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

7 (215 ILCS 5/155.18) (from Ch. 73, par. 767.18)

8 Sec. 155.18. (a) This Section shall apply to insurance on
9 risks based upon negligence by a physician, hospital or other
10 health care provider, referred to herein as medical liability
11 insurance. This Section shall not apply to contracts of
12 reinsurance, nor to any farm, county, district or township
13 mutual insurance company transacting business under an Act
14 entitled "An Act relating to local mutual district, county and
15 township insurance companies", approved March 13, 1936, as now
16 or hereafter amended, nor to any such company operating under a
17 special charter.

18 (b) The following standards shall apply to the making and
19 use of rates pertaining to all classes of medical liability
20 insurance:

21 (1) Rates shall not be excessive or inadequate, as
22 herein defined, nor shall they be unfairly discriminatory.
23 No rate shall be held to be excessive unless such rate is
24 unreasonably high for the insurance provided, ~~and a~~

1 ~~reasonable degree of competition does not exist in the area~~
2 ~~with respect to the classification to which such rate is~~
3 ~~applicable.~~

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

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

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

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

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

1 or dispersion of hazard, or any other reasonable
2 considerations and shall apply to all risks under the same
3 or substantially the same circumstances or conditions. The
4 rate for an established classification should be related
5 generally to the anticipated loss and expense factors of
6 the class.

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

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

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

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

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

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

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

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

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

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

29 (f) Medical liability insurance rate compression.
30 Notwithstanding any other provision of this Code, an insurer
31 may charge different rates for different medical specialties or
32 combinations of medical specialties; however, the base rate
33 paid by the highest-rated medical specialty or combination of
34 medical specialties shall be no greater than 800% of the base

1 rate paid by the lowest-rated medical specialty or combination
2 of medical specialties.

3 This subsection (f) is operative at the discretion of the
4 Director.

5 (g) Every company writing medical liability insurance in
6 this State shall offer to each of its medical liability
7 insureds the option to make premium payments in installments as
8 prescribed by and filed with the Director. This offer shall be
9 included in the initial offer or in the first policy renewal
10 occurring after the effective date of this amendatory Act of
11 the 93rd General Assembly.

12 (h) Medical liability insurance risk management plans.

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

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

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

26 (215 ILCS 5/155.18a new)

27 Sec. 155.18a. Professional Liability Insurance Resource
28 Center. The Director of Insurance shall establish a
29 Professional Liability Insurance Resource Center on the World
30 Wide Web containing the names and telephone numbers of all
31 licensed companies providing medical liability insurance and
32 producers who sell medical liability insurance. Each company
33 and producer shall submit the information to the Department on

1 or before September 30 of each year in order to be listed on
2 the website. The Department is under no obligation to list a
3 company or producer on the website. Hyperlinks to company
4 websites shall be included, if available. The publication of
5 the information on the Department's website shall commence on
6 January 1, 2005. The Department shall update the information on
7 the Professional Liability Insurance Resource Center at least
8 annually.

9 (215 ILCS 5/155.19) (from Ch. 73, par. 767.19)

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

1 reporting on health care provider liability trends in this
2 State. The Director shall release to appropriate disciplinary
3 and licensing agencies any such data or information which may
4 assist such agencies in improving the quality of health care or
5 which may be useful to such agencies for the purpose of
6 professional discipline.

7 With due regard for appropriate maintenance of the
8 confidentiality thereof, the Director shall ~~may~~ release, on an
9 annual basis, ~~from time to time~~ to the Governor, the General
10 Assembly and the general public statistical reports based on
11 such data and information.

12 If the Director finds that any entity required to report
13 information under this Section has violated any provision of
14 this Section by filing late, incomplete, or inaccurate reports,
15 the Director may fine the entity up to \$1,000 for each offense.
16 Each day during which a violation occurs constitutes a separate
17 offense.

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

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

21 (215 ILCS 5/1204) (from Ch. 73, par. 1065.904)

22 Sec. 1204. (A) The Director shall promulgate rules and
23 regulations which shall require each insurer licensed to write
24 property or casualty insurance in the State and each syndicate
25 doing business on the Illinois Insurance Exchange to record and
26 report its loss and expense experience and other data as may be
27 necessary to assess the relationship of insurance premiums and
28 related income as compared to insurance costs and expenses. The
29 Director may designate one or more rate service organizations
30 or advisory organizations to gather and compile such experience
31 and data. The Director shall require each insurer licensed to
32 write property or casualty insurance in this State and each
33 syndicate doing business on the Illinois Insurance Exchange to

1 submit a report, on a form furnished by the Director, showing
2 its direct writings in this State and companywide.

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

6 (1) Political subdivision liability insurance reported
7 separately in the following categories:

8 (a) municipalities;

9 (b) school districts;

10 (c) other political subdivisions;

11 (2) Public official liability insurance;

12 (3) Dram shop liability insurance;

13 (4) Day care center liability insurance;

14 (5) Labor, fraternal or religious organizations
15 liability insurance;

16 (6) Errors and omissions liability insurance;

17 (7) Officers and directors liability insurance
18 reported separately as follows:

19 (a) non-profit entities;

20 (b) for-profit entities;

21 (8) Products liability insurance;

22 (9) Medical malpractice insurance;

23 (10) Attorney malpractice insurance;

24 (11) Architects and engineers malpractice insurance;

25 and

26 (12) Motor vehicle insurance reported separately for
27 commercial and private passenger vehicles as follows:

28 (a) motor vehicle physical damage insurance;

29 (b) motor vehicle liability insurance.

30 (C) Such report may include, but need not be limited to the
31 following data, both specific to this State and companywide, in
32 the aggregate or by type of insurance for the previous year on
33 a calendar year basis:

34 (1) Direct premiums written;

- 1 (2) Direct premiums earned;
- 2 (3) Number of policies;
- 3 (4) Net investment income, using appropriate estimates
- 4 where necessary;
- 5 (5) Losses paid;
- 6 (6) Losses incurred;
- 7 (7) Loss reserves:
 - 8 (a) Losses unpaid on reported claims;
 - 9 (b) Losses unpaid on incurred but not reported
 - 10 claims;
- 11 (8) Number of claims:
 - 12 (a) Paid claims;
 - 13 (b) Arising claims;
- 14 (9) Loss adjustment expenses:
 - 15 (a) Allocated loss adjustment expenses;
 - 16 (b) Unallocated loss adjustment expenses;
- 17 (10) Net underwriting gain or loss;
- 18 (11) Net operation gain or loss, including net
- 19 investment income;
- 20 (12) Any other information requested by the Director.

21 (C-5) Additional information required from medical
22 malpractice insurers.

23 (1) In addition to the other requirements of this
24 Section, all medical malpractice insurers shall include
25 the following information in the report required by
26 subsection (A) of this Section in such form and under such
27 terms and conditions as may be prescribed by the Director:

28 (a) paid and incurred losses by county for each of
29 the past 10 policy years; and

30 (b) earned exposures by ISO code, policy type, and
31 policy year by county for each of the past 10 years.

32 (2) All information collected by the Director under
33 paragraph (1) of this subsection (C-5) shall be made
34 available, on a company by company basis, to the General

1 Assembly and the general public. This provision shall
2 supersede any other provision of law that may otherwise
3 protect such information from public disclosure as
4 confidential.

5 (D) In addition to the information which may be requested
6 under subsection (C), the Director may also request on a
7 companywide, aggregate basis, Federal Income Tax recoverable,
8 net realized capital gain or loss, net unrealized capital gain
9 or loss, and all other expenses not requested in subsection (C)
10 above.

11 (E) Violations - Suspensions - Revocations.

12 (1) Any company or person subject to this Article, who
13 willfully or repeatedly fails to observe or who otherwise
14 violates any of the provisions of this Article or any rule
15 or regulation promulgated by the Director under authority
16 of this Article or any final order of the Director entered
17 under the authority of this Article shall by civil penalty
18 forfeit to the State of Illinois a sum not to exceed
19 \$2,000. Each day during which a violation occurs
20 constitutes a separate offense.

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

1 (3) No forfeiture liability under paragraph (1) of this
2 subsection may attach for any violation occurring more than
3 2 years prior to the date of issuance of the notice of
4 apparent liability and in no event may the total civil
5 penalty forfeiture imposed for the acts or omissions set
6 forth in any one notice of apparent liability exceed
7 \$100,000.

8 (4) All administrative hearings conducted pursuant to
9 this Article are subject to 50 Ill. Adm. Code 2402 and all
10 administrative hearings are subject to the Administrative
11 Review Law.

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

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

27 (7) When any person or company has a license or
28 certificate of authority under this Code and knowingly
29 fails or refuses to comply with a lawful order of the
30 Director requiring compliance with this Article, entered
31 after notice and hearing, within the period of time
32 specified in the order, the Director may, in addition to
33 any other penalty or authority provided, revoke or refuse
34 to renew the license or certificate of authority of such

1 person or company, or may suspend the license or
2 certificate of authority of such person or company until
3 compliance with such order has been obtained.

4 (8) When any person or company has a license or
5 certificate of authority under this Code and knowingly
6 fails or refuses to comply with any provisions of this
7 Article, the Director may, after notice and hearing, in
8 addition to any other penalty provided, revoke or refuse to
9 renew the license or certificate of authority of such
10 person or company, or may suspend the license or
11 certificate of authority of such person or company, until
12 compliance with such provision of this Article has been
13 obtained.

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

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

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

25 (705 ILCS 105/27.10 new)

26 Sec. 27.10. Director of Insurance. Each clerk of the
27 circuit court shall provide to the Director of Insurance such
28 information as the Director of Insurance requests under Section
29 155.19 of the Illinois Insurance Code.

30 Section 15. The Code of Civil Procedure is amended by
31 reenacting and changing Sections 2-1115.1, 2-1115.2, and

1 2-1702 as follows:

2 (735 ILCS 5/2-1115.1)

3 (This Section was added by P.A. 89-7, which has been held
4 unconstitutional)

5 Sec. 2-1115.1. Limitations on recovery of non-economic
6 damages.

7 (a) In all medical, hospital, or other healing art
8 malpractice common law, statutory or other actions that seek
9 damages on account of death, bodily injury, or physical damage
10 to property based on negligence, or product liability based on
11 any theory or doctrine, recovery of non-economic damages shall
12 be limited to \$500,000 per plaintiff. There shall be no
13 recovery for hedonic damages.

14 (b) (Blank). Beginning in 1997, every January 20, the
15 liability limit established in subsection (a) shall
16 automatically be increased or decreased, as applicable, by a
17 percentage equal to the percentage change in the consumer price
18 index u during the preceding 12 month calendar year. "Consumer
19 price index u" means the index published by the Bureau of Labor
20 Statistics of the United States Department of Labor that
21 measures the average change in prices of goods and services
22 purchased by all urban consumers, United States city average,
23 all items, 1982-84 = 100. The new amount resulting from each
24 annual adjustment shall be determined by the Comptroller and
25 made available to the chief judge of each judicial district.

26 (c) (Blank). The liability limits at the time at which
27 damages subject to such limits are awarded by final judgment or
28 settlement shall be utilized by the courts.

29 (d) (Blank). Nothing in this Section shall be construed to
30 create a right to recover non-economic damages.

31 (e) This amendatory Act of 2004 ~~1995~~ applies to causes of
32 action accruing on or after its effective date.

33 (Source: P.A. 89-7, eff. 3-9-95.)

1 (735 ILCS 5/2-1115.2)

2 (This Section was added by P.A. 89-7, which has been held
3 unconstitutional)

4 Sec. 2-1115.2. Economic and non-economic loss. In all
5 actions on account of medical, hospital, or other healing art
6 malpractice ~~bodily injury, death, physical damage to property~~
7 ~~based on negligence, or a product liability action as defined~~
8 ~~in Section 2-2101~~, the following terms have the following
9 meanings:

10 (a) "Economic loss" or "economic damages" means all damages
11 which are tangible, such as damages for past and future medical
12 expenses, loss of income or earnings and other property loss.

13 (b) "Non-economic loss" or "non-economic damages" means
14 damages which are intangible, including but not limited to
15 damages for pain and suffering, disability, disfigurement,
16 loss of consortium, and loss of society.

17 (c) "Compensatory damages" or "actual damages" are the sum
18 of economic and non-economic damages.

19 This amendatory Act of 2004 ~~1995~~ applies to causes of
20 action filed on or after its effective date.

21 (Source: P.A. 89-7, eff. 3-9-95.)

22 (735 ILCS 5/2-1702) (from Ch. 110, par. 2-1702)

23 (Text of Section WITH the changes made by P.A. 89-7, which
24 has been held unconstitutional)

25 Sec. 2-1702. Economic/Non-Economic Loss. As used in this
26 Part, "economic loss" and "non-economic loss" are defined as in
27 Section 2-1115.2.

28 (Source: P.A. 89-7, eff. 3-9-95.)

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

31 ~~Sec. 2-1702. Economic/Non-Economic Loss. As used in this~~

1 ~~Part :~~

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

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

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

9 Section 97. Liberal construction; severability.

10 (a) This Act, being necessary for the welfare of the State
11 and its inhabitants, shall be liberally construed to effect its
12 purposes.

13 (b) The provisions of this Act are severable under Section
14 1.31 of the Statute on Statutes.

15 Section 99. Effective date. This Act takes effect upon
16 becoming law."