

Senate Bill 22

By: Senators Seabaugh of the 28th, Smith of the 52nd, Hill of the 32nd and Williams of the 19th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 change certain provisions relating to medical malpractice insurance rate filings; to change  
3 certain provisions relating to rate increases for medical malpractice insurance; to provide for  
4 approval or rejection of such rate increases; to provide for certain hearings in connection with  
5 such rate increase approvals; to provide for certain notices and reports; to provide for related  
6 matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
10 striking Code Section 33-3-27, relating to reports of awards under medical malpractice  
11 insurance policies, in its entirety and inserting in lieu thereof a new Code Section 33-3-27  
12 to read as follows:

13 "33-3-27.

14 (a) For the purposes of this Code section, the term 'medical malpractice claim' means any  
15 claim for damages resulting from the death of or injury to any person arising out of health,  
16 medical, or surgical service, diagnosis, prescription, treatment, or care rendered by a person  
17 authorized by law to practice medicine in this state or by any person acting under such  
18 person's supervision and control.

19 (b) Every insurer providing medical malpractice insurance coverage in this state, including  
20 authorized insurers, surplus lines insurers, captive insurers, risk retention groups, and  
21 persons or entities self-insured against medical malpractice claims, shall notify in writing  
22 the Composite State Board of Medical Examiners and the Commissioner when it pays a  
23 judgment in excess of \$10,000.00 or ~~enters into an agreement to pay an amount~~ makes a  
24 payment in excess of \$10,000.00 to settle a medical malpractice claim against a person  
25 authorized by law to practice medicine in this state; such judgments or ~~agreements~~  
26 payments shall be reported to the board regardless of the dollar amount if the records of the  
27 insurer establish that there have been two or more previous judgments against or

1 settlements with a licensed physician which relate to the practice of medicine. Such notice  
2 shall be sent within 30 days after the judgment has been paid or ~~the agreement has been~~  
3 ~~entered into by the parties involved in the claim~~ a payment has been made to settle a  
4 medical malpractice claim against a person authorized by law to practice medicine in this  
5 state. Such report shall include:

6 (1) The insured's name;

7 (2) The insurer's claim number;

8 (3) The hospital where the incident occurred;

9 (4) The physician's Georgia medical license number;

10 (5) A description of the injury;

11 (6) The claimant's name;

12 (7) The patient's name;

13 (8) The insurer's name;

14 (9) The payment amount;

15 (10) The date of payment;

16 (11) If a civil action was filed, a copy of the complaint and affidavit;

17 (12) If a civil action was not filed, a copy of the claim letter from the plaintiff's attorney  
18 or the patient; and

19 (13) A copy of the insured's National Practitioner Data Bank form.

20 (c) Every insurer providing medical malpractice insurance coverage in this state, including  
21 authorized insurers, surplus lines insurers, captive insurers, risk retention groups, and  
22 persons or entities self-insured against medical malpractice claims, shall submit an annual  
23 report on or before March 31 of each year to the Commissioner containing the following  
24 information relating to the immediately preceding calendar year:

25 (1) The number of medical malpractice claims pending at the beginning of the year;

26 (2) The number of medical malpractice claims pending at the end of the year;

27 (3) The number of medical malpractice claims paid;

28 (4) The number of medical malpractice claims closed with no payment;

29 (5) The number and amounts of medical malpractice claims in which a judgment was  
30 paid, including an identification of the following:

31 (A) Highest amount;

32 (B) Lowest amount;

33 (C) Average amount; and

34 (D) Median amount;

35 (6) The number and amounts of medical malpractice claims in which a settlement was  
36 paid, including an identification of the following:

37 (A) Highest amount;

1 (B) Lowest amount;

2 (C) Average amount; and

3 (D) Median amount;

4 (7) The total premium collected;

5 (8) The total general and administrative expenses paid; and

6 (9) The total loss adjustment expenses paid.

7 (d) All information provided pursuant to subsection (c) of this Code section by an insurer  
 8 to the Commissioner or the Composite State Board of Medical Examiners shall be provided  
 9 on an aggregate basis only and shall not provide specific information on any individual  
 10 claim, payment, or settlement.

11 (e) All information submitted to the Commissioner or the Composite State Board of  
 12 Medical Examiners pursuant to subsection (b) or (c) of this Code Section shall not be  
 13 subject to the provisions of Article 4 of Chapter 18 of Title 50, relating to the inspection  
 14 of public records, and thereby shall not be disclosed or otherwise made public. However,  
 15 nothing in this subsection shall prohibit the Commissioner from using or analyzing such  
 16 information for the purpose of conducting actuarial or market analysis so long as such use  
 17 or analysis is performed in a manner which does not identify, either directly or by reference  
 18 to other publicly available information, the case, parties, or sums involved in any payment  
 19 or settlement agreement."

20 **SECTION 2.**

21 Said title is further amended by adding a new Code section 33-9-21.3 to read as follows:

22 "33-9-21.3

23 (a) Every domestic, foreign, and alien insurer that is authorized to write medical  
 24 malpractice insurance in this state shall maintain with the Commissioner copies of the  
 25 rates, rating plans, rating systems, underwriting rules, and policy or bond forms used by it.  
 26 The maintenance of rates, rating plans, rating systems, underwriting rules, and policy or  
 27 bond forms with the Commissioner by a licensed rating organization of which an insurer  
 28 is a member or subscriber will be sufficient compliance with this Code section for any  
 29 insurer maintaining membership or subscriberships in such organization, to the extent that  
 30 the insurer uses the rates, rating plans, rating systems, underwriting rules, and policy or  
 31 bond forms of such organization; provided, however, that the Commissioner, when he or  
 32 she deems it necessary, without compliance with the rule-making procedures of this title  
 33 or Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' may require any  
 34 such insurer to file the required rates, rating plans, rating systems, underwriting rules, and  
 35 policy or bond forms used independent of any filing made on its behalf or as a member of  
 36 a licensed rating organization, as the Commissioner shall deem to be necessary to ensure

1 compliance with the standards of this chapter and for the best interests of the citizens of  
2 this state.

3 (b) Any domestic, foreign, or alien insurer that is authorized to write medical malpractice  
4 insurance in this state must file with the Commissioner any rate, rating plan, rating system,  
5 or underwriting rule used in connection with such insurance. No such rate, rating plan,  
6 rating system, or underwriting rule shall become effective nor shall any premium be  
7 collected by any insurer unless the filing has been received by the Commissioner in his or  
8 her office and such filing has been approved by the Commissioner or a period of 45 days  
9 has elapsed from the date such filing was received by the Commissioner during which time  
10 such filing has not been disapproved by the Commissioner. The Commissioner shall be  
11 authorized to extend such 45 day period by no more than 45 days at his or her discretion.  
12 If a filing is disapproved, notice of such disapproval order shall be given within 90 days  
13 of receipt of filing by the Commissioner, specifying in what respects such filing fails to  
14 meet the requirements of this chapter. The filer shall be given a hearing upon written  
15 request made within 30 days after the issuance of the disapproval order and such hearing  
16 shall commence within 30 days after such request unless postponed by mutual consent.  
17 Such hearing, once commenced, may be postponed or recessed by the Commissioner only  
18 for weekends, holidays, or after normal business hours or at any time by mutual consent  
19 of all parties to the hearing. After such a hearing, the Commissioner must affirm, modify,  
20 or reverse his or her previous action within the time period provided in subsection (a) of  
21 Code Section 33-2-23 relative to orders of the Commissioner. The requirement of approval  
22 or disapproval of a rate filing by the Commissioner under this subsection shall not prohibit  
23 actions by the Commissioner regarding compliance of such rate filing with the  
24 requirements of Code Section 33-9-4 brought after such approval or disapproval.

25 (c) When a rate filing of an insurer required under subsection (b) of this Code section is  
26 not accompanied by the information upon which the insurer supports the filing and the  
27 Commissioner does not have sufficient information to determine whether the filing meets  
28 the requirements of this chapter, then the Commissioner must request in writing, within 20  
29 days of the date he or she receives the filing, the specifics of such additional information  
30 as he or she requires and the insurer shall be required to furnish such information and in  
31 such event the 45 day period provided for in subsection (b) of this Code section shall  
32 commence as of the date such information is furnished.

33 (d) When a rate filing of an insurer required under subsection (b) of this Code section will  
34 result in any overall rate increase of 10 percent within any 12 month period, the  
35 Commissioner shall order an examination of that insurer to determine the accuracy of the  
36 claim reserves, the applicability of the claim reserve practices for the loss data used in  
37 support of such filing, and any other component of the rate filing; provided, however, that,

1 in the event the overall increase is less than 25 percent within any 12 month period and the  
2 Commissioner affirmatively determines that he or she has sufficient information to evaluate  
3 such rate increase and that the cost thereof would not be justified, he or she may waive all  
4 or part of such examination. In all other rate filings required under subsection (b) of this  
5 Code section, the Commissioner may order an examination of that insurer as provided in  
6 this subsection. Such examination shall be conducted in accordance with the provisions  
7 of Chapter 2 of this title. Upon notification by the Commissioner of his or her intent to  
8 conduct such examination, the insurer shall be prohibited from placing the rates so filed in  
9 effect until such examination has been reviewed and certified by the Commissioner as  
10 being complete. Such examination, if conducted by the Commissioner, shall be reviewed  
11 and certified within 90 days of the date such rate, rating plan, rating system, or  
12 underwriting rule is filed; provided, however, that, if the Commissioner makes an  
13 affirmative finding that the examination may not be completed within the 90 day period,  
14 he or she may extend such time for one additional 60 day period. Any examination  
15 required under this Code section shall be conducted in accordance with Chapter 2 of this  
16 title.

17 (e) Rates for medical malpractice insurance shall be based upon each individual insurer's  
18 experience in this state to the extent actuarially credible. However, to the extent that an  
19 individual insurer's data is not credible, then the insurer may utilize the data of other  
20 similar admitted insurers in this state. The experience filed by the insurer shall include, at  
21 a minimum, the loss ratios, allocated and unallocated loss adjustment expenses related to  
22 claims, expenses including commissions and dividends paid, prospective investment  
23 income reasonably expected by the insurer, and pure premium data adjusted for loss  
24 development and loss trending. The insurer's submission may also include a consideration  
25 for a profit or contingency. The Commissioner is authorized to accept such rate  
26 classifications as are reasonable and necessary for compliance with this chapter.

27 (f) Notwithstanding the provisions of subsection (d) of this Code section, in the event the  
28 filing of any rate, rating plan, rating system, or underwriting rule under subsection (b) of  
29 this Code section is not necessary, in the judgment of the Commissioner, to accomplish the  
30 purposes of this chapter as set forth in Code Section 33-9-1, then the Commissioner may  
31 exempt all domestic, foreign, and alien insurers from being required to file such rate, rating  
32 plan, rating system, or underwriting rule.

33 (g) Filings required pursuant to this Code section shall be accompanied by a fee or fees as  
34 provided in Code Section 33-8-1."

**SECTION 3.**

Said title is further amended by adding a new Code Section 33-9-21.4 to read as follows:

"33-9-21.4

When a rate filing of an insurer submitted under subsection (b) of Code Section 33-9-21.3 will result in an average base rate increase greater than 25 percent within any 12 month period, the Commissioner may notify the public of such proposed rate increase and may hold a public hearing as to the appropriateness of such rate increase. The hearing shall be conducted in accordance with the provisions of Chapter 2 of this title. Any person or group that can demonstrate that they would be affected by the proposed rate increase may intervene in or be heard in such hearing in accordance with the provisions of Code Section 33-2-21."

**SECTION 4.**

Said title is further amended by striking Code Section 33-24-47, relating to notice required of termination or nonrenewal, in its entirety and inserting in lieu thereof a new Code Section 33-24-47 to read as follows:

"33-24-47.

(a) Each insurer licensed to transact business in this state which issues or issues for delivery in this state policies or contracts of insurance insuring risks or residents in this state and insuring against liability for loss of, damage to, or injury to persons or property shall comply with the provisions of this Code section. This Code section shall not apply to personal automobile or personal property and casualty insurance policies. Cancellation of a policy for failure of the named insured to discharge when due any obligations in connection with the payment of premiums or cancellation for any reason of a policy that has been in effect for less than 60 days shall be governed by the provisions of Code Section 33-24-44.

(b) A notice of termination, including a notice of cancellation or nonrenewal, by the insurer, a notice of an increase in premiums, other than an increase in premiums due to a change in risk or exposure, including a change in experience modification or resulting from an audit of auditable coverages, which exceeds 15 percent of the current policy's premium, or a notice of change in any policy provision which limits or restricts coverage shall be delivered to the insured in person or by depositing the notice in the United States mail, to be dispatched by at least first-class mail to the last address of record of the insured, at least 45 days prior to the termination date of such policy; provided, however, that a notice of cancellation or nonrenewal of a policy of workers' compensation insurance shall be controlled by the provisions of subsection (f) of this Code section. In those instances where an increase in premium exceeds 15 percent, the notice to the insured shall indicate

1 the dollar amount of the increase. The insurer may obtain a receipt provided by the United  
2 States Postal Service as evidence of mailing such notice or such other evidence of mailing  
3 as prescribed or accepted by the United States Postal Service.

4 (c) The failure of an insurer to comply with the requirements of subsection (b) of this Code  
5 section or the failure of a medical malpractice insurer to comply with the requirements of  
6 subsection (g) of this Code section shall entitle the policyholder to purchase, under the  
7 same premiums and policy terms and conditions, an additional 30 day period of insurance  
8 coverage beyond the termination date of such policy; provided, however, that the  
9 policyholder shall tender the premium amount, computed on a pro rata basis, to the insurer  
10 on or before the termination date. No provision of this Code section shall be construed as  
11 requiring the insurance coverage under a policy to be extended for more than 30 days from  
12 the termination date stated in such policy. An insurer shall not be subject to any other  
13 penalty for the failure to comply with the requirements of subsection (b) of this Code  
14 section unless the Commissioner finds, after a hearing, that such noncompliance by the  
15 insurer has occurred with such frequency as to indicate a general business practice by the  
16 insurer of noncompliance with subsection (b) of this Code section. There shall be no  
17 liability on the part of and no cause of action of any nature shall arise against the  
18 Commissioner or the Commissioner's employees or against any insurer, its authorized  
19 representatives, its agents, its employees, or any firm, person, or corporation furnishing to  
20 the insurer information as to reasons for cancellation or nonrenewal for any statement made  
21 by any of them and in written notice of cancellation or nonrenewal or in any other  
22 communication, oral or written, specifying the reasons for cancellation or nonrenewal or  
23 providing information pertaining thereto or for statements made or evidence submitted at  
24 any formal or informal hearing conducted in connection therewith.

25 (d) This Code section shall not apply to policies canceled in accordance with the  
26 provisions of Chapter 22 of this title.

27 (e) Cancellation by the insured shall be accomplished in accordance with Code Section  
28 33-24-44.1.

29 (f) A notice of cancellation or nonrenewal of a policy of workers' compensation insurance  
30 shall be dispatched to the insured by certified mail or statutory overnight delivery, return  
31 receipt requested, to the last address of record of the insured at least 75 days prior to the  
32 termination date of such policy. The workers' compensation insurer shall retain the receipt  
33 of mailing provided by the United States Postal Service as evidence of mailing.

34 (g) A notice of increase in premium of a policy of medical malpractice insurance, other  
35 than an increase in premium due to a change in risk or exposure, including a change of  
36 experience modification or resulting from an audit of auditable coverages, which exceeds  
37 15 percent of the current policy's premium shall be delivered to the insured in person or

1 by depositing the notice in the United States mail, to be dispatched by at least first-class  
2 mail to the last address of record of the insured, at least 60 days prior to the termination  
3 date of such policy. In those instances in which an increase in premium exceeds 15  
4 percent, the notice to the insured shall indicate the dollar amount of the increase. The  
5 insurer may obtain a receipt provided by the United States Postal Service as evidence of  
6 mailing such notice or such other evidence of mailing as prescribed or accepted by the  
7 United States Postal Service."

8 **SECTION 5.**

9 This Act shall become effective upon its approval by the Governor or upon its becoming law  
10 without such approval. This Act shall apply only to those rate filings that are first filed with  
11 the Commissioner on or after the effective date of this Act.

12 **SECTION 6.**

13 All laws and parts of laws in conflict with this Act are repealed.