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## SENATE BILL NO. 601

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 11, 2004)

(Patrons Prior to Substitute—Senators Newman [SBs 601 and 415] and Potts [SB 216])

*A BILL to amend and reenact § 2.2-1839 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 2.2-1839.1, relating to risk management plans; physicians and community hospitals.*

**Be it enacted by the General Assembly of Virginia:**

**1. That § 2.2-1839 of the Code of Virginia is amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-1839.1 as follows:**

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish a risk management plan subject to the approval of the Governor, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; *any person who satisfies the requirements of § 2.2-1839.1*; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. *For persons participating under § 2.2-1839.1, approval shall not be required and the Division shall assume sole responsibility for plan management, compliance or removal.*

C. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

D. The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

*§ 2.2-1839.1. Patient access to physicians and hospitals; professional liability insurance.*

A. Any physician licensed by the Virginia Board of Medicine, together with his agents and professional business entity or any sole community hospital as defined by 1886 (d) 5 (D) (iii) of the Social Security Act, together with its agents and related entities, shall be entitled to purchase professional liability insurance from the Department of the Treasury's Risk Management Division, pursuant to § 2.2-1839, covering all liability imposed by law for damages arising from the provision of health care to all patients, subject to the requirements of this section.

B. In order to purchase professional liability insurance under this section, a physician shall: (i) hold a valid license issued by the Virginia Board of Medicine, (ii) participate in the Medicaid program or provide health care to patient clinics as referenced in § 2.2-1839, if such a clinic is reasonably available, for the equivalent of one day per month, (iii) participate in the Virginia Birth Related Neurological Injury Fund if eligible, (iv) have active hospital privileges or participate in a quality

60 assurance committee pursuant to § 8.01-581.17 and (v) have been refused a professional liability  
61 insurance premium quote by one or more private insurance carriers or have received professional  
62 liability insurance premium quotes from two private insurance carriers that exceed 125 percent of the  
63 premium last paid by the physician to a private insurance carrier or have had the professional liability  
64 insurance carrier that last provided coverage to the physician become insolvent or stop writing  
65 professional liability insurance in the Commonwealth.

66 C. In order to purchase professional liability insurance under this section, a sole community hospital  
67 shall; (i) hold a valid license issued by Virginia Department of Health, (ii) participate in the Medicaid  
68 program or support financially or in kind a patient clinic as referenced in § 2.2-1839, (iii) participate in  
69 the Virginia Birth Related Neurological Injury Fund, (iv) have been refused a professional liability  
70 insurance premium quote by one or more private insurance carriers or have received professional  
71 liability insurance premium quotes from two private insurance carriers that exceed 110 percent of the  
72 premium last paid by the sole community hospital to a private insurance carrier or have had the  
73 professional liability insurance carrier that last provided coverage to the sole community hospital  
74 become insolvent or stop writing professional liability insurance in the Commonwealth.

75 D. Physicians or sole community hospitals that satisfy the requirements of this section and elect to  
76 purchase professional liability insurance coverage from the Division shall pay the Division the premium,  
77 which is to be determined in accordance with subsection E of § 2.2-1839. Physicians or sole community  
78 hospitals shall not be charged that portion of the premium related to care provided to clinics as  
79 referenced in § 2.2-1839.

80 E. Physicians or sole community hospitals purchasing coverage under this section shall be entitled to  
81 purchase prior acts coverage or coverage for claims arising since the termination date of the last  
82 professional insurance policy affording coverage to the physician or sole community hospitals.

83 F. Physicians who elect to retire, while covered by a professional liability insurance policy provided  
84 by the Division, shall be entitled to purchase extended reporting period endorsement coverage for a  
85 period not to exceed 10 years from the date of retirement.

86 G. Physicians or sole community hospitals may renew coverage and purchase professional liability  
87 insurance pursuant to this section provided that requirements in subsection B or C are met at the time  
88 of renewal.

89 **2. That the chairman of the Senate Committee on Rules shall appoint a subcommittee of three**  
90 **members of the Senate to study the availability and affordability of professional liability insurance**  
91 **for physicians and hospitals in the Commonwealth; the practices of professional liability insurance**  
92 **carriers related to the establishment of premiums and the determination of increases in such**  
93 **premiums and the impact that the professional liability insurance climate is having on patient**  
94 **access to quality healthcare and on the ability of patients to recover damages from the settlement**  
95 **or verdict of a medical malpractice action. The Division of Legislative Services shall provide**  
96 **staffing and support to the subcommittee. The Bureau of Insurance of the State Corporation**  
97 **Commission shall provide insurance information and assistance to the subcommittee. The**  
98 **subcommittee shall receive input from the Medical Society of Virginia, the Virginia Trial Lawyers**  
99 **Association and the Virginia Hospital and Healthcare Association. The subcommittee shall report**  
100 **its findings to the chairman of the Senate Committee on Courts of Justice prior to December 1,**  
101 **2004.**

102 **3. That an emergency exists and this bill is in force from its passage.**