

SENATE BILL REPORT

SB 5785

As Reported By Senate Committee On:
Financial Institutions, Housing & Consumer Protection, March 1, 2005
Ways & Means, March 7, 2005

Title: An act relating to stabilizing the cost of medical malpractice insurance.

Brief Description: Stabilizing the cost of medical malpractice insurance.

Sponsors: Senators Fairley, Kline, Keiser, Franklin, Prentice, Rockefeller, Kohl-Welles and McAuliffe; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Housing & Consumer Protection: 2/17/05, 2/22/05, 3/1/05 [DP-WM, DNP].
Ways & Means: 3/4/05, 3/7/05 [DP, DNP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & CONSUMER PROTECTION

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Fairley, Chair; Berkey, Vice Chair; Franklin, Keiser, Prentice and Spanel.

Minority Report: Do not pass.

Signed by Senators Benton, Ranking Minority Member; Benson, Brandland, Delvin and Schmidt.

Staff: Joanne Conrad (786-7472)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Prentice, Chair; Doumit, Vice Chair; Fraser, Vice Chair; Fairley, Kohl-Welles, Pridemore, Rasmussen, Regala and Rockefeller.

Minority Report: Do not pass.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Hewitt, Parlette, Pflug, Roach and Schoesler.

Staff: Steve Jones (786-7440)

Background: Physicians and other health care providers and facilities, as well as patients, taxpayers and policymakers are increasingly concerned about the cost and availability of medical malpractice insurance. The media features stories about doctors retiring prematurely, limiting or changing their practices, or deciding not to practice in some specialties, based on

the costs of malpractice coverage. There are reports of emergency treatment facilities being in financial jeopardy, due to the expense of coverage.

Summary of Bill: A new program is created to provide supplemental medical malpractice insurance coverage for health care providers and facilities. The program pays qualified claims and defense costs, within limits, after January 1, 2005. Payments can be made if all other medical malpractice coverage purchased has been used first. Payments are not made for claims that exceed the limits of liability coverage, are related to a provider's operation of a motor vehicle, or are the result of intentional crimes, or acts by employees outside the scope of their employment.

The program is a separate legal entity, not a state agency. The Office of the Insurance Commissioner (OIC) is not liable for the acts of the program. The Legislature appropriates funds for the program, at its discretion. The program is exempt from most taxes, and is not a part of the Washington Insurance Guarantee Association. Providers and facilities are charged an annual premium, and the program can issue capital calls.

The program is run by a Board of Governors, with designated membership, terms, and per diem. The Board adopts an operating plan, specific program coverage, eligibility rules, and criteria for purchase of reinsurance. The Board makes determinations regarding high-risk providers and provider eligibility for premium discounts for safety programs. The program files annual statements with the OIC, according to National Association of Insurance Commissioner (NAIC) standards, and establishes standards for facilities, including proof of the facility's financial responsibility in specified amounts.

The program's basic limits of excess liability coverage are one million dollars per claim, and three million dollars aggregate annual limit. Insureds may contract for higher amounts.

Premiums are determined by analysis of rates, rating plans, claims and other factors. Premiums must not be excessive, inadequate or unfairly discriminatory, and annual program funding must be actuarially sound.

The program reports on judgments, settlements, and other disposition of claims. Information required for reported claims is detailed in statute. A substantial annual report is required, summarizing and analyzing closed claims for medical malpractice, including trends, loss ratios, and profitability analysis.

The OIC has the ability to fine violations by insuring entities.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For (Financial Institutions, Housing & Consumer Protection): This bill is intended to help physicians in high risk and rural practices. They could use the state program or the open market. Oregon and Wisconsin are doing something similar to this. The data

reporting required in the bill would be very useful. This bill would increase coverage for the poor, by insuring doctors in rural areas.

Testimony Against (Financial Institutions, Housing & Consumer Protection): None.

Who Testified: (Financial Institutions, Housing & Consumer Protection) PRO: Mike Kreidler, Insurance Commissioner; Bill Daley, WA Citizen Action.

Testimony For (Ways & Means): This bill will help alleviate the economic pressures caused by the inevitable cycles of the insurance industry and will stabilize the cost of medical malpractice insurance. The Insurance Commissioner is asking for only the administrative costs necessary to establish the program.

Testimony Against (Ways & Means): This bill does nothing to solve the problems that necessitate a reform of the civil justice system because the bill does nothing to limit the amount of awards in medical malpractice cases and imposes additional insurance premiums on health care providers, on top of existing insurance premiums.

Who Testified (Ways & Means): PRO: Mary Clogston, Office of the Insurance Commissioner; Bill Daley, Washington Citizen Action.

CON: Cliff Webster, Washington State Medical Association.