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SENATE BILL NO. 309

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact § 38.2-2801 of the Code of Virginia, relating to activation of medical malpractice joint underwriting association.

Patrons—Hawkins; Delegate: Marshall, D.W.

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-2801 of the Code of Virginia is amended and reenacted as follows:**

§ 38.2-2801. Association activated; members; purpose; powers of association.

A. By January 1, 2005, the Commission shall activate a joint underwriting association if, after investigation, notice, and hearing, it finds that medical malpractice insurance cannot be made reasonably available in the voluntary market for a significant number of any for the members of any class, type, or group of providers of health care who, between January 1, 2003, and January 1, 2004, have not been covered for any period of time by malpractice insurance by reason of insolvency of their previous carrier or cannot purchase or cannot afford to purchase medical malpractice insurance in the voluntary market. Consistent with this subsection, the Commission shall establish criteria to determine the eligibility of any such class, type, or group of providers of health care for purchasing coverage under this chapter.

The association shall consist of all insurers licensed to write and engaged in writing liability insurance within this Commonwealth on a direct basis except those exempted from rate regulation by subsection C of § 38.2-1902. Each such insurer shall be a member of the association as a condition of its license to write liability insurance in this Commonwealth.

B. The purpose of the association shall be to provide a market for medical malpractice insurance on a self-supporting basis without subsidy from its members.

C. Pursuant to this subsection:

1. The association shall not commence underwriting operations for the members of any class, type or group of providers of health care, as defined in subsection A, until it the association is activated by the Commission; however, the Commission shall activate the association by January 1, 2005. At the direction of the Commission, the association shall commence operations in accordance with the provisions of this chapter.

2. If the Commission determines at any time that medical malpractice insurance can be made has become reasonably available in the voluntary market for the members of any class, type or group of providers of health care defined in subsection A, the association shall, at the direction of the Commission, cease its underwriting operations for that class, type or group of providers of health care.

D. The Commission shall also determine after investigation and a hearing whether the association shall be the exclusive source of medical malpractice insurance for any class, type or group of providers of health care and the type of policy or policies that shall be issued to any class, type or group of providers of health care. If the Commission determines that a claims-made policy will be issued to any class, type or group of providers of health care, the Commission shall also provide for the guaranteed availability of insurance that covers claims that (i) result from incidents occurring during periods when the basic claims-made policies are in force, and (ii) are reported after the expiration of the basic claims-made policies. The Commission may from time to time after an investigation and hearing reexamine and reconsider any determination made pursuant to this subsection.

E. Pursuant to this chapter and the plan of operation required by § 38.2-2804, the association shall have the power on behalf of its members to: (i) issue, or cause to be issued, policies of medical malpractice insurance to applicants, including incidental coverages, subject to limits as specified in the plan of operation but not to exceed \$2 million for each claimant under any one policy and \$6 million for all claimants under one policy in any one year; (ii) underwrite the insurance and adjust and pay losses on the insurance; (iii) appoint a service company or companies to perform the functions enumerated in this subsection; (iv) assume reinsurance from its members; and (v) reinsure its risks in whole or in part.

INTRODUCED

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