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2 For: Reps. Sandifer and Spires
3 Attorney: Ziegler
4 Stenographer: Downey
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9 **A BILL**

10
11 TO AMEND SECTION 38-79-110, CODE OF LAWS OF SOUTH
12 CAROLINA, 1976, RELATING TO DEFINITIONS
13 APPLICABLE TO THE SOUTH CAROLINA MEDICAL
14 MALPRACTICE LIABILITY JOINT UNDERWRITING
15 ASSOCIATION, SO AS TO REDEFINE CERTAIN TERMS AND
16 DEFINE THE TERM "DEFICIT"; TO AMEND SECTION
17 38-79-120, RELATING TO THE CREATION OF THE
18 ASSOCIATION, SO AS TO INCLUDE INSURERS
19 AUTHORIZED TO WRITE PROFESSIONAL LIABILITY
20 INSURANCE AS MEMBERS OF THE ASSOCIATION AND
21 ESTABLISH THE PURPOSE OF THE ASSOCIATION; TO
22 AMEND SECTION 38-79-180, RELATING TO THE FILING OF
23 POLICY FORMS, SO AS TO REQUIRE THE ASSOCIATION TO
24 SUBMIT CERTAIN FORMS AND ESTABLISH A TIMEFRAME
25 FOR THE SUBMISSION OF THESE FORMS; TO AMEND
26 SECTIONS 38-79-210 THROUGH 38-79-290, ALL RELATING
27 TO THE PARTICIPATION IN THE ASSOCIATION AND
28 OBLIGATIONS OF THE ASSOCIATION MEMBERS AND THE
29 BOARD OF DIRECTORS OF THE ASSOCIATION, SO AS TO
30 ESTABLISH CERTAIN RECOUPMENT METHODS FOR
31 DEFICITS ACCUMULATED BY THE ASSOCIATION, TO
32 BIND ASSOCIATION MEMBERS TO THE APPROVED PLAN
33 OF OPERATION AND ANY AMENDMENTS TO THE PLAN,
34 TO ESTABLISH TERMS FOR THE BOARD OF DIRECTORS,
35 AND REQUIRE THE ASSOCIATION TO FILE FINANCIAL
36 STATEMENTS ON SPECIFIED DATES; AND BY ADDING
37 SECTIONS 40-15-390, 40-33-240, 40-43-115, 40-47-46,
38 40-47-1025, AND 40-51-185 ALL SO AS TO REQUIRE THE
39 COLLECTION OF FEES TO SUPPORT THE MEDICAL
40 MALPRACTICE LIABILITY JOINT UNDERWRITING
41 ASSOCIATION.
42

1 Be it enacted by the General Assembly of the State of South
2 Carolina:

3
4 SECTION 1. Section 38-79-110 of the 1976 Code is amended to
5 read:

6
7 “Section 38-79-110. As used in this article:

8 (1) ‘Association’ means any joint underwriting association
9 established by the General Assembly in 1987 and managed and
10 operated pursuant to the provisions of this article .

11 (2) ‘Licensed health care providers’ means physicians and
12 surgeons, nurses, oral surgeons, dentists, pharmacists, ~~chiropractors,~~
13 podiatrists, hospitals, nursing homes, or any similar major category
14 of licensed health care providers. The term ‘licensed health care
15 provider’ also includes blood centers which collect, process, and
16 distribute blood to hospitals and physicians for the care of patients
17 if these blood centers as of July 1, 1997, were insured with the Joint
18 Underwriting Association.

19 (3) ‘Medical malpractice insurance’ means medical professional
20 liability insurance or insurance protection against the legal liability
21 of the insured and against loss, damage, or expense incident to a
22 claim arising out of the death or injury of any person as the result of
23 negligence or malpractice in rendering or failing to render
24 professional service by any licensed physician, licensed health care
25 provider, or hospital.

26 (4) ‘Net direct premiums’ means gross direct premiums written
27 on ~~bodily injury liability insurance, other than automobile liability~~
28 ~~insurance, homeowners liability insurance, and farmowners liability~~
29 ~~insurance, including the liability component of multiple peril~~
30 ~~package policies, as~~ medical malpractice insurance, medical
31 professional liability insurance, hospital professional liability
32 insurance, and any other type of professional liability insurance
33 covering risks of licensed health care providers and facilities, as
34 determined by and computed by the director or his designee, less
35 return premiums or the unused or unabsorbed portions of premium
36 deposits. The net direct premium calculation does not include
37 premiums written by the Association or the South Carolina Patients
38 Compensation Fund established pursuant to Article 5 of this chapter.

39 (5) ‘Deficit’ means all operating losses of the association, as
40 reported in the association’s financial statements.”

41
42 SECTION 2. Section 38-79-120 of the 1976 Code is amended to
43 read:

[]

1
2 “Section 38-79-120. (1) A joint underwriting association
3 (association) is created, ~~consisting of~~ containing as members all
4 insurers authorized to write and report net direct written premiums
5 for medical malpractice insurance, medical professional liability
6 insurance, hospital professional liability insurance or any other type
7 of professional liability insurance in this State covering the
8 professional liability risk of licensed healthcare providers or
9 facilities. Membership also includes foreign and domestic risk
10 retention groups and surplus lines insurers authorized to do business
11 in accordance with the provisions of this title. Each such insurer,
12 risk retention group, or surplus lines insurer is and must remain a
13 member of the association as a condition of its authority to transact
14 the sale of insurance in the State. However, if the net direct
15 premiums written by all carriers are less than twenty-five million
16 dollars in any given year, then in such year, the members of the
17 association shall be expanded to include all insurers authorized to
18 write within this State, on a direct basis, bodily injury liability
19 insurance, other than automobile bodily injury liability insurance,
20 homeowners liability insurance, and farmowners liability insurance,
21 including insurers covering such peril in multiple peril package
22 policies. Every such insurer is and must remain a member of the
23 association as a condition of its authority to continue to transact such
24 kind of insurance in this State and in such event, the term ‘net direct
25 premiums’ shall mean gross direct premiums written on bodily
26 injury liability insurance, other than automobile liability insurance,
27 homeowners liability insurance, and farmowners liability insurance,
28 including the liability component of multiple peril package policies,
29 as computed by the director or his designee, less return premiums or
30 the unused or unabsorbed portions of premium deposits.

31 (2) The purpose of the association is to ~~provide medical~~
32 ~~malpractice insurance~~ ensure the availability of medical malpractice
33 and other types of liability insurance for health care providers on a
34 self-supporting basis to the fullest extent possible.

35 (3) The association must be called into operation at any time that
36 the department finds and declares the existence of an emergency
37 because of the unavailability of medical malpractice liability
38 insurance, or the unavailability of medical malpractice liability
39 insurance on a reasonable basis through normal channels, in respect
40 to all or any one or more of the major categories of licensed health
41 care providers listed in item (2) of Section 38-79-110.”
42

1 SECTION 3. Section 38-79-180 of the 1976 Code is amended to
2 read:

3
4 “Section 38-79-180. ~~Within a time that the director or his designee~~
5 ~~directs,~~ The association shall submit, for the approval of the director
6 or his designee, ~~an initial filing, in proper form, of policy forms,~~
7 ~~classifications, rates, rating plans, and rating rules applicable to~~
8 ~~medical malpractice liability insurance to be written by the~~
9 ~~association. In the event the director or his designee disapproves the~~
10 ~~initial filing, in whole or in part, the association shall amend the~~
11 ~~filing, in whole or in part, in accordance with the direction of the~~
12 ~~director or his designee. If the director or his designee is unable to~~
13 ~~approve the filing or amended filing, within the time specified, he~~
14 ~~shall promulgate the policy forms, classifications, rates, rating~~
15 ~~plans, and rules to be used by the association in making rates for and~~
16 ~~writing the insurance~~ all policy forms, classifications, rates, rating
17 plans or rules applicable to its insurance product offerings to
18 customers in this State. Such filings must be submitted for prior
19 approval to the director no less than sixty days prior to their intended
20 effective date. The director may extend the time for his review by
21 an additional sixty days to allow the department sufficient time to
22 evaluate the proposed form, classification, rate, rating plans or rules
23 to be used by the association. Rates must be actuarially sound, self
24 supporting, and may not be excessive, inadequate, or unfairly
25 discriminatory.”

26
27 SECTION 4. Sections 38-79-210 through 38-79-290 of the 1976
28 Code are amended to read:

29
30 “Section 38-79-210. Any deficit accumulated or sustained by
31 ~~the Association in any year~~ association must be recouped, ~~pursuant~~
32 ~~to the plan of operation and the rating plan then in effect, by one or~~
33 ~~both~~ by one or more of the following procedures:

34 (1) ~~An assessment upon the policyholders which may not~~
35 ~~exceed one additional annual premium at the then current rate~~ A
36 surcharge applied to the license and any annual or biennial renewal
37 for all physicians, surgeons, osteopaths, and physician assistants as
38 authorized pursuant to Chapter 47, Title 40; dentists and oral
39 surgeons as authorized pursuant to Chapter 15, Title 40; advanced
40 practice registered nurses and nurse practitioners as authorized
41 pursuant to Chapter 33, Title 40; podiatrists authorized pursuant to
42 Chapter 51, Title 40; and pharmacists authorized pursuant to
43 Chapter 43, Title 40. All such surcharges must be authorized by the

1 General Assembly and collected by the Department of Labor,
2 Licensing and Regulation and forwarded to the board of the
3 association to be applied toward reduction of an operating deficit of
4 the association.

5 (2) An assessment against all members of the association
6 according to any plan agreed to by the association's board and
7 submitted to, and approved by, the director. The board shall make
8 an annual recommendation by July first of each year regarding the
9 need for an assessment against the members, the size and scope of
10 such assessment, and the percentages to be assessed against each
11 member pursuant to this chapter.

12 (3) A rate increase applicable prospectively approved by the
13 director or his designee pursuant to Section 38-79-180.

14
15 ~~Section 38-79-220. Effective after the initial year of operation,~~
16 ~~rates, rating plans, and rating rules, and any provision for~~
17 ~~recoupment through policyholder assessment or premium rate~~
18 ~~increase, must be based upon the association's loss and expense~~
19 ~~experience and investment income, together with any other~~
20 ~~information based upon such experience and income as the director~~
21 ~~or his designee considers appropriate. The resultant premium rates~~
22 ~~must be on an actuarially sound basis and must be calculated to be~~
23 ~~self-supporting.~~

24 ~~In the event that sufficient funds are not available for the sound~~
25 ~~financial operation of the association, pending recoupment as~~
26 ~~provided in Section 38-79-210, all members shall, on a temporary~~
27 ~~basis, contribute to the financial requirements of the association in~~
28 ~~the manner provided for in Section 38-79-230. Any such~~
29 ~~contribution must be reimbursed to the members following~~
30 ~~recoupment as provided in Section 38-79-210. Reserved.~~

31
32 Section 38-79-230. All insurers which are members of the
33 association pursuant to the provisions of Section 38-79-120 shall
34 participate in its writings, expenses, profits, and losses in the
35 proportion that the ~~net~~ direct premiums of each member (~~excluding~~
36 ~~that portion of premiums attributable to the operation of the~~
37 ~~association~~) written during the preceding calendar year bear to the
38 aggregate ~~net~~ direct premiums written in this State by all members
39 of the association, excluding that portion of premiums attributable
40 to the operation of the association. However, no member of the
41 association may share in any profits or otherwise financially gain or
42 benefit from the operation of the association unless and until the

1 board and the director have mutually determined that all deficits of
2 the association have been satisfactorily recovered.

3 Each insurer's participation in the association must be determined
4 annually on the basis of the ~~net~~ direct premiums written during the
5 preceding calendar year, as reported in the annual statements and
6 other reports filed by the insurer with the department or as reported
7 by the insurer in reports or financial statements requested by the
8 director to effectuate the provisions of this section.

9 The assessment of a member insurer, ~~after hearing,~~ may be
10 ordered deferred in whole or in part upon application by the insurer
11 if, in the opinion of the director or his designee, payment of the
12 assessment may render the insurer insolvent or in danger of
13 insolvency or otherwise may leave the insurer in a hazardous
14 financial condition that further transaction of the insurer's business
15 ~~may be hazardous to its policyholders, creditors, members,~~
16 ~~subscribers, stockholders, or the public or the insurer has been~~
17 placed into administrative supervision or receivership by their
18 domestic state's insurance regulator. If payment of an assessment
19 against a member insurer is deferred by order of the director or his
20 designee in whole or in part, the amount by which the assessment is
21 deferred must be assessed against other member insurers in the same
22 manner as provided in this section. ~~In the order of deferral or in~~
23 ~~subsequent orders as may be necessary~~ When ordering a deferral in
24 whole or in part, the director or his designee shall prescribe a plan
25 by which the assessment deferred must be repaid to the association
26 by the impaired insurer with interest at the six-month treasury bill
27 rate adjusted semiannually. Profits, dividends, or other funds of the
28 association to which the insurer is otherwise entitled may not be
29 distributed to the impaired insurer but must be applied toward
30 repayment of any assessment until the obligation has been satisfied.
31 The association shall distribute the repayments, including interest
32 on them, to the other member insurers on the basis on which
33 assessments were made.

34
35 Section 38-79-240. Every member of the Association is bound by
36 the approved plan of operation of the Association, including any
37 amendments made, and by any other rules the board of directors of
38 the Association lawfully prescribes.

39
40 Section 38-79-250. (1) ~~If the authority of an insurer to transact~~
41 ~~bodily injury liability insurance, other than automobile,~~
42 ~~homeowners, or farmowners, in this State terminates for any reason~~
43 ~~its obligations as a member of the association nevertheless continue~~

1 ~~until all its obligations have been fulfilled and the director or his~~
2 ~~designee has so found and certified to the board of directors. If any~~
3 ~~member insurer ceases writing business in the State, either~~
4 ~~voluntarily or involuntarily, or by order or authority of the director,~~
5 ~~such insurer member shall nonetheless continue to be a member~~
6 ~~until all of its obligations to the association have been satisfied and~~
7 ~~the director or his designee has so found and certified to the~~
8 ~~association's board.~~

9 (2) If a member insurer merges into, acquires, or consolidates
10 with another insurer ~~authorized to transact such insurance in this~~
11 ~~State or another insurer authorized to transact such insurance in this~~
12 ~~State has reinsured the insurer's entire general liability business in~~
13 ~~this State, both the insurer and its successor or assuming reinsurer,~~
14 ~~as the case may be are liable for the insurer's, transacting business~~
15 ~~subject to this article, or if any other insurer or entity has reinsured~~
16 ~~or assumed a member insurer's entire liability business in this State,~~
17 ~~the surviving insurer, the acquiring insurer, its legal successor, or its~~
18 ~~assuming reinsurer, as the case may be, nonetheless remains liable~~
19 ~~for the member insurer's obligations in respect to the association.~~

20 (3) Any unsatisfied net liability of any insolvent member of the
21 association must be assumed by and apportioned among the
22 remaining members in the same manner in which assessments or
23 gain and loss are apportioned and the association shall thereupon
24 acquire and have all rights and remedies allowed by law in behalf of
25 the remaining members against the estate or funds of the insolvent
26 insurer for funds due the association.

27 (4) The State is not responsible for any costs, expenses,
28 liabilities, judgments, or other obligations of the association.
29

30 Section 38-79-260. The association is governed by a board of
31 thirteen directors, all of whom must be appointed by the Governor.
32 Each member of the board shall serve a term of four years. A board
33 member may be reappointed for up to two additional four-year
34 terms. The Governor shall appoint five health care providers after
35 consultation with the South Carolina Medical Association, and the
36 South Carolina Dental Association, ~~and the South Carolina Health~~
37 ~~Alliance~~; four insurance representatives after consultation with the
38 insurance industry; one consumer representative who is unaffiliated
39 with the insurance or health care industries or the medical or legal
40 professions; and two licensed insurance agents or brokers. The
41 professional associations listed and the insurance industry may
42 nominate qualified individuals to the Governor for his
43 consideration. The Governor may also receive nominations for

1 appointments to the board from any other individual, group, or
2 association. ~~Notices of vacancies on the board must be published in~~
3 ~~newspapers of general statewide circulation.~~ The association and
4 director must publicize all vacancies on the board to the general
5 public. The director or his designee shall serve as an ex officio
6 member of the board. The board shall develop a plan of operation
7 which is subject to the approval of the director or his designee as
8 provided in this article. The plan of operation shall provide for
9 staggered terms of the members of the board. The approved plan of
10 operation of the association may make provision for combining
11 insurers under common ownership or management into groups for
12 voting, assessment, and all other purposes and may provide that not
13 more than one of the officers or employees of a group may serve as
14 a director at any one time. The board shall elect a chairman and other
15 necessary officers for two-year terms. A vacancy must be filled for
16 the unexpired portion of the term only. The Governor may receive
17 recommendations from any individual, group, or association for any
18 vacancy on the board. The board must meet at the call of the
19 chairman or a majority of the members of the board, but in any event
20 it must meet at least once a year.

21
22 Section 38-79-280. ~~The association shall file in the office of the~~
23 ~~department annually, by March first, a statement which contains~~
24 ~~information with respect to its transactions, condition, operations,~~
25 ~~and affairs during the preceding year.~~ The association shall file a
26 financial statement with the department by March first of each year
27 detailing its transactions, financial condition, operations, and affairs
28 during the previous calendar year. In addition, the director may
29 require the association to file quarterly financial statements with the
30 department on the fifteenth of May, August, and November of each
31 year. ~~The statement~~ statements shall contain such matters and
32 information as are prescribed by the director or his designee and
33 must be in the form he directs. The director or his designee may, at
34 any reasonable time, require the association to furnish additional
35 information with respect to its transactions, condition, or any matter
36 connected therewith considered to be material and of assistance in
37 evaluating the scope, operation, and experience of the association.

38
39 Section 38-79-290. The director or his designee shall make an
40 examination into the financial condition and affairs of the
41 association at least annually and shall file a report thereon with the
42 department, the Governor, and the General Assembly. The expenses
43 of the examination must be paid by the association. In lieu of

1 conducting his own examination, the director or his designee may
2 accept an audit of the association performed by a qualified public
3 accounting firm. The expenses of the audit must be paid by the
4 association.”
5

6 SECTION 5. A. Article 1, Chapter 15, Title 40 of the 1976 Code is
7 amended by adding:
8

9 “Section 40-15-390. In addition to the fees for initial licenses
10 and renewal licenses, the board and department also shall collect a
11 surcharge fee of fifty dollars per dentist license or license renewal
12 for the purpose of reducing the operating deficit of the South
13 Carolina Medical Malpractice Liability Joint Underwriting
14 Association created pursuant to Section 38-79-120. Such surcharge
15 fees must be remitted, on a quarterly basis, by the department to the
16 board of the South Carolina Medical Malpractice Liability Joint
17 Underwriting Association and shall continue until June 30, 2025,
18 after which the fifty dollar surcharge fee shall expire, unless
19 extended by act of the General Assembly. The failure to pay or
20 remit the charge authorized by this section shall result, after notice
21 and a hearing, in the suspension of the license until the license fee
22 and applicable surcharge fees have been paid in full.”
23

24 B. Article 1, Chapter 33, Title 40 of the 1976 Code is amended by
25 adding:
26

27 “Section 40-33-240. In addition to the fees for initial licenses
28 and renewal licenses, the board and department also shall collect a
29 surcharge fee of fifty dollars per license or license renewal for every
30 person licensed as an advanced practice registered nurse or nurse
31 practitioner. The surcharge is imposed for the purpose of reducing
32 the operating deficit of the South Carolina Medical Malpractice
33 Liability Joint Underwriting Association created pursuant to Section
34 38-79-120. Such surcharge fees must be remitted, on a quarterly
35 basis, by the department to the board of the South Carolina Medical
36 Malpractice Liability Joint Underwriting Association and shall
37 continue until June 30, 2025, after which the fifty dollar surcharge
38 fee shall expire, unless extended by act of the General Assembly.
39 The failure to pay or remit the charge authorized by this section shall
40 result, after notice and a hearing, in the suspension of the license
41 until the license fee and applicable surcharge fees have been paid in
42 full.”
43

1 C. Chapter 43, Title 40 of the 1976 Code is amended by adding:

2
3 “Section 40-43-115. In addition to the fees for initial licenses
4 and renewal licenses, the board and department also shall collect a
5 surcharge fee of ten dollars per pharmacist license or license
6 renewal for the purpose of reducing the operating deficit of the
7 South Carolina Medical Malpractice Liability Joint Underwriting
8 Association created pursuant to Section 38-79-120. Such surcharge
9 fees must be remitted, on a quarterly basis, by the department to the
10 board of the South Carolina Medical Malpractice Liability Joint
11 Underwriting Association and shall continue until June 30, 2025,
12 after which the ten dollar surcharge fee shall expire, unless extended
13 by act of the General Assembly. The failure to pay or remit the
14 charge authorized by this section shall result, after notice and a
15 hearing, in the suspension of the license until the license fee and
16 applicable surcharge fees have been paid in full.”

17
18 D. Article 1, Chapter 47, Title 40 of the 1976 Code is amended by
19 adding:

20
21 “Section 40-47-46. In addition to the fees for initial licenses and
22 renewal licenses, the board and department also shall collect a
23 surcharge fee of one hundred dollars per medical doctor, surgeon or
24 osteopathic physician license or license renewal for the purpose of
25 reducing the operating deficit of the South Carolina Medical
26 Malpractice Liability Joint Underwriting Association created
27 pursuant to Section 38-79-120. Such fees must be remitted, on a
28 quarterly basis, by the department to the board of the South Carolina
29 Medical Malpractice Liability Joint Underwriting Association and
30 shall continue until June 30, 2025, after which the one hundred
31 dollar surcharge fee shall expire, unless extended by act of the
32 General Assembly. The failure to pay or remit the charge authorized
33 by this section shall result, after notice and a hearing, in the
34 suspension of the license until the license fee and applicable
35 surcharge fees have been paid in full.”

36
37 E. Article 7, Chapter 47, Title 40 of the 1976 Code is amended by
38 adding:

39
40 “Section 40-47-1025. In addition to the fees for initial licenses
41 and renewal licenses, the board and department also shall collect a
42 surcharge fee of fifty dollars per physician assistant license or
43 license renewal for the purpose of reducing the operating deficit of

1 the South Carolina Medical Malpractice Liability Joint
2 Underwriting Association created pursuant to Section 38-79-120.
3 Such fees shall be remitted by the department, on a quarterly basis,
4 to the board of the South Carolina Medical Malpractice Liability
5 Joint Underwriting Association and shall continue until June 30,
6 2025, after which the fifty dollar surcharge fee shall expire, unless
7 extended by act of the General Assembly. The failure to pay or
8 remit the charge authorized by this section shall result, after notice
9 and a hearing, in the suspension of the license until the license fee
10 and applicable surcharge fees have been paid in full.”

11

12 F. Chapter 51, Title 40 of the 1976 Code is amended by adding:

13

14 “Section 40-51-185. In addition to the fees for initial licenses
15 and renewal licenses, the board and department also shall collect a
16 surcharge fee of ten dollars per podiatrist license or license renewal
17 for the purpose of reducing the operating deficit of the South
18 Carolina Medical Malpractice Liability Joint Underwriting
19 Association created pursuant to Section 38-79-120. Such surcharge
20 fees must be remitted, on a quarterly basis, by the department to the
21 board of the South Carolina Medical Malpractice Liability Joint
22 Underwriting Association and shall continue until June 30, 2025,
23 after which the ten dollar surcharge fee shall expire, unless extended
24 by act of the General Assembly. The failure to pay or remit the
25 charge authorized by this section shall result, after notice and a
26 hearing, in the suspension of the license until the license fee and
27 applicable surcharge fees have been paid in full.”

28

29 SECTION 6. A board member serving on the joint underwriting
30 association board on the effective date of this act may be
31 reappointed by the Governor.

32

33 SECTION 7. This act takes effect upon approval by the Governor.

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