

HOUSE BILL No. 4156

February 14, 1989, Introduced by Rep. Gubow and referred to the Committee on Insurance.

A bill to amend the title and section 2434 of Act No. 218 of the Public Acts of 1956, entitled as amended

"The insurance code of 1956,"

as added by Act No. 173 of the Public Acts of 1986, being section 500.2434 of the Michigan Compiled Laws; to add chapter 16; and to repeal certain parts of the act on specific dates.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. The title and section 2434 of Act No. 218 of the
2 Public Acts of 1956, as added by Act No. 173 of the Public Acts
3 of 1986, being section 500.2434 of the Michigan Compiled Laws,
4 are amended and chapter 16 is added to read as follows:

TITLE

5
6 An act to revise, consolidate, and classify the laws
7 relating to the insurance and surety business; to regulate the
8 incorporation or formation of domestic insurance and surety

1 companies and associations and the admission of foreign and alien
2 companies and associations; to provide their rights, powers, and
3 immunities and to prescribe the conditions on which companies and
4 associations organized, existing, or authorized under this act
5 may exercise their powers; to provide the rights, powers, and
6 immunities and to prescribe the conditions on which other per-
7 sons, firms, corporations, and associations engaged in an insur-
8 ance or surety business may exercise their powers; to provide for
9 the imposition of a privilege fee on domestic insurance companies
10 and associations and the state accident fund; to provide for the
11 imposition of a tax on the business of foreign and alien com-
12 panies and associations; to provide for the imposition of a tax
13 on the business of surplus line agents; to modify tort liability
14 arising out of certain accidents; to provide for limited actions
15 with respect to that modified tort liability, and to prescribe
16 certain procedures for maintaining those actions; to require
17 security for losses arising out of certain accidents; to provide
18 for the continued availability and affordability of automobile
19 insurance and homeowners insurance in this state, and to facili-
20 tate the purchase of that insurance by all residents of this
21 state at fair and reasonable rates; to provide for certain
22 reporting with respect to insurance, and with respect to certain
23 claims against uninsured or self-insured persons; and to pre-
24 scribe duties for certain state departments and officers with
25 respect to that reporting; to provide for certain assessments; to
26 establish and continue certain state insurance funds; to modify
27 and clarify the status, rights, powers, duties, and operations of

1 the nonprofit malpractice insurance fund; TO CREATE A MEDICAL
2 LIABILITY TRUST; TO PROVIDE FOR A LIMITATION ON LIABILITY OF AND
3 RECOVERY FROM CERTAIN HEALTH CARE PROVIDERS; to provide for the
4 departmental supervision and regulation of the insurance and
5 surety business within this state; to provide for the conserva-
6 tion, rehabilitation, or liquidation of unsound or insolvent
7 insurers; to provide for the protection of policyholders, claim-
8 ants, and creditors of unsound or insolvent insurers; to provide
9 for associations of insurers to protect policyholders and claim-
10 ants in the event of insurer insolvencies; to prescribe educa-
11 tional requirements for insurance agents and solicitors; to pro-
12 vide for the regulation of multiple employer welfare arrange-
13 ments; to create an automobile theft prevention authority to
14 reduce the number of automobile thefts in this state; to pre-
15 scribe the powers and duties of the automobile theft prevention
16 authority; to provide certain powers and duties upon certain
17 officials, departments, and authorities of this state; to repeal
18 certain acts and parts of acts; to repeal certain acts and parts
19 of acts on specific dates; TO REPEAL CERTAIN PARTS OF THIS ACT ON
20 SPECIFIC DATES; and to provide penalties for the violation of
21 this act.

22 CHAPTER 16

23 MEDICAL LIABILITY TRUST

24 SEC. 1600. THE LEGISLATURE FINDS THAT THE HEALTH CARE
25 DELIVERY SYSTEM IS AN ESSENTIAL PART OF THE GENERAL HEALTH,
26 SAFETY, AND WELFARE OF THE PEOPLE OF THIS STATE AND IS IN PERIL
27 AS A RESULT OF THE DIMINISHING AVAILABILITY OF AND RISING COST OF

1 MEDICAL MALPRACTICE INSURANCE; THAT IT IS WITHIN THE PUBLIC
2 POLICY OF THIS STATE TO ENSURE THAT THE HEALTH CARE DELIVERY
3 SYSTEM BE PRESERVED AND THAT HEALTH CARE PROVIDERS BE AFFORDED
4 ADEQUATE LIABILITY PROTECTION; AND THAT IT IS WITHIN THE PUBLIC
5 POLICY OF THIS STATE THAT ALL PHYSICIANS, HEALTH FACILITIES, AND
6 MALPRACTICE INSURERS, BEING DIRECT OR INDIRECT BENEFICIARIES OF
7 THIS PROTECTION, BEAR ITS COSTS AS PROVIDED IN THIS CHAPTER.

8 SEC. 1602. AS USED IN THIS CHAPTER:

9 (A) "BOARD" MEANS THE BOARD OF TRUSTEES OF THE MEDICAL
10 LIABILITY TRUST.

11 (B) "HEALTH FACILITY" MEANS A COUNTY MEDICAL CARE FACILITY,
12 FREESTANDING SURGICAL OUTPATIENT FACILITY, HEALTH MAINTENANCE
13 ORGANIZATION, OR HOSPITAL THAT IS LICENSED UNDER ARTICLE 17 OF
14 THE PUBLIC HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978,
15 BEING SECTIONS 333.20101 TO 333.22260 OF THE MICHIGAN COMPILED
16 LAWS.

17 (C) "INDEMNITY" MEANS THE PAYMENT ON BEHALF OF THE INSURED
18 OF SUMS WHICH THE INSURED IS OBLIGATED TO PAY AS DAMAGES BECAUSE
19 OF INJURY OR DEATH OF A PERSON.

20 (D) "MALPRACTICE INSURANCE" MEANS INSURANCE OF A PHYSICIAN
21 OR HEALTH FACILITY, INSURING AND DEFENDING AGAINST LOSS RESULTING
22 FROM INJURY ARISING OUT OF THE RENDERING OF OR FAILURE TO RENDER
23 PROFESSIONAL SERVICES BY THE INSURED, OR BY A PERSON OR ENTITY
24 FOR WHOSE ACTS OR OMISSIONS THE INSURED IS LEGALLY RESPONSIBLE,
25 AND MAY INCLUDE LOSS RESULTING FROM THE OWNERSHIP, MAINTENANCE,
26 OR USE OF A SPECIFIED PREMISES BY THE INSURED AS A PROFESSIONAL

1 OFFICE OR HEALTH FACILITY AND ALL ACTIVITIES NECESSARY OR
2 INCIDENTAL TO THAT USE.

3 (E) "MEDICAL INCIDENT" MEANS BOTH OF THE FOLLOWING:

4 (i) AN ERROR, OMISSION, OR OTHER NEGLIGENT ACT, INCLUDING A
5 SERIES OF RELATED ERRORS, OMISSIONS, OR OTHER NEGLIGENT ACTS, OF
6 A QUALIFIED PHYSICIAN OR QUALIFIED HEALTH FACILITY, DIRECTLY OR
7 VICARIOUSLY, FOR WHICH A PERSON HAS A CAUSE OR CAUSES OF ACTION.

8 (ii) THE ERRORS, OMISSIONS, OR OTHER NEGLIGENT ACTS, INCLUD-
9 ING A SERIES OF RELATED ERRORS, OMISSIONS, OR OTHER NEGLIGENT
10 ACTS, OF 1 OR MORE QUALIFIED PHYSICIANS OR QUALIFIED HEALTH
11 FACILITIES, DIRECTLY OR VICARIOUSLY, WHICH CAUSED THE SAME INJURY
12 OR DEATH.

13 (F) "PHYSICIAN" MEANS A PERSON LICENSED BY THE STATE TO
14 ENGAGE IN THE PRACTICE OF MEDICINE OR OSTEOPATHIC MEDICINE AND
15 SURGERY UNDER ARTICLE 15 OF THE PUBLIC HEALTH CODE, ACT NO. 368
16 OF THE PUBLIC ACTS OF 1978, BEING SECTIONS 333.16101 TO 333.18838
17 OF THE MICHIGAN COMPILED LAWS.

18 (G) "QUALIFIED HEALTH FACILITY" MEANS A HEALTH FACILITY
19 WHICH QUALIFIES FOR COVERAGE FROM THE TRUST PURSUANT TO
20 SECTION 1630.

21 (H) "QUALIFIED PHYSICIAN" MEANS A PHYSICIAN WHO QUALIFIES
22 FOR COVERAGE FROM THE TRUST PURSUANT TO SECTION 1630.

23 (I) "QUALIFIED PROVIDER" MEANS A QUALIFIED PHYSICIAN OR
24 QUALIFIED HEALTH FACILITY.

25 (J) "TRUST" MEANS THE MEDICAL LIABILITY TRUST.

26 SEC. 1604. (1) A MEDICAL LIABILITY TRUST IS CREATED AS A
27 BODY CORPORATE, SEPARATE AND DISTINCT FROM THE STATE, TO PROVIDE

1 EXCESS MALPRACTICE INSURANCE TO ALL QUALIFIED PHYSICIANS AND
2 QUALIFIED HEALTH FACILITIES, AND TO ACT AS A PRIMARY MALPRACTICE
3 INSURER FOR PHYSICIANS AND HEALTH FACILITIES THAT ARE UNABLE TO
4 OBTAIN PRIMARY MALPRACTICE INSURANCE IN THE VOLUNTARY MARKET.

5 (2) THE STATE OR ANY AGENCIES OR OFFICERS OF THE STATE SHALL
6 NOT BE LIABLE OR RESPONSIBLE FOR THE PAYMENT OF CLAIMS MADE
7 AGAINST THE TRUST. THE TRUST SHALL BE SUBJECT TO ALL OF THE
8 REQUIREMENTS OF CHAPTER 20 AND THIS CHAPTER, INCLUDING THE REGU-
9 LATION AND SUPERVISION OF THE COMMISSIONER AS AUTHORIZED OR
10 REQUIRED BY THIS CHAPTER, BUT SHALL NOT BE SUBJECT TO THE OTHER
11 CHAPTERS OF THIS ACT.

12 (3) THE TRUST SHALL PROVIDE BOTH OF THE FOLLOWING:

13 (A) SUBJECT TO SECTION 1610, EXCESS MALPRACTICE INSURANCE
14 WHICH PROVIDES COVERAGE FOR PROFESSIONAL LIABILITY OR MALPRACTICE
15 CLAIMS FOR DAMAGES FOR WHICH A QUALIFIED PHYSICIAN IS LEGALLY
16 RESPONSIBLE IN EXCESS OF \$200,000.00 PER QUALIFIED PHYSICIAN FOR
17 EACH MEDICAL INCIDENT; AND FOR PROFESSIONAL LIABILITY OR MALPRAC-
18 TICE CLAIMS FOR WHICH A QUALIFIED HEALTH FACILITY IS LEGALLY
19 RESPONSIBLE IN EXCESS OF \$1,000,000.00 PER QUALIFIED HEALTH
20 FACILITY FOR EACH MEDICAL INCIDENT.

21 (B) PRIMARY MALPRACTICE INSURANCE WHICH PROVIDES FIRST
22 DOLLAR COVERAGE FOR PROFESSIONAL LIABILITY OR MALPRACTICE CLAIMS
23 FOR DAMAGES THAT ARE FILED MORE THAN 4 YEARS AFTER THE DATE OF AN
24 ERROR, OMISSION, OR OTHER NEGLIGENT ACT GIVING RISE TO A MEDICAL
25 INCIDENT FOR WHICH A QUALIFIED PHYSICIAN OR QUALIFIED HEALTH
26 FACILITY IS LEGALLY RESPONSIBLE, BUT WHICH IN CONJUNCTION WITH

1 THE COVERAGE PROVIDED UNDER SUBDIVISION (A) SHALL NOT EXCEED THE
2 TOTAL LIMIT PROVIDED IN SECTION 1610.

3 (4) IF THE TRUST DETERMINES THAT AN INDIVIDUAL PHYSICIAN OR
4 HEALTH FACILITY IS UNABLE TO OBTAIN PRIMARY MALPRACTICE INSURANCE
5 FROM AN AUTHORIZED INSURER IN THE AMOUNT AS PROVIDED IN
6 SECTION 1635, UPON FILING EVIDENCE OF UNAVAILABILITY WITH THE
7 TRUST AS THE BOARD MAY REQUIRE, THE TRUST SHALL ISSUE A PRIMARY
8 MALPRACTICE INSURANCE POLICY TO THAT PHYSICIAN OR HEALTH
9 FACILITY. IF THE TRUST ISSUES PRIMARY MALPRACTICE INSURANCE POL-
10 ICIES, ALL OF THE FOLLOWING SHALL APPLY:

11 (A) THE RATES CHARGED FOR POLICIES SHALL BE ESTABLISHED AT
12 ACTUARIALLY SOUND LEVELS.

13 (B) THE PRIMARY MALPRACTICE INSURANCE BUSINESS ACTIVITIES OF
14 THE TRUST, IN BOTH ORGANIZATIONAL AND FINANCIAL TERMS, SHALL BE
15 CONDUCTED AND MAINTAINED SEPARATELY FROM ITS OTHER ACTIVITIES.

16 (C) THE TRUST MAY LEVY ASSESSMENTS ON THOSE PHYSICIANS AND
17 HEALTH FACILITIES THAT HAVE OBTAINED PRIMARY MALPRACTICE INSUR-
18 ANCE FROM THE TRUST IN ORDER TO OFFSET ANY DEFICIT IN THE TRUST'S
19 PRIMARY MALPRACTICE INSURANCE BUSINESS.

20 SEC. 1606. (1) A BOARD OF TRUSTEES SHALL MANAGE THE AFFAIRS
21 OF THE TRUST PURSUANT TO THIS CHAPTER. THE BOARD SHALL CONSIST
22 OF:

23 (A) THE FOLLOWING NONVOTING MEMBERS:

24 (i) THE COMMISSIONER OR HIS OR HER DESIGNEE.

25 (ii) THE DIRECTOR OF LICENSING AND REGULATION OR HIS OR HER
26 DESIGNEE.

1 (iii) A REPRESENTATIVE OF AN AUTHORIZED INSURER THAT ISSUES
2 A SUBSTANTIAL NUMBER OF PRIMARY MEDICAL MALPRACTICE INSURANCE
3 POLICIES IN THIS STATE.

4 (iv) A REPRESENTATIVE OF AN AUTHORIZED INSURER THAT ISSUES A
5 SUBSTANTIAL NUMBER OF EXCESS INSURANCE POLICIES IN THIS STATE
6 OTHER THAN MEDICAL MALPRACTICE INSURANCE POLICIES.

7 (v) THE CHIEF OFFICER OF THE TRUST.

8 (B) THE FOLLOWING VOTING MEMBERS:

9 (i) TWO MEMBERS SELECTED FROM THE PUBLIC.

10 (ii) A REPRESENTATIVE OF THE MICHIGAN STATE MEDICAL
11 SOCIETY.

12 (iii) A REPRESENTATIVE OF THE MICHIGAN OSTEOPATHIC
13 ASSOCIATION.

14 (iv) A REPRESENTATIVE OF THE MICHIGAN HOSPITAL ASSOCIATION.

15 (2) MEMBERS OF THE BOARD SHALL BE APPOINTED BY THE GOVERNOR
16 WITH THE ADVICE AND CONSENT OF THE SENATE FOR A TERM OF 4 YEARS,
17 EXCEPT THAT OF THE VOTING MEMBERS FIRST APPOINTED, 2 SHALL BE
18 APPOINTED FOR A TERM OF 3 YEARS AND 3 SHALL BE APPOINTED FOR A
19 TERM OF 4 YEARS. A MEMBER OF THE BOARD SHALL SERVE WITHOUT COM-
20 PENSATION BUT SHALL BE ENTITLED TO HIS OR HER REASONABLE
21 EXPENSES.

22 (3) THE GOVERNOR SHALL APPOINT 1 MEMBER OF THE BOARD WHO IS
23 A PUBLIC REPRESENTATIVE TO SERVE AS CHAIRPERSON. THE TERM OF THE
24 CHAIRPERSON SHALL BE FOR 2 YEARS.

25 (4) THE GOVERNOR MAY REMOVE A MEMBER OF THE BOARD FOR CAUSE
26 STATED IN WRITING TO THE BOARD.

1 SEC. 1610. (1) THE TRUST'S PAYMENTS OF INDEMNITY SHALL NOT
2 EXCEED THE GROSS PRESENT CASH VALUE OF \$2,000,000.00 PER MEDICAL
3 INCIDENT, OR THE ADJUSTED AMOUNT ESTABLISHED PURSUANT TO
4 SUBSECTION (2), MINUS ANY PAYMENTS OF INDEMNITY MADE BY QUALIFIED
5 PHYSICIANS AND QUALIFIED HEALTH FACILITIES BY THEMSELVES OR
6 THROUGH THEIR PRIMARY INSURERS IN CONNECTION WITH THE MEDICAL
7 INCIDENT. AS USED IN THIS SUBSECTION, "GROSS PRESENT CASH VALUE"
8 MEANS THAT TERM AS DEFINED IN SECTION 6306(2) OF THE REVISED
9 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,
10 BEING SECTION 600.6306 OF THE MICHIGAN COMPILED LAWS.

11 (2) BEGINNING 1 YEAR AFTER THE DATE THIS CHAPTER TAKES
12 EFFECT, AND ANNUALLY THEREAFTER, THE TRUST'S \$2,000,000.00 PER
13 MEDICAL INCIDENT LIMIT ON PAYMENTS OF INDEMNITY SHALL BE ADJUSTED
14 UPWARD OR DOWNWARD BY THE BOARD TO REFLECT THE CHANGE IN THE MED-
15 ICAL CARE COMPONENT OF THE CONSUMER PRICE INDEX AS REPORTED BY
16 THE UNITED STATES DEPARTMENT OF LABOR AND AS CERTIFIED BY THE
17 COMMISSIONER AND SHALL BE BASED ON THE CAPABILITY OF THE TRUST'S
18 AGGREGATE FINANCIAL RESOURCES TO SUSTAIN PAYMENTS AT THAT
19 ADJUSTED LEVEL. AN ADJUSTMENT MADE PURSUANT TO THIS SUBSECTION
20 SHALL APPLY TO ALL CLAIMS ARISING ON OR AFTER THE EFFECTIVE DATE
21 OF THE ADJUSTMENT. PRIOR TO MAKING THE ADJUSTMENT UNDER THIS
22 SUBSECTION AND NOT LESS THAN 60 DAYS BEFORE EACH ANNIVERSARY OF
23 THE EFFECTIVE DATE OF THIS CHAPTER, THE BOARD SHALL CAUSE AN
24 INDEPENDENT ACTUARIAL ANALYSIS OF THE TRUST'S FINANCIAL RESOURCES
25 AS LIMITED UNDER SECTION 1640. THE ANALYSIS SHALL DO BOTH OF THE
26 FOLLOWING:

1 (A) CALCULATE THE TRUST'S AGGREGATE FINANCIAL RESOURCES AS
2 LIMITED UNDER SECTION 1640.

3 (B) RECOMMEND THE APPROPRIATE ADJUSTMENT UNDER THIS SUBSEC-
4 TION BASED ON THE LIMITATION ON THE TRUST'S FINANCIAL RESOURCES
5 UNDER SECTION 1640.

6 (3) AFTER RECEIPT OF THE ANALYSIS AND BEFORE MAKING THE
7 ADJUSTMENT UNDER SUBSECTION (2), THE BOARD SHALL CONDUCT A PUBLIC
8 HEARING WITH RESPECT TO THE ANALYSIS AND THE PROPOSED
9 ADJUSTMENT. NOTICE OF THE PUBLIC HEARING SHALL BE GIVEN TO THE
10 LEGISLATURE AND TO THE PUBLIC NOT LESS THAN 10 DAYS BEFORE THE
11 PUBLIC HEARING AND NOT LESS THAN 20 DAYS BEFORE MAKING THE
12 ADJUSTMENT. THE NOTICE SHALL INCLUDE THE TIME AND PLACE OF THE
13 PUBLIC HEARING. THE NOTICE TO THE PUBLIC SHALL BE PUBLISHED IN A
14 NEWSPAPER OF GENERAL CIRCULATION IN THIS STATE.

15 (4) AS USED IN THIS SECTION, "AGGREGATE FINANCIAL RESOURCES"
16 SHALL CONSIST OF THE FOLLOWING:

17 (A) ASSESSMENTS UNDER SECTION 1640.

18 (B) ATTORNEY ASSESSMENTS UNDER SECTION 2912B OF THE REVISED
19 JUDICATURE ACT OF 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961,
20 BEING SECTION 600.2912B OF THE MICHIGAN COMPILED LAWS.

21 (C) FEES PAID PURSUANT TO SECTIONS 57 AND 63 OF THE STATE
22 LICENSE FEE ACT, ACT NO. 152 OF THE PUBLIC ACTS OF 1979, BEING
23 SECTIONS 338.2257 AND 338.2263 OF THE MICHIGAN COMPILED LAWS.

24 (D) INCOME FROM ALL OTHER SOURCES, INCLUDING BUT NOT LIMITED
25 TO INVESTMENT INCOME, BUT EXCLUDING PREMIUM REVENUE FROM PRIMARY
26 MALPRACTICE COVERAGE.

1 SEC. 1614. (1) THE TOTAL LIABILITY OF AND RECOVERY FROM
2 EACH QUALIFIED PROVIDER FOR EACH MEDICAL INCIDENT SHALL BE
3 LIMITED AS FOLLOWS:

4 (A) NOT MORE THAN \$200,000.00 PER PHYSICIAN PURSUANT TO THE
5 PRIMARY FINANCIAL RESPONSIBILITY REQUIREMENTS UNDER SECTION 1635
6 AND PAYMENTS FROM THE TRUST PURSUANT TO SECTION 1604(3) AS
7 LIMITED IN SECTION 1610.

8 (B) NOT MORE THAN \$1,000,000.00 PER HEALTH FACILITY PURSUANT
9 TO THE PRIMARY FINANCIAL RESPONSIBILITY REQUIREMENTS UNDER
10 SECTION 1635 AND PAYMENTS FROM THE TRUST PURSUANT TO SECTION
11 1604(3) AS LIMITED IN SECTION 1610.

12 (2) THE TOTAL RECOVERY FOR ALL CLAIMS ARISING OUT OF A MEDI-
13 CAL INCIDENT SHALL NOT EXCEED THE SUM OF THE COMBINED AMOUNTS
14 RECOVERED FROM ALL PHYSICIAN AND HEALTH FACILITY DEFENDANTS PUR-
15 SUANT TO PRIMARY FINANCIAL RESPONSIBILITY REQUIREMENTS AND THE
16 MAXIMUM PAYMENTS FROM THE TRUST AS PROVIDED IN SECTION 1610.

17 SEC. 1620. THE TRUST SHALL:

18 (A) PROVIDE EXCESS AND PRIMARY MALPRACTICE INSURANCE PURSU-
19 ANT TO THE REQUIREMENTS OF THIS CHAPTER.

20 (B) RECEIVE AND DISTRIBUTE ALL SUMS REQUIRED FOR THE OPERA-
21 TION OF THE TRUST.

22 (C) IN A MANNER PROVIDED FOR IN THE PLAN OF OPERATION,
23 ASSESS PHYSICIANS AND HEALTH FACILITIES THE AMOUNTS PRESCRIBED BY
24 SECTION 1640.

25 SEC. 1621. THE BOARD SHALL:

26 (A) RETAIN OR EMPLOY LEGAL COUNSEL TO REPRESENT THE TRUST IN
27 ANY AND ALL RESPECTS.

1 (B) PROVIDE FOR APPROPRIATE HOUSING, EQUIPMENT, AND
2 PERSONNEL AS MAY BE NECESSARY TO ASSURE THE EFFICIENT OPERATION
3 OF THE TRUST.

4 (C) ADOPT REASONABLE PROCEDURES FOR THE ADMINISTRATION OF
5 THE TRUST, ENFORCE THOSE PROCEDURES, AND DELEGATE AUTHORITY, AS
6 THE BOARD CONSIDERS NECESSARY TO ASSURE THE PROPER ADMINISTRATION
7 AND OPERATION OF THE TRUST.

8 SEC. 1622. THE BOARD SHALL APPOINT OR REMOVE A DIRECTOR OF
9 THE TRUST AND FIX HIS OR HER COMPENSATION. THE DIRECTOR SHALL
10 HIRE ADDITIONAL PERSONNEL AS ARE APPROVED BY THE BOARD.

11 SEC. 1624. PURSUANT TO THIS CHAPTER, THE TRUST MAY:

12 (A) CONTRACT FOR REINSURANCE.

13 (B) SUE AND BE SUED, AND PROVIDE FOR THE INDEMNIFICATION OF
14 MEMBERS OF ITS BOARD OF TRUSTEES, OFFICERS, EMPLOYEES, AND OTHER
15 PERSONS ACTING ON BEHALF OF THE TRUST TO THE EXTENT PROVIDED BY
16 LAW.

17 (C) REQUIRE EACH INSURER WRITING PRIMARY MALPRACTICE INSUR-
18 ANCE IN THIS STATE AND EACH QUALIFIED PROVIDER TO FURNISH INFOR-
19 MATION AND DATA AS MAY BE REQUIRED BY THE BOARD.

20 (D) CONTRACT FOR GOODS AND SERVICES, INCLUDING, BUT NOT
21 LIMITED TO, INDEPENDENT CLAIMS MANAGEMENT, RISK MANAGEMENT, ACTU-
22 ARIAL, INVESTMENT, AND LEGAL SERVICES, FROM OTHERS WITHIN OR
23 WITHOUT THIS STATE TO ASSURE THE EFFICIENT OPERATION OF THE
24 TRUST.

25 (E) DO ALL OTHER THINGS NECESSARY OR APPROPRIATE FOR THE
26 PERFORMANCE OF ITS FUNCTIONS THAT ARE CONSISTENT WITH THIS
27 CHAPTER.

1 SEC. 1626. THE TRUST SHALL INSTITUTE A RISK MANAGEMENT
2 PROGRAM WHICH SHALL IDENTIFY, ANALYZE, AND EVALUATE HEALTH CARE
3 RISKS AND SELECT THE MOST ADVANTAGEOUS METHODS FOR TREATING THOSE
4 RISKS. AS PART OF THE RISK MANAGEMENT PROGRAM, THE BOARD SHALL
5 DEVELOP AND PROMULGATE RISK MANAGEMENT RULES. AS A CONDITION OF
6 QUALIFYING FOR COVERAGE FROM THE TRUST, A PHYSICIAN OR HEALTH
7 FACILITY SHALL COMPLY WITH THE RISK MANAGEMENT RULES DEVELOPED BY
8 THE BOARD. THE GOALS OF THE RISK MANAGEMENT PROGRAM SHALL
9 INCLUDE THE REDUCTION OF IATROGENIC INJURIES, THE REDUCTION OF
10 ALL FORMS OF RISKS TO HEALTH CARE CONSUMERS, THE PROMOTION OF
11 IMPROVED HEALTH PROVIDER-PATIENT RELATIONSHIPS, THE IMPROVEMENT
12 OF HEALTH FACILITY MANAGEMENT WITH RESPECT TO PATIENT CARE, AND
13 THE REDUCTION OF MALPRACTICE CLAIMS ACTIVITY AND SEVERITY. THE
14 RISK MANAGER, IN COOPERATION WITH THE COMMISSIONER, THE DIRECTOR
15 OF THE BUREAU OF HEALTH SERVICES, AND THE DIRECTOR OF PUBLIC
16 HEALTH, SHALL SUBMIT BIENNIAL REPORTS TO THE GOVERNOR AND THE
17 LEGISLATURE WHICH SHALL INCLUDE ALL OF THE FOLLOWING:

18 (A) THE CLAIMS ACTIVITY OF THE TRUST.

19 (B) THE NATURE AND EXTENT OF IATROGENIC INJURIES OF HEALTH
20 CARE CONSUMERS IN THIS STATE.

21 (C) THE EFFECTS OF THE VARIOUS RISK MANAGEMENT TECHNIQUES IN
22 USE BY THE TRUST.

23 (D) THE FINANCIAL CONDITION OF THE TRUST.

24 (E) RECOMMENDATIONS WHICH ARE DESIGNED TO REDUCE THE EXTENT
25 OF MALPRACTICE LIABILITY.

26 SEC. 1628. THE TRUST SHALL INSTITUTE A LEGAL DEFENSE
27 PROGRAM. THE TRUST SHALL HAVE THE RIGHT TO PARTICIPATE IN THE

1 DEFENSE, SETTLEMENT, AND APPEAL OF A CLAIM BROUGHT BY A THIRD
2 PARTY AGAINST A QUALIFIED PROVIDER IF THE PRIMARY INSURER HAS SET
3 ASIDE \$50,000.00 OR MORE IN RESERVE FOR THE CLAIM AND THE CLAIM
4 MAY RESULT IN A PAYMENT FROM THE TRUST. AS AN EXCESS INSURER,
5 THE TRUST OWES AND IS OWED A DUTY OF GOOD FAITH IN THE DEFENSE,
6 SETTLEMENT, AND APPEAL OF A CLAIM THAT THE PRIMARY INSURER HAS
7 SET ASIDE \$50,000.00 OR MORE IN RESERVE AND WHICH MAY RESULT IN A
8 PAYMENT FROM THE TRUST. WITH RESPECT TO A CLAIM RESERVED AT
9 \$50,000.00 OR MORE THAT MAY RESULT IN A PAYMENT FROM THE TRUST
10 PURSUANT TO THIS CHAPTER, A QUALIFIED PROVIDER AND THE PRIMARY
11 INSURER OF THE QUALIFIED PROVIDER SHALL COOPERATE WITH AND OBTAIN
12 THE CONCURRENCE OF THE TRUST IN THE DEFENSE, SETTLEMENT, AND
13 APPEAL OF THAT CLAIM.

14 SEC. 1630. TO QUALIFY FOR COVERAGE FROM THE TRUST UNDER
15 SECTION 1604(3), A PHYSICIAN OR HEALTH FACILITY SHALL DO ALL OF
16 THE FOLLOWING:

17 (A) COMPLY WITH THE RISK MANAGEMENT, LOSS PREVENTION, AND
18 INCIDENT REPORTING REQUIREMENTS ESTABLISHED BY THE BOARD AS PRO-
19 VIDED IN SECTION 1626.

20 (B) FILE WITH THE BOARD PROOF OF FINANCIAL RESPONSIBILITY AS
21 PROVIDED IN SECTION 1635.

22 (C) PAY ANY ASSESSMENT REQUIRED PURSUANT TO SECTION 1640.

23 SEC. 1635. A PHYSICIAN OR HEALTH FACILITY SHALL FILE WITH
24 THE BOARD PROOF OF FINANCIAL RESPONSIBILITY PURSUANT TO THIS
25 SECTION. FINANCIAL RESPONSIBILITY OF A PHYSICIAN OR HEALTH
26 FACILITY MAY BE ESTABLISHED BY 1 OF THE FOLLOWING:

1 (A) FILING WITH THE TRUST PROOF THAT THE PHYSICIAN OR HEALTH
2 FACILITY IS INSURED BY A MALPRACTICE INSURANCE POLICY ISSUED BY
3 AN AUTHORIZED INSURER OR THE TRUST WHICH PROVIDES INDEMNITY IN
4 THE FOLLOWING AMOUNTS, AS APPLICABLE:

5 (i) EACH PHYSICIAN, IN THE AMOUNT OF AT LEAST \$200,000.00
6 PER MEDICAL INCIDENT WITH AN ANNUAL AGGREGATE OF AT LEAST
7 \$600,000.00.

8 (ii) EACH HEALTH FACILITY, IN THE AMOUNT OF AT LEAST
9 \$1,000,000.00 PER MEDICAL INCIDENT WITH AN ANNUAL AGGREGATE OF AT
10 LEAST \$3,000,000.00.

11 (B) IF A HEALTH FACILITY FOR WHICH THE PHYSICIAN HAS STAFF
12 PRIVILEGES AGREES TO INDEMNIFY THE PHYSICIAN, FILING WITH THE
13 TRUST A WRITTEN AGREEMENT THAT THE HEALTH FACILITY SHALL INDEM-
14 NIFY THE PHYSICIAN IN THE AMOUNT OF AT LEAST \$200,000.00 PER MED-
15 ICAL INCIDENT AND AN ANNUAL AGGREGATE OF AT LEAST \$600,000.00.

16 (C) FILING AND MAINTAINING WITH THE TRUST, SECURITY OF A
17 TYPE AND AMOUNT AS APPROVED BY THE BOARD. THE TYPE AND AMOUNT OF
18 SECURITY FILED PURSUANT TO THIS SUBDIVISION SHALL BE SUFFICIENT
19 TO ASSURE THE PAYMENT OF INDEMNITY, LEGAL EXPENSES, AND OTHER
20 COSTS IN THE SAME AMOUNTS AS WOULD BE PAID BY A MALPRACTICE
21 INSURANCE POLICY MEETING THE REQUIREMENTS OF SUBDIVISION (A).

22 SEC. 1640. (1) THE TRUST SHALL LEVY AN ANNUAL ASSESSMENT ON
23 ALL PHYSICIANS AND HEALTH FACILITIES AND AUTHORIZED INSURERS IN A
24 MANNER PROVIDED IN THIS SECTION AND THE PLAN OF OPERATION.

25 (2) PURSUANT TO THE PLAN OF OPERATION, FOR THE FIRST YEAR OF
26 ITS OPERATION, THE TRUST SHALL LEVY AN ASSESSMENT ON EACH HEALTH
27 FACILITY IN THIS STATE IN AN AMOUNT AS IS REQUIRED TO OBTAIN AN

1 AGGREGATE ASSESSMENT ON ALL HEALTH FACILITIES IN THE AMOUNT OF
2 \$100,000,000.00. THE ASSESSMENT ON EACH HEALTH FACILITY SHALL BE
3 IN THE FORM OF A UNIFORM PERCENTAGE RATE APPLIED TO EACH HEALTH
4 FACILITY'S NET REVENUES FOR ITS PRIOR FISCAL YEAR OR, IN THE CASE
5 OF A HEALTH FACILITY WITHOUT NET REVENUES FOR A PRIOR FISCAL
6 YEAR, THE PROJECTED NET REVENUES OF THE HEALTH FACILITY FOR THE
7 CURRENT FISCAL YEAR, AS DETERMINED BY THE BOARD.

8 (3) EXCEPT AS PROVIDED BY SUBSECTION (8), AND PURSUANT TO
9 THE PLAN OF OPERATION, BEGINNING IN THE SECOND YEAR OF THE
10 TRUST'S OPERATION, AND IN EACH YEAR THEREAFTER, ASSESSMENTS SHALL
11 BE LEVIED ON HEALTH FACILITIES THROUGH A UNIFORM PERCENTAGE RATE
12 APPLIED TO EACH HEALTH FACILITY'S NET REVENUES FOR ITS PRIOR
13 FISCAL YEAR, OR, IN THE CASE OF A HEALTH FACILITY WITHOUT NET
14 REVENUES FOR A PRIOR FISCAL YEAR, THE PROJECTED NET REVENUES OF
15 THE HEALTH FACILITY FOR THE CURRENT YEAR, AS DETERMINED BY THE
16 BOARD. THE AGGREGATE AMOUNT OF THE ASSESSMENTS ON HEALTH FACILI-
17 TIES SHALL BE THE AGGREGATE AMOUNT ASSESSED IN THE PRIOR YEAR,
18 INCREASED OR DECREASED BY A FACTOR EQUAL TO AN INCREASE OR
19 DECREASE IN THE MEDICAL CARE COMPONENT OF THE CONSUMER PRICE
20 INDEX AS REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR AND AS
21 CERTIFIED BY THE COMMISSIONER. HOWEVER, THE AGGREGATE ASSESS-
22 MENTS SHALL NOT INCREASE OR DECREASE IN ANY YEAR BY AN AMOUNT
23 WHICH IS GREATER THAN 6%.

24 (4) PURSUANT TO THE PLAN OF OPERATION, FOR THE FIRST YEAR OF
25 THE TRUST'S OPERATION, THE TRUST SHALL ESTABLISH A BASE ASSESS-
26 MENT PER PHYSICIAN EQUAL TO THE AMOUNT OF \$41,000,000.00 DIVIDED
27 BY THE NUMBER OF PHYSICIANS IN THIS STATE. THE BASE ASSESSMENT

1 SHALL BE LEVIED ON EACH PHYSICIAN. HOWEVER, FOR THE FIRST YEAR
2 OF THE TRUST'S OPERATION, AGGREGATE PAYMENTS TO THE TRUST BY
3 QUALIFIED PHYSICIANS ELIGIBLE FOR A CREDIT PURSUANT TO
4 SUBSECTION (5), AFTER APPLYING THE CREDIT, SHALL NOT EXCEED
5 \$20,000,000.00.

6 (5) PURSUANT TO THE PLAN OF OPERATION, FOR THE FIRST YEAR OF
7 THE TRUST'S OPERATION, THE TRUST SHALL CALCULATE AND APPLY A
8 CREDIT TOWARDS THE PAYMENT OF THE BASE ASSESSMENT FOR EACH QUALI-
9 FIED PHYSICIAN WHO HAS OBTAINED PRIMARY MALPRACTICE INSURANCE
10 FROM AN AUTHORIZED INSURER EQUAL TO THE AGGREGATE AMOUNT OF PAY-
11 MENTS TO BE MADE BY AUTHORIZED INSURERS FOR THAT YEAR PURSUANT TO
12 SUBSECTION (7), DIVIDED BY THE NUMBER OF PHYSICIANS WHICH THEY
13 INSURE.

14 (6) PURSUANT TO THE PLAN OF OPERATION, BEGINNING IN THE
15 SECOND YEAR OF THE TRUST'S OPERATION, AND IN EACH YEAR THEREAF-
16 TER, ASSESSMENTS SHALL BE LEVIED ON PHYSICIANS PURSUANT TO THIS
17 SUBSECTION. EXCEPT AS PROVIDED IN SUBSECTION (8), FOR EACH YEAR,
18 THE TRUST SHALL ESTABLISH A BASE ASSESSMENT, WHICH SHALL BE IN
19 THE FORM OF A UNIFORM DOLLAR AMOUNT, AND WHICH SHALL BE LEVIED ON
20 EACH PHYSICIAN. THE AMOUNT OF THE BASE ASSESSMENT PER PHYSICIAN
21 SHALL BE THE PRIOR YEAR'S BASE ASSESSMENT PER PHYSICIAN,
22 INCREASED OR DECREASED BY A FACTOR EQUAL TO ANY INCREASE OR
23 DECREASE IN THE MEDICAL CARE COMPONENT OF THE CONSUMER PRICE
24 INDEX AS REPORTED BY THE UNITED STATES DEPARTMENT OF LABOR AND AS
25 CERTIFIED BY THE COMMISSIONER. HOWEVER, THE BASE ASSESSMENT
26 SHALL NOT INCREASE OR DECREASE IN ANY YEAR BY AN AMOUNT WHICH IS
27 GREATER THAN 6%.

1 (7) PURSUANT TO THE PLAN OF OPERATION, BEGINNING IN THE
2 FIRST YEAR OF THE TRUST'S OPERATION, AND EACH YEAR THEREAFTER,
3 EACH AUTHORIZED INSURER PROVIDING PRIMARY MALPRACTICE INSURANCE
4 SHALL BE OBLIGATED TO PAY TO THE TRUST AN AMOUNT EQUAL TO 7.5% OF
5 ITS ANNUAL PREMIUMS ATTRIBUTABLE TO THE PROVISION OF PRIMARY MAL-
6 PRACTICE INSURANCE TO PHYSICIANS IN THIS STATE. PAYMENTS TO THE
7 TRUST SHALL BE MADE ON THE BASIS OF AN AUTHORIZED INSURER'S
8 PROJECTED ANNUAL DIRECT WRITTEN PREMIUMS ON PRIMARY MALPRACTICE
9 INSURANCE PROVIDED TO PHYSICIANS IN THIS STATE. BEGINNING IN THE
10 SECOND YEAR OF THE TRUST'S OPERATION, AND IN EACH YEAR THEREAF-
11 TER, THE AMOUNTS PAYABLE TO THE TRUST BY AN AUTHORIZED INSURER
12 SHALL BE ADJUSTED TO REFLECT ANY UNDERPAYMENT OR OVERPAYMENT IN A
13 PRIOR YEAR DUE TO DIFFERENCES BETWEEN PROJECTED AND ACTUAL
14 PREMIUMS.

15 (8) BEGINNING IN THE FOURTH YEAR OF THE TRUST'S OPERATION,
16 THE BOARD MAY ADJUST THE ASSESSMENTS ON INDIVIDUAL PHYSICIANS AND
17 HEALTH FACILITIES UNDER THIS SECTION BASED UPON THE EXPERIENCE OF
18 AN INDIVIDUAL PHYSICIAN OR HEALTH FACILITY WITH RESPECT TO MAL-
19 PRACTICE CLAIMS REQUIRING PAYMENTS FROM THE TRUST, THE PRIMARY
20 INSURER, OR BY THE PHYSICIAN OR HEALTH FACILITY. IF IN ANY YEAR
21 THE TRUST ELECTS TO ASSESS HEALTH FACILITIES BY A MEANS OTHER
22 THAN AS PRESCRIBED BY SUBSECTION (3) AS AUTHORIZED BY THIS SUB-
23 SECTION, THE AGGREGATE AMOUNT OF ASSESSMENTS ON HEALTH FACILITIES
24 FOR THAT YEAR SHALL BE EQUAL TO THE AGGREGATE AMOUNT PROVIDED IN
25 SUBSECTION (3). IF IN ANY YEAR THE TRUST ELECTS TO ASSESS PHYSI-
26 CIANS BY A MEANS OTHER THAN AS PRESCRIBED UNDER SUBSECTION (6) AS
27 AUTHORIZED BY THIS SUBSECTION, THE AGGREGATE AMOUNT OF

1 ASSESSMENTS ON PHYSICIANS FOR THAT YEAR SHALL BE EQUAL TO THE
2 AGGREGATE ASSESSMENT THAT OTHERWISE WOULD HAVE BEEN OBTAINED
3 UNDER SUBSECTION (6).

4 (9) THE PROFESSIONAL LICENSE OF A PHYSICIAN OR HEALTH FACIL-
5 ITY THAT FAILS TO PAY AN ASSESSMENT IS SUSPENDED WHILE THE
6 ASSESSMENT REMAINS UNPAID. UPON PAYMENT OF THE ASSESSMENT, THE
7 PROFESSIONAL LICENSE OF THAT NONPAYING PHYSICIAN OR HEALTH FACIL-
8 ITY SHALL BE AUTOMATICALLY RESTORED.

9 (10) AS USED IN THIS SECTION:

10 (A) "NET REVENUES" MEANS THAT TERM AS DEFINED BY THE BOARD.

11 (B) "PHYSICIAN" DOES NOT INCLUDE A PHYSICIAN WHO IS NOT
12 ACTIVELY TREATING PATIENTS IN THIS STATE AS DEFINED BY THE
13 BOARD.

14 SEC. 1650. (1) WITHIN THE TIME PROVIDED BY THIS SECTION,
15 THE BOARD SHALL SUBMIT TO THE COMMISSIONER FOR REVIEW AND
16 APPROVAL A PROPOSED PLAN OF OPERATION. THE PLAN SHALL INCLUDE,
17 BUT NOT BE LIMITED TO, ALL OF THE FOLLOWING:

18 (A) PROCEDURES BY WHICH QUALIFIED PROVIDERS SHALL PROMPTLY
19 REPORT TO THE TRUST AN INCIDENT WHICH, ON THE BASIS OF THE INJU-
20 RIES OR DAMAGES SUSTAINED, MAY REASONABLY BE ANTICIPATED TO CAUSE
21 A MALPRACTICE CLAIM TO BE FILED AGAINST THE PROVIDER.

22 (B) PROCEDURES BY WHICH QUALIFIED PROVIDERS AND PRIMARY MAL-
23 PRACTICE INSURERS SHALL PROMPTLY REPORT TO THE TRUST ALL CLAIMS
24 FILED AGAINST THE QUALIFIED PROVIDER.

25 (C) PROCEDURES FOR THE ESTABLISHMENT OF RISK MANAGEMENT AND
26 LOSS PREVENTION REQUIREMENTS OF THE TRUST.

1 (D) WITH RESPECT TO PRIMARY MALPRACTICE INSURANCE, A
2 DESCRIPTION OF THE COVERAGES AND THE LIMITS OF THE COVERAGES TO
3 BE AFFORDED TO PHYSICIANS AND HEALTH FACILITIES.

4 (E) A DESCRIPTION OF THE ACCOUNTING PROCEDURES, REPORTS, AND
5 STATISTICAL REQUIREMENTS INVOLVED IN OPERATING THE TRUST.

6 (F) PROCEDURES TO BE UTILIZED IN MAKING THE ADJUSTMENT TO
7 THE PAYMENT LIMIT AS PROVIDED IN SECTION 1610.

8 (G) THE ESTABLISHMENT OF NECESSARY REINSURANCE.

9 (H) THE MANAGEMENT AND OPERATION OF THE TRUST.

10 (I) PROCEDURES TO BE UTILIZED IN CHARGING AND COLLECTING
11 PREMIUMS AND ASSESSMENTS.

12 (J) PROCEDURES GOVERNING THE PAYMENT OF CLAIMS.

13 (K) THE REIMBURSEMENT OF EACH MEMBER OF THE BOARD BY THE
14 TRUST FOR ACTUAL AND NECESSARY EXPENSES INCURRED ON TRUST
15 BUSINESS.

16 (L) THE INVESTMENT POLICY OF THE TRUST.

17 (M) ANY OTHER MATTERS REQUIRED BY OR NECESSARY TO EFFEC-
18 TIVELY OPERATE THE TRUST.

19 (2) THE COMMISSIONER SHALL REVIEW THE PROPOSED PLAN OF OPER-
20 ATION AND APPROVE THE PLAN IF HE OR SHE FINDS THAT THE PLAN FUL-
21 FILLS THE PURPOSES OF THIS CHAPTER. THE COMMISSIONER MAY CONSULT
22 WITH THE BOARD OF TRUSTEES OR ANY OTHER INDIVIDUAL OR
23 ORGANIZATION.

24 (3) IF THE COMMISSIONER APPROVES THE PROPOSED PLAN OF OPERA-
25 TION, HE OR SHE SHALL CERTIFY THE APPROVAL TO THE BOARD AND THE
26 PLAN SHALL TAKE EFFECT 10 DAYS AFTER THE CERTIFICATION.

1 (4) IF THE COMMISSIONER DISAPPROVES ALL OR ANY PART OF THE
2 PROPOSED PLAN OF OPERATION, HE OR SHE SHALL RETURN THE PROPOSED
3 PLAN TO THE BOARD WITH A STATEMENT, IN WRITING, OF THE REASONS
4 FOR HIS OR HER DISAPPROVAL AND ANY RECOMMENDATIONS HE OR SHE MAY
5 WISH TO MAKE. THE BOARD MAY ACCEPT THE COMMISSIONER'S RECOMMEN-
6 DATIONS AND SUBMIT THE AMENDED PLAN TO THE COMMISSIONER OR SUBMIT
7 A NEW PLAN WITHIN 30 DAYS AFTER THE RETURN OF THE DISAPPROVED
8 PLAN TO THE BOARD. WITHIN 10 DAYS AFTER RECEIPT OF THE SECOND
9 PLAN, THE COMMISSIONER SHALL ENTER AN ORDER CERTIFYING OR REJECT-
10 ING THE PLAN. IF THE COMMISSIONER REJECTS THE SECOND PLAN, HE OR
11 SHE SHALL PROCEED PURSUANT TO SUBSECTION (5).

12 (5) IF THE BOARD DOES NOT SUBMIT A PROPOSED PLAN OF OPERA-
13 TION WITHIN 120 DAYS AFTER THE BOARD TAKES OFFICE OR IF A SECOND
14 PLAN IS REJECTED PURSUANT TO SUBSECTION (4), THE COMMISSIONER
15 SHALL ESTABLISH A PLAN OF OPERATION AND CERTIFY IT TO THE BOARD.
16 A PLAN ESTABLISHED BY THE COMMISSIONER SHALL TAKE EFFECT 10 DAYS
17 AFTER CERTIFICATION TO THE BOARD.

18 (6) THE BOARD MAY, ON ITS OWN INITIATIVE, AMEND THE PLAN OF
19 OPERATION AT ANY TIME, SUBJECT TO THE APPROVAL OF THE
20 COMMISSIONER.

21 (7) THE COMMISSIONER MAY REVIEW THE PLAN OF OPERATION, AND
22 SHALL REVIEW THE PLAN AT LEAST ONCE A YEAR, AND MAY SUBMIT TO THE
23 BOARD RECOMMENDATIONS FOR AMENDMENTS TO THE PLAN.

24 (8) AN AMENDMENT TO THE PLAN SHALL TAKE EFFECT NOT LESS THAN
25 10 DAYS AFTER APPROVAL.

26 SEC. 1655. (1) EXCEPT AS OTHERWISE PROVIDED IN
27 SUBSECTION (2), PAYMENTS FROM THE TRUST FOR FUTURE DAMAGES LESS

1 ATTORNEY FEES SHALL BE ONLY IN THE FORM OF STRUCTURED PAYMENTS BY
2 PURCHASE OF AN ANNUITY CONTRACT SUBJECT TO THE FOLLOWING
3 REQUIREMENTS:

4 (A) THE PURCHASE PRICE OF THE ANNUITY CONTRACT SHALL BE
5 EQUAL TO 100% OF THE FUTURE DAMAGES LESS ATTORNEY FEES.

6 (B) THE ANNUITY CONTRACT SHALL BE PURCHASED FROM AN AUTHO-
7 RIZED INSURER.

8 (2) IF STRUCTURED PAYMENTS WOULD PREVENT COMPENSATION OF
9 ECONOMIC LOSSES WHICH HAVE ALREADY BEEN INCURRED OR OTHERWISE
10 PRECLUDE A SETTLEMENT WHICH IS IN THE BEST INTERESTS OF THE
11 TRUST, THE TRUST'S DIRECTOR MAY APPROVE A PARTIAL PAYMENT IN NON-
12 STRUCTURED TERMS.

13 SEC. 1660. (1) THE PRIMARY MALPRACTICE INSURANCE OBLIGA-
14 TIONS OF THE TRUST MAY BE TRANSFERRED TO AN INSURER BY THE BOARD
15 SUBJECT TO THE APPROVAL OF THE COMMISSIONER. THE COMMISSIONER
16 SHALL NOT APPROVE THE TRANSFER UNLESS THE TRANSFER WOULD BE CON-
17 SIDERED WITHIN THE PURPOSES OF THIS CHAPTER AND THE ASSETS TO BE
18 TRANSFERRED ARE REASONABLY RELATED TO THE OBLIGATIONS TO BE
19 ASSUMED.

20 (2) THE COMMISSIONER MAY ATTACH CONDITIONS TO A TRANSFER,
21 BINDING ON BOTH THE TRANSFEREE AND THE TRANSFEROR, WHICH ARE REA-
22 SONABLE AND NECESSARY, AND WHICH MAY INCLUDE CONDITIONS WHICH
23 SHALL DO BOTH OF THE FOLLOWING:

24 (A) REQUIRE THE INSURER TO GUARANTEE, ASSUME, OR REINSURE OR
25 TO CAUSE TO BE GUARANTEED, ASSUMED, OR REINSURED ALL PRIMARY MAL-
26 PRACTICE INSURANCE POLICIES OF THE TRUST.

1 (B) ASSURE THE TERMINATION OF ALL PRIMARY MALPRACTICE
2 INSURANCE OBLIGATIONS OF THE TRUST.

3 SEC. 1665. WITH RESPECT TO PRIMARY MALPRACTICE INSURANCE,
4 ALL RATES AND POLICY FORMS OF THE TRUST SHALL BE SUBJECT TO THE
5 PRIOR APPROVAL OF THE COMMISSIONER.

6 SEC. 1670. (1) ADMINISTRATIVE SERVICES FOR PRIMARY MALPRAC-
7 TICE INSURANCE POLICIES ISSUED BY THE TRUST MAY BE CONDUCTED BY
8 THE TRUST OR THROUGH OTHER ORGANIZATIONS DESIGNATED BY THE
9 BOARD.

10 (2) FOR THE PRIVILEGE OF DOING BUSINESS IN THIS STATE, AN
11 INSURANCE COMPANY AUTHORIZED TO DO BUSINESS IN THIS STATE THAT
12 WRITES MALPRACTICE INSURANCE ANYWHERE IN THE UNITED STATES MAY BE
13 REQUIRED, BY THE COMMISSIONER, TO BE A SERVICING INSURER TO THE
14 TRUST.

15 (3) SERVICES PROVIDED TO THE TRUST BY A SERVICING INSURER
16 SHALL BE REASONABLY COMPENSATED. THE COMMISSIONER MAY OBTAIN AND
17 REPORT TO THE TRUST ALL DATA CONCERNING A SERVICING INSURER WHICH
18 SHALL BE NECESSARY TO DETERMINE IF A SERVICING INSURER'S CHARGES
19 FOR SERVICES PROVIDED TO THE TRUST ARE REASONABLE.

20 (4) SERVICING MAY INCLUDE, BUT NOT BE LIMITED TO, COLLECTION
21 OF PREMIUMS, ISSUANCE OF POLICIES, LOSS PREVENTION, AND ADJUST-
22 MENT OR DEFENSE OF CLAIMS.

23 (5) A DISPUTE BETWEEN THE TRUST AND THE SERVICING INSURER
24 SHALL BE RESOLVED BY THE COMMISSIONER.

25 (6) CONTRACTS BETWEEN THE TRUST AND THE SERVICING INSURER
26 SHALL BE SUBJECT TO THE APPROVAL OF THE COMMISSIONER AND THE
27 BOARD.

1 SEC. 1675. (1) A SUFFICIENT AMOUNT OF CASH SHALL BE
2 MAINTAINED IN THE TRUST TO PAY CURRENT LOSSES AND EXPENSES AND
3 THE BOARD OF THE TRUST OR ITS DESIGNATED REPRESENTATIVE MAY
4 INVEST THE BALANCE IN SECURITIES SPECIFIED BY LAW FOR INVESTMENT
5 BY CASUALTY INSURANCE COMPANIES.

6 (2) THE TRUST IS DECLARED TO BE A CHARITABLE AND BENEVOLENT
7 INSTITUTION, AND SHALL BE EXEMPT FROM TAXATION BY THE STATE OR A
8 POLITICAL SUBDIVISION OF THE STATE.

9 (3) THE COMMISSIONER MAY VISIT THE TRUST AT ANY TIME AND
10 EXAMINE ANY AND ALL OF ITS RECORDS.

11 SEC. 1695. MALPRACTICE INSURANCE COVERAGE FROM THE TRUST
12 SHALL NOT COVER INCIDENTS OF MALPRACTICE WHICH OCCUR BEFORE THE
13 EFFECTIVE DATE OF THIS CHAPTER.

14 SEC. 1699. THIS CHAPTER IS REPEALED UPON THE EXPIRATION OF
15 10 YEARS AFTER THE DATE THIS CHAPTER TAKES EFFECT.

16 Sec. 2434. (1) The commissioner, after consultation with
17 associations representative of physician interests and with
18 authorized insurers writing malpractice insurance for physicians
19 in this state shall prescribe the rating classifications for use
20 by insurers in writing malpractice insurance for physicians.

21 (2) Before ~~1 year after the effective date of chapter 49~~
22 ~~and before~~ implementing the rating classifications prescribed
23 pursuant to subsection (1), the commissioner shall furnish to the
24 legislature and the governor the rating classifications which he
25 or she intends to prescribe pursuant to this section.

1 Section 2. This amendatory act shall not take effect unless
2 all of the following bills of the 85th Legislature are enacted
3 into law:

4 (a) Senate Bill No. _____ or House Bill No. _____ (request
5 no. 00667'89 a).

6 (b) Senate Bill No. _____ or House Bill No. _____ (request
7 no. 00667'89 b).

8 (c) Senate Bill No. _____ or House Bill No. _____ (request
9 no. 00667'89 c).