer shall be included in
11 the initial offer or in the first policy renewal occurring
12 after the effective date of this amendatory Act of the 93rd
13 General Assembly.

14 (2) Prior to initial use and thereafter as often as the
15 risk management plan is changed or amended, each insurer
16 shall file with the Director its risk management plan,
17 including the schedule of discounts.

18 (Source: P.A. 79-1434.)

19 (215 ILCS 5/155.18a new)

20 Sec. 155.18a. Professional Liability Insurance Resource
21 Center. The Director of Insurance shall establish a
22 Professional Liability Insurance Resource Center on the World
23 Wide Web containing the names and telephone numbers of all
24 licensed companies providing medical liability insurance and
25 producers who sell medical liability insurance. Each company
26 and producer shall submit the information to the Department on
27 or before September 30 of each year in order to be listed on
28 the website. The Department is under no obligation to list a
29 company or producer on the website. Hyperlinks to company
30 websites shall be included, if available. The publication of
31 the information on the Department's website shall commence on
32 January 1, 2005. The Department shall update the information on
33 the Professional Liability Insurance Resource Center at least

1 annually.

2 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

3 Sec. 155.19. All claims filed after December 31, 1976 with
4 any insurer and all suits filed after December 31, 1976 in any
5 court in this State, alleging liability on the part of any
6 physician, hospital or other health care provider for medically
7 related injuries, shall be reported to the Director of
8 Insurance in such form and under such terms and conditions as
9 may be prescribed by the Director. Notwithstanding any other
10 provision of law to the contrary, any insurer, stop loss
11 insurer, captive insurer, risk retention group, religious or
12 charitable risk pooling trust, surplus line insurer, or other
13 entity authorized or permitted by law to provide medical
14 liability insurance in this State shall report to the Director,
15 in such form and under such terms and conditions as may be
16 prescribed by the Director, all claims filed after December 31,
17 2004 and all suits filed after December 31, 2004 in any court
18 in this State alleging liability on the part of any physician,
19 hospital, or health care provider for medically-related
20 injuries. Each clerk of the circuit court shall provide to the
21 Director such information as the Director may deem necessary to
22 verify the accuracy and completeness of reports made to the
23 Director under this Section. The Director shall maintain
24 complete and accurate records of all such claims and suits
25 including their nature, amount, disposition and other
26 information as he may deem useful or desirable in observing and
27 reporting on health care provider liability trends in this
28 State. The Director shall release to appropriate disciplinary
29 and licensing agencies any such data or information which may
30 assist such agencies in improving the quality of health care or
31 which may be useful to such agencies for the purpose of
32 professional discipline.

33 With due regard for appropriate maintenance of the

1 confidentiality thereof, the Director shall ~~may~~ release, on an
2 annual basis, from time to time to the Governor, the General
3 Assembly and the general public statistical reports based on
4 such data and information.

5 If the Director finds that any entity required to report
6 information under this Section has violated any provision of
7 this Section by filing late, incomplete, or inaccurate reports,
8 the Director may fine the entity up to \$1,000 for each offense.
9 Each day during which a violation occurs constitutes a separate
10 offense.

11 The Director may promulgate such rules and regulations as
12 may be necessary to carry out the provisions of this Section.

13 (Source: P.A. 79-1434.)

14 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

15 Sec. 1204. (A) The Director shall promulgate rules and
16 regulations which shall require each insurer licensed to write
17 property or casualty insurance in the State and each syndicate
18 doing business on the Illinois Insurance Exchange to record and
19 report its loss and expense experience and other data as may be
20 necessary to assess the relationship of insurance premiums and
21 related income as compared to insurance costs and expenses. The
22 Director may designate one or more rate service organizations
23 or advisory organizations to gather and compile such experience
24 and data. The Director shall require each insurer licensed to
25 write property or casualty insurance in this State and each
26 syndicate doing business on the Illinois Insurance Exchange to
27 submit a report, on a form furnished by the Director, showing
28 its direct writings in this State and companywide.

29 (B) Such report required by subsection (A) of this Section
30 may include, but not be limited to, the following specific
31 types of insurance written by such insurer:

32 (1) Political subdivision liability insurance reported
33 separately in the following categories:

- 1 (a) municipalities;
- 2 (b) school districts;
- 3 (c) other political subdivisions;
- 4 (2) Public official liability insurance;
- 5 (3) Dram shop liability insurance;
- 6 (4) Day care center liability insurance;
- 7 (5) Labor, fraternal or religious organizations
- 8 liability insurance;
- 9 (6) Errors and omissions liability insurance;
- 10 (7) Officers and directors liability insurance
- 11 reported separately as follows:
 - 12 (a) non-profit entities;
 - 13 (b) for-profit entities;
 - 14 (8) Products liability insurance;
 - 15 (9) Medical malpractice insurance;
 - 16 (10) Attorney malpractice insurance;
 - 17 (11) Architects and engineers malpractice insurance;
 - 18 and
 - 19 (12) Motor vehicle insurance reported separately for
 - 20 commercial and private passenger vehicles as follows:
 - 21 (a) motor vehicle physical damage insurance;
 - 22 (b) motor vehicle liability insurance.
- 23 (C) Such report may include, but need not be limited to the
- 24 following data, both specific to this State and companywide, in
- 25 the aggregate or by type of insurance for the previous year on
- 26 a calendar year basis:
 - 27 (1) Direct premiums written;
 - 28 (2) Direct premiums earned;
 - 29 (3) Number of policies;
 - 30 (4) Net investment income, using appropriate estimates
 - 31 where necessary;
 - 32 (5) Losses paid;
 - 33 (6) Losses incurred;
 - 34 (7) Loss reserves:

- 1 (a) Losses unpaid on reported claims;
- 2 (b) Losses unpaid on incurred but not reported
- 3 claims;
- 4 (8) Number of claims:
- 5 (a) Paid claims;
- 6 (b) Arising claims;
- 7 (9) Loss adjustment expenses:
- 8 (a) Allocated loss adjustment expenses;
- 9 (b) Unallocated loss adjustment expenses;
- 10 (10) Net underwriting gain or loss;
- 11 (11) Net operation gain or loss, including net
- 12 investment income;
- 13 (12) Any other information requested by the Director.

14 (C-5) Additional information required from medical

15 malpractice insurers.

16 (1) In addition to the other requirements of this

17 Section, all medical malpractice insurers shall include

18 the following information in the report required by

19 subsection (A) of this Section in such form and under such

20 terms and conditions as may be prescribed by the Director:

21 (a) paid and incurred losses by county for each of

22 the past 10 policy years; and

23 (b) earned exposures by ISO code, policy type, and

24 policy year by county for each of the past 10 years.

25 (2) All information collected by the Director under

26 paragraph (1) of this subsection (C-5) shall be made

27 available, on an aggregate basis only, to the General

28 Assembly and the general public. This provision shall

29 supersede any other provision of law that may otherwise

30 protect such information from public disclosure as

31 confidential. The identity of any plaintiff, defendant,

32 attorney, or insurance company shall not be disclosed.

33 (D) In addition to the information which may be requested

34 under subsection (C), the Director may also request on a

1 companywide, aggregate basis, Federal Income Tax recoverable,
2 net realized capital gain or loss, net unrealized capital gain
3 or loss, and all other expenses not requested in subsection (C)
4 above.

5 (E) Violations - Suspensions - Revocations.

6 (1) Any company or person subject to this Article, who
7 willfully or repeatedly fails to observe or who otherwise
8 violates any of the provisions of this Article or any rule
9 or regulation promulgated by the Director under authority
10 of this Article or any final order of the Director entered
11 under the authority of this Article shall by civil penalty
12 forfeit to the State of Illinois a sum not to exceed
13 \$2,000. Each day during which a violation occurs
14 constitutes a separate offense.

15 (2) No forfeiture liability under paragraph (1) of this
16 subsection may attach unless a written notice of apparent
17 liability has been issued by the Director and received by
18 the respondent, or the Director sends written notice of
19 apparent liability by registered or certified mail, return
20 receipt requested, to the last known address of the
21 respondent. Any respondent so notified must be granted an
22 opportunity to request a hearing within 10 days from
23 receipt of notice, or to show in writing, why he should not
24 be held liable. A notice issued under this Section must set
25 forth the date, facts and nature of the act or omission
26 with which the respondent is charged and must specifically
27 identify the particular provision of this Article, rule,
28 regulation or order of which a violation is charged.

29 (3) No forfeiture liability under paragraph (1) of this
30 subsection may attach for any violation occurring more than
31 2 years prior to the date of issuance of the notice of
32 apparent liability and in no event may the total civil
33 penalty forfeiture imposed for the acts or omissions set
34 forth in any one notice of apparent liability exceed

1 \$100,000.

2 (4) All administrative hearings conducted pursuant to
3 this Article are subject to 50 Ill. Adm. Code 2402 and all
4 administrative hearings are subject to the Administrative
5 Review Law.

6 (5) The civil penalty forfeitures provided for in this
7 Section are payable to the General Revenue Fund of the
8 State of Illinois, and may be recovered in a civil suit in
9 the name of the State of Illinois brought in the Circuit
10 Court in Sangamon County or in the Circuit Court of the
11 county where the respondent is domiciled or has its
12 principal operating office.

13 (6) In any case where the Director issues a notice of
14 apparent liability looking toward the imposition of a civil
15 penalty forfeiture under this Section that fact may not be
16 used in any other proceeding before the Director to the
17 prejudice of the respondent to whom the notice was issued,
18 unless (a) the civil penalty forfeiture has been paid, or
19 (b) a court has ordered payment of the civil penalty
20 forfeiture and that order has become final.

21 (7) When any person or company has a license or
22 certificate of authority under this Code and knowingly
23 fails or refuses to comply with a lawful order of the
24 Director requiring compliance with this Article, entered
25 after notice and hearing, within the period of time
26 specified in the order, the Director may, in addition to
27 any other penalty or authority provided, revoke or refuse
28 to renew the license or certificate of authority of such
29 person or company, or may suspend the license or
30 certificate of authority of such person or company until
31 compliance with such order has been obtained.

32 (8) When any person or company has a license or
33 certificate of authority under this Code and knowingly
34 fails or refuses to comply with any provisions of this

1 Article, the Director may, after notice and hearing, in
2 addition to any other penalty provided, revoke or refuse to
3 renew the license or certificate of authority of such
4 person or company, or may suspend the license or
5 certificate of authority of such person or company, until
6 compliance with such provision of this Article has been
7 obtained.

8 (9) No suspension or revocation under this Section may
9 become effective until 5 days from the date that the notice
10 of suspension or revocation has been personally delivered
11 or delivered by registered or certified mail to the company
12 or person. A suspension or revocation under this Section is
13 stayed upon the filing, by the company or person, of a
14 petition for judicial review under the Administrative
15 Review Law.

16 (Source: P.A. 93-32, eff. 7-1-03.)

17 Section 10. The Clerks of Courts Act is amended by adding
18 Section 27.10 as follows:

19 (705 ILCS 105/27.10 new)

20 Sec. 27.10. Director of Insurance. Each clerk of the
21 circuit court shall provide to the Director of Insurance such
22 information as the Director of Insurance requests under Section
23 155.19 of the Illinois Insurance Code.

24 Section 15. The Code of Civil Procedure is amended by
25 reenacting and changing Sections 2-1109 and 2-1702, changing
26 Section 2-1704, and adding Section 2-1706.5 as follows:

27 (735 ILCS 5/2-1109) (from Ch. 110, par. 2-1109)

28 (Text of Section WITHOUT the changes made by P.A. 89-7,
29 which has been held unconstitutional)

30 Sec. 2-1109. Itemized verdicts.

1 (a) In every case where damages for bodily injury or death
2 ~~to the person~~ are assessed by the jury the verdict shall be
3 itemized so as to reflect the monetary distribution, if any,
4 among economic loss and non-economic loss, ~~if any,~~ and, in
5 healing art ~~medical~~ malpractice cases, further itemized so as
6 to reflect the distribution of economic loss by category, such
7 itemization of economic loss by category to include: (a)
8 amounts intended to compensate for reasonable expenses which
9 have been incurred, or which will be incurred, for necessary
10 medical, surgical, x-ray, dental, or other health or
11 rehabilitative services, drugs, and therapy; (b) amounts
12 intended to compensate for lost wages or loss of earning
13 capacity; and (c) all other economic losses claimed by the
14 plaintiff or granted by the jury. Each category of economic
15 loss shall be further itemized into amounts intended to
16 compensate for losses which have been incurred prior to the
17 verdict and amounts intended to compensate for future losses
18 ~~which will be incurred in the future.~~

19 (b) In all actions on account of bodily injury or death
20 based on negligence, including healing art malpractice
21 actions, the following terms have the following meanings:

22 (i) "Economic loss" or "economic damages" means all
23 damages that are tangible, such as damages for past and
24 future medical expenses, loss of income or earnings and
25 other property loss.

26 (ii) "Non-economic loss" or "non-economic damages"
27 means damages that are intangible, including but not
28 limited to damages for pain and suffering, disability,
29 disfigurement, loss of consortium, and loss of society.

30 (iii) "Compensatory damages" or "actual damages" are
31 the sum of economic and non-economic damages.

32 (c) Nothing in this Section shall be construed to create a
33 cause of action.

34 (d) This amendatory Act of the 93rd General Assembly

1 applies to causes of action filed on or after its effective
2 date.

3 (Source: P.A. 84-7.)

4 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

5 (Text of Section WITHOUT the changes made by P.A. 89-7,
6 which has been held unconstitutional)

7 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
8 Part, "economic loss" and "non-economic loss" have the same
9 meanings as in Section 2-1109(b). †

10 ~~(a) "Economic loss" means all pecuniary harm for which~~
11 ~~damages are recoverable.~~

12 ~~(b) "Non-economic loss" means loss of consortium and all~~
13 ~~nonpecuniary harm for which damages are recoverable,~~
14 ~~including, without limitation, damages for pain and suffering,~~
15 ~~inconvenience, disfigurement, and physical impairment.~~

16 (Source: P.A. 84-7.)

17 (735 ILCS 5/2-1704) (from Ch. 110, par. 2-1704)

18 Sec. 2-1704. Healing art malpractice ~~Medical Malpractice~~
19 ~~Action~~. As used in this Code Part, "healing art medical
20 malpractice action" means any action, whether in tort, contract
21 or otherwise, in which the plaintiff seeks damages for injuries
22 or death by reason of medical, hospital, or other healing art
23 malpractice including but not limited to medical, hospital,
24 nursing home, nursing, dental, or podiatric malpractice. The
25 term "healing art" shall not include care and treatment by
26 spiritual means through prayer in accord with the tenets and
27 practices of a recognized church or religious denomination.

28 (Source: P.A. 84-7.)

29 (735 ILCS 5/2-1706.5 new)

30 Sec. 2-1706.5. Standards for economic and non-economic
31 damages.

1 (a) In any medical malpractice action in which economic and
2 non-economic damages may be awarded, the following standards
3 shall apply:

4 (1) In a case of an award against a hospital and its
5 personnel, the total amount of non-economic damages shall
6 not exceed \$750,000 awarded to all plaintiffs in any civil
7 action arising out of the care.

8 (2) In a case of an award against a physician and the
9 physician's business or corporation entity, the total
10 amount of non-economic damages shall not exceed \$500,000
11 awarded to all plaintiffs in any civil action arising out
12 of the care.

13 (3) In awarding damages in a medical malpractice case,
14 the finder of fact shall render verdicts with a specific
15 award of damages for economic loss, if any, and a specific
16 award of damages for non-economic loss, if any.

17 (b) In any medical malpractice action where an individual
18 plaintiff earns less than the annual average weekly wage, as
19 determined by the Industrial Commission, at the time the action
20 is filed, any award may include an amount equal to the wage the
21 individual plaintiff earns or the annual average weekly wage.

22 (c) Any party in a medical malpractice case may introduce
23 annuity evidence to inform the fact finder about the time value
24 of an award and its ability to cover the plaintiff's damages
25 over time.

26 (d) If any provision of this Section or its application to
27 any person or circumstance is held invalid, the invalidity of
28 that provision or application does not affect other provisions
29 or applications of this Section.

30 Section 97. Inseverability. The provisions of this Act are
31 mutually dependent and inseverable. If any provision is held
32 invalid other than as applied to a particular person or
33 circumstance, then this entire Act is invalid.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.".