

MAINE STATE LEGISLATURE

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(EMERGENCY)

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FIRST REGULAR SESSION

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ONE HUNDRED AND ELEVENTH LEGISLATURE

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Legislative Document

No. 1227

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H.P. 946

House of Representatives, March 17, 1983

9

Referred to the Committee on Business Legislation. Sent up for
concurrence and ordered printed.

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EDWIN H. PERT, Clerk

Presented by Representative MacEachern of Lincoln.
Cosponsor: Senator Pearson of Penobscot.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD

16

NINETEEN HUNDRED AND EIGHTY-THREE

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18

AN ACT Relating to Malpractice Insurance
in the Field of Medicine.

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Emergency preamble. Whereas, Acts of the Legis-
lature do not become effective until 90 days after
adjournment unless enacted as emergencies; and

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Whereas, medical malpractice insurance is a
necessity of modern medical practice, benefiting both
the doctor and the patient; and

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Whereas, a limited number of physicians are
unable to obtain medical malpractice insurance on the
voluntary market, thereby preventing them from prac-
ticing and denying the public the benefits of their
services; and

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Whereas, this bill would reinstitute the services
of an organization created by prior statute that is

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1 about to cease operations and will do so unless
2 reestablished by this legislation; and

3 Whereas, in the judgment of the Legislature,
4 these facts create an emergency within the meaning of
5 the Constitution of Maine and require the following
6 legislation as immediately necessary for the preser-
7 vation of the public peace, health and safety; now,
8 therefore,

9 Be it enacted by the People of the State of Maine as
10 follows:

11 Sec. 1. 24 MRSA §2403, sub-§1, as amended by PL
12 1977, c. 7, §2, is further amended to read:

13 1. Establishment. A ~~temporary~~ Joint Underwriting
14 Association is hereby created, consisting of all
15 insurers authorized to write and engage in writing,
16 within this State on a direct basis, personal injury
17 liability insurance, as defined in section 2402, sub-
18 section 4, including insurers covering such perils in
19 multiple peril package policies. Every such insurer
20 shall be a member of the association and shall remain
21 a member as a condition of its authority to continue
22 to transact such kind of insurance in this State. No
23 insurer with total assets less than \$5,000,000 shall
24 may be required to participate in the association
25 created by this Act. Insurers under common manage-
26 ment or ownership shall constitute a single member.

27 Sec. 2. 24 MRSA §2403, sub-§2, as amended by PL
28 1979, c. 689, §1, is further amended to read:

29 2. Purpose. The purpose of the association shall
30 be is to provide, ~~until July 1, 1981,~~ a market for
31 medical malpractice insurance on a self-supporting
32 basis without subsidy from its members.

33 Sec. 3. 24 MRSA §2403, sub-§3, as amended by PL
34 1977, c. 7, §§4 and 5, is further amended to read:

35 3. Underwriting operations. The association
36 shall ~~not commence underwriting operations for physi-~~
37 ~~cians until the superintendent, after due hearing and~~
38 ~~investigation, has determined that medical malprae-~~
39 ~~tice insurance cannot be made readily available for~~

1 physicians in the voluntary market. Upon such deter-
2 mination, the The association shall be authorized to
3 issue policies of medical malpractice insurance to
4 physicians, but need not be the exclusive agency
5 through which such insurance may be written on a pri-
6 mary basis in the State.

7 The association shall not commence underwriting oper-
8 ations for hospitals until the superintendent, after
9 due hearing and investigation, has determined that
10 medical malpractice insurance is not readily avail-
11 able for hospitals in the voluntary market. Upon such
12 determination, the association shall be authorized to
13 issue policies of medical malpractice insurance to
14 hospitals, but need not be the exclusive agency
15 through which such insurance may be written on a pri-
16 mary basis in this State.

17 The association shall not commence underwriting oper-
18 ations for other licensed health care providers until
19 the superintendent, after due hearing and investiga-
20 tion, has determined that medical malpractice insur-
21 ance cannot be made available for a specific type of
22 licensed health care providers. The association
23 shall be the exclusive agency through which medical
24 malpractice insurance may be written in this State on
25 a primary basis for such specific type of health care
26 provider.

27 If the superintendent determines at any time that
28 medical malpractice insurance can be made available
29 in the voluntary market for all physicians, all
30 hospitals or any specific type of other licensed
31 health care providers or facilities, the association
32 shall thereby cease its underwriting operations for
33 such medical malpractice insurance which the superin-
34 tendent has determined can be made available in the
35 voluntary market.

36 Sec. 4. 24 MRS §2405, sub-§1, as amended by PL
37 1979, c. 689, §2, is further amended to read:

38 1. Requirements. The association shall not issue
39 any policies with an inception date after July 1,
40 1981, and in no event shall issue a policy providing
41 for coverage after July 1, 1982. All such policies
42 shall be issued subject to the group retrospective

1 rating plan and the stabilization reserve fund
2 authorized by this Act. All such policies shall be
3 written so as to apply to injury which results from
4 acts or omissions by the insured during the policy
5 periods regardless of the date of discovery provide
6 coverage equivalent to that readily available in the
7 voluntary market. No policy form shall may be used
8 by the association unless it has been filed with the
9 superintendent and either he has approved it or 30
10 days have elapsed and he has not disapproved it as
11 misleading or violative of public policy.

12 Emergency clause. In view of the emergency cited
13 in the preamble, this Act shall take effect when
14 approved.

15 STATEMENT OF FACT

16 The purpose of this bill is to provide a mecha-
17 nism to insure that all physicians in need of medical
18 malpractice insurance in this State can obtain it.
19 There is, at present, at least one case in which a
20 physician in this State is unable to procure this
21 much needed insurance.

22 Inability to obtain medical malpractice insurance
23 in Maine was a bigger problem in the mid-'70's, but
24 the problem still lingers on. In 1975 the Legis-
25 lature enacted the "Maine Medical and Hospital Mal-
26 practice Joint Underwriting Association Act" to
27 remedy this problem. Early in this decade, the oper-
28 ations of the "temporary Joint Underwriting Associa-
29 tion" were terminated, due to the perceived ability
30 of all physicians to obtain malpractice insurance in
31 the voluntary market. The services of the Joint
32 Underwriting Association are still needed, and this
33 bill reestablishes the operation of the Joint Under-
34 writing Association on a permanent basis.

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