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HOUSE JOINT RESOLUTION NO. 666

Offered January 12, 2005

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Requesting the State Corporation Commission to study the implications of requiring that medical malpractice insurance rates for certain high-risk specialties be based only on Virginia loss experience and be subject to prior approval. Report.

Patrons—Albo, Athey and Janis; Senators: Newman and Stolle

Referred to Committee on Rules

WHEREAS, the joint subcommittee studying risk management plans for physicians and hospitals pursuant to Senate Bill 601 of 2004 has been advised that average Virginia base rates for medical malpractice insurance have increased by 83 percent, from \$28,284 to \$51,847, between 2000 and 2004; and

WHEREAS, medical malpractice insurance rates nationally increased between 2000 and 2003 by 15 percent for all physicians, 22 percent for obstetricians and gynecologists, and 33 percent for internists/surgeons; and

WHEREAS, factors accounting for rate increases nationally include the volume of claims losses, the cyclical nature of insurance premiums, reduced investment income, and large jury awards; and

WHEREAS, the Governor's Work Group on Rural Obstetrical Care established pursuant to Executive Directive 2 heard reports that physicians are responding to increases in medical malpractice insurance costs by closing their practices, relocating to states where insurance is more affordable and Medicaid reimbursement rates are higher, or ceasing to provide high-risk services such as obstetrics; and

WHEREAS, the Senate Bill 601 joint subcommittee was also advised that risk ratings under the Medical College of Virginia Physicians Professional Liability Program for neurosurgery, obstetrics and gynecology, orthopedics, emergency medicine, and anesthesiology are over twice those for certain other medical specialties; and

WHEREAS, medical malpractice liability insurance rates in Virginia are subject to "file and use" regulation, which requires that rates be filed prior to their use, and the State Corporation Commission may disapprove rates following their filing if it finds that they are inadequate, excessive or unfairly discriminatory; and

WHEREAS, several other states require prior approval of insurance rates, which requires that rates must be filed with and approved by state insurance regulators before they can be used; and

WHEREAS, Virginia requires prior approval of insurance rates for certain lines of insurance, including insurance written through the Virginia Workers' Compensation Insurance Plan; and

WHEREAS, while insurance rates subject to Virginia's file and use regulation are required to consider Virginia loss experience, data from other states may be considered if it is relevant and a sound actuarial basis exists for its consideration; and

WHEREAS, the consideration of loss experience data from states that have not legislated measures to limit tort recoveries, such as Virginia's cap on recovery in medical malpractice actions, may result in higher medical malpractice insurance rates in the Commonwealth than would be justified if data from other states were excluded; and

WHEREAS, one theory advanced during the Senate Bill 601 joint subcommittee's study is that the Commonwealth's existing tort reform laws may be allowing insurers to earn profits from medical malpractice insurance policies issued in Virginia, and that these profits earned on premiums paid by Virginia policyholders are used to offset the insurers' losses incurred in other states that have not enacted similar tort reform laws; and

WHEREAS, in order to determine whether medical malpractice insurance rates would be lower if they were limited to Virginia-specific data and subject to prior approval, it is important to determine what the rates would be if such regulatory approaches were in effect; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the State Corporation Commission be requested to study the implications of requiring that medical malpractice insurance rates for certain high-risk specialties be based only on Virginia loss experience and be subject to prior approval. In conducting its study, the State Corporation Commission shall (i) determine the average medical malpractice rates for neurosurgery, obstetrics and gynecology, orthopedics, emergency medicine, and anesthesiology in Virginia under the current regulatory structure; (ii) compare such rates to what it estimates medical malpractice insurance rates would be for these specialties if the rates were subject to prior approval by the State Corporation Commission based on data that excluded loss experience and

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59 other data from other states; and (iii) assess the probable effects on the availability and affordability of
60 medical malpractice insurance for these specialties if Virginia were to require prior approval of the rates,
61 compared to continuing to regulate these rates under existing file and use provisions.

62 All agencies of the Commonwealth shall provide assistance to the State Corporation Commission for
63 this study, upon request.

64 The State Corporation Commission shall submit to the Governor and the General Assembly an
65 executive summary and a report of its findings and recommendations for publication as a House or
66 Senate document. The executive summary and report shall be submitted as provided in the procedures of
67 the Division of Legislative Automated Systems for the processing of legislative documents and reports
68 no later than the first day of the 2006 Regular Session of the General Assembly and shall be posted on
69 the General Assembly's website.