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DELAWARE STATE SENATE

143rd GENERAL ASSEMBLY

SENATE BILL NO. 123

AN ACT TO AMEND CHAPTER 1, TITLE 16 AND CHAPTER 68, TITLE 18 OF THE DELAWARE CODE RELATING TO THE CREATION OF A SPECIAL FUND FOR MEDICAL NEGLIGENCE INSURANCE PREMIUM RELIEF.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

1 Section 1. Amend §6801(5), Title 18 of the Delaware Code by adding the following at the end thereof: “This
2 definition shall not apply to sections 6870 et seq. of this Chapter that relate to the Medical Negligence Insurance Premium
3 Relief Fund.”

4 Section 2. Amend Chapter 68, Title 18 of the Delaware Code by adding a new subchapter VIII to read as follows:
5 “Subchapter VIII. Medical Negligence Insurance Premium Relief

6 § 6870. Declaration of Purpose and Short Title.

7 (a) The purposes of this subchapter are to recognize that the cost of medical negligence insurance
8 coverage for certain individual health care providers has increased to a level where such providers are
9 unable to maintain their practices in this State thereby reducing the availability of quality health care to
10 Delaware’s citizens, and to provide financial relief to those health care providers from a special fund to
11 allow them to abate or offset a portion of the costs of their medical malpractice insurance premiums so
12 that they will elect to continue in practice in Delaware for the benefit of their patients and the citizens of
13 this State.

14 (b) This subchapter of this title constitutes and may be cited as the Medical Negligence Insurance
15 Premium Relief Act.

16 (c) The provisions of this subchapter shall be liberally construed to effectuate its purposes.

17 § 6871. Definitions.

18 The definitions contained in § 6801 shall be applicable to this subchapter except as modified herein:

19 (a) 'Applicant' means any health care provider who is licensed and practices in the State of Delaware
20 and who applies for relief hereunder. A health care provider against whom any investigation is pending
21 by a state regulatory body, or the staff of that body, or against whom any regulatory or disciplinary action
22 has been taken by a state regulatory body, or to whom a letter of counsel has been sent by a state
23 regulatory body or the staff of that body, cannot be an Applicant. Applications for relief shall require
24 sworn statements from health care providers with respect to actions referred to in this paragraph, and all
25 relevant state regulatory bodies shall provide information requested by the Medical Negligence Premium
26 Relief Committee or its staff in connection with this definition.

27 (b) 'Assessment' means the monetary payment required of each insurer hereunder.

28 (c) 'Department' means the Department of Insurance of the State of Delaware.

29 (d) 'Fund' means the Medical Negligence Insurance Premium Relief Fund established by this subchapter
30 and administered by the Medical Negligence Premium Relief Committee established by this subchapter.

31 (e) 'Health care provider' shall mean any person licensed under 24 Del. C. Chapters 5, 7, 11, 17, or 19.

32 (f) 'Insurer' means any entity authorized to issue health care insurance coverage in this State pursuant to
33 18 Del. C. Chapter 63.

34 (g) 'Medical malpractice insurance' shall mean any insurance coverage, by whatever name, that provides
35 professional liability and/or legal defense coverage to a health care provider in this State.

36 § 6872. Medical Negligence Insurance Premium Relief Fund.

37 There is hereby created in the Office of the State Treasurer, a special fund to be designated as the Medical
38 Negligence Insurance Premium Relief Fund, which shall be used solely for the purposes set forth in this subchapter. All
39 monies paid by insurers and collected by the Insurance Commissioner pursuant to this subchapter, together with any
40 interest or income thereon, shall be deposited in the State Treasury to the credit of the Medical Negligence Insurance
41 Premium Relief Fund to be used solely for the purposes and related administrative costs set forth in this subchapter. No
42 part of the Fund shall be credited to the General or Special Funds of the State.

43 § 6873. Assessments to Insurers.

44 (a) On or before March 1 of each calendar year, each insurer shall pay to the Fund an amount of money
45 equal to four percent (4%) of the amount in excess of eight hundred percent (800%) of the statutory

46 capital and surplus (net worth) as determined in accordance with the statutory accounting applicable to
47 the annual financial statements required to be filed under Chapter 5 of this title. The Insurance
48 Department shall have authority for ensuring compliance with this Section.

49 (b) No insurer shall base any application for any increase in rates in whole or in part upon any payment
50 made pursuant to subsection (a) of this Section, including applications made pursuant to Chapters 25 and
51 72 of this Title.

52 § 6874. Administration and Use of the Medical Negligence Insurance Premium Relief Fund.

53 (a) The Fund shall be administered by the Medical Negligence Premium Relief Committee established
54 by subsection (f) of this Section. The Insurance Commissioner may promulgate such regulations as are
55 necessary, consistent with this subchapter, to accomplish the purposes set forth in this subchapter.

56 (b) The Fund shall operate on a fiscal year basis to coincide with the fiscal year of the State.

57 (c) If, in any year, the amount of the revenue collected for or by the Fund exceeds the actual costs and
58 expenses incurred to carry out the purposes of this subchapter, the excess amount shall be carried forward
59 within the Fund for use in the next fiscal year.

60 (d) On an annual basis, the Medical Negligence Premium Relief Committee shall determine in a timely
61 fashion:

62 (i) A minimum annual malpractice premium to which a health care provider must be subject in
63 order to qualify for relief from the Fund.

64 (ii) A formula for determining the amount of subsidies from the Fund, to be based upon the
65 level of premium being paid by applicants who qualify for relief under subparagraph (d)(i).

66 (iii) The specific sum to be awarded to each applicant consistent with the formula established
67 pursuant to subparagraph (d)(ii).

68 (iv) Whether the Committee wishes to make exceptions to the sums dictated by subparagraphs
69 (i) through (iii) due to specific, articulable potential shortages of particular health care providers
70 in particular regions of the state. The Committee shall have the discretion to make
71 determinations under this subparagraph.

72 (v) Whether a change in the definition of “applicant” under Section 6871(a) of this Title should
73 be recommended. Proposals for changes in the definition of “applicant” must be approved
74 through legislation.

75 (e) The State Treasurer shall disburse monies from the Fund consistent with instructions from the
76 Medical Negligence Premium Relief Committee under subsection (d)(iii) and d(iv) of this Section.
77 (f) The Medical Negligence Premium Relief Committee shall consist of three persons, nominated by the
78 Governor for a term of six years and confirmed by the Delaware State Senate. At least one of the
79 Committee's three members shall be a physician licensed to practice medicine in the State of Delaware.
80 The Committee's chair shall be appointed by the Governor from among its three members, and shall
81 serve in that capacity at the pleasure of the Governor. The Committee shall be considered a public body
82 pursuant to Title 29, Section 10002(c) of the Delaware Code. The Committee's activities shall not be
83 subject to the provisions of the Administrative Procedures Act (Title 29, Chapter 101 of the Delaware
84 Code), and shall not be appealable. Staff support for the Committee shall be provided by the Delaware
85 Insurance Department and, with respect to information regarding medical needs and shortages, by the
86 Department of Health and Social Services."

87 Section 3. Renumber Title 16, Section 122(8) of the Delaware Code as Title 16, Section 122(9), and add a new
88 Section 122(8) which shall read as follows:

89 "(8) Provide timely information to the Medical Negligence Premium Relief Committee regarding
90 anticipated or actual shortages of particular types of medical care in specific regions of the state."

91 Section 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid,
92 such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid
93 provision or application, and to that end the provisions of this Act are declared to be severable.

94 Section 5. The Commissioner shall promulgate appropriate regulations to become effective on or before January
95 1, 2006. The first awards from the Medical Negligence Insurance Premium Relief Fund shall be made no earlier than
96 Fiscal Year 2007.

97 Section 6. This Act shall become effective upon its enactment into law.

SYNOPSIS

The purpose of this Act is to create a special fund to be known as the Medical Negligence Insurance Premium Relief Fund from which the State can award moneys to a limited group of eligible individual medical care providers to provide relief from the high costs of medical malpractice insurance premiums. The funds will come from an assessment on the excess net worth of health service corporations operating pursuant to Chapter 63 of Title 18. Health insurance rates will not go up as a result of this assessment.

Author: Senator Blevins