Senate BILL NO. 437

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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A JOINT 5 UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSUBANCE."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Purpose. (1) The legislature finds that a crisis exists because of the high cost and impending unavailability of medical liability insurance. The purpose of this act is to provide an interim solution to the unavailability of such insurance. This legislation will not resolve the underlying causes of the unavailability and high cost, which extend beyond the insurance mechanism. It is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis. Accordingly, this act is enacted for a limited period of time.

19 Section 2. Definitions. As used in this act the 20 following definitions apply:

(1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by a licensed

- physician or a hospital, hospital-related facility, cr
 long-term care facility, as defined by 69-5201.
- 3 (2) "Association" means the joint underwriting
 4 association established pursuant to the provisions of this
 5 act.
- 6 (3) "Net direct premiums" mean gross direct premiums
 7 on personal injury liability insurance written pursuant to
 8 the provisions of the insurance laws of Ecotana, including
 9 the liability component of multiple peril package policies
 10 as computed by the commissioner of insurance, less return
 11 premiums or the unused or unabsorbed portions of premium
 12 deposits.
- 13 Section 3. Joint underwriting association. (1) A joint 14 underwriting association is bereby created, consisting of all insurers authorized to write and engaged in writing 16 within this state on a direct basis insurance against legal 17 liability for the death, injury, or disability of any person pursuant to the provisions of Title 40, including insurers covering the perils in multiple peril package policies. Each 19 of these insurers shall be a member of the association and 20 21 shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. 22
- 23 The purpose of the association is to provide medical
- 24 liability insurance on a self-supporting basis.
- 25 (2) The association may not commence underwriting

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- operations for physicians until the commissioner of insurance, after due bearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.
- 8 (3) The association may not commence underwriting 9 operations for hospitals, hospital-related facilities, or 10 long-term care facilities until the commissioner of 11 insurance, after due hearing and investigation, has 12 determined that medical liability insurance is not readily 13 available for these facilities in the voluntary market. Upon 14 that determination the association is authorized to issue 15 policies of medical liability insurance to hospitals. 16 hospital-related facilities, or long-term care facilities 17 but need not be the exclusive agency through which this 18 insurance may be written on a primary basis in this state.
 - (4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, hospital-related facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the

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voluntary market.

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- (5) The association has, pursuant to the provisions of this act and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:
- 5 (a) subject to limits as specified in the plan of operation but not to exceed \$1 million for each claimant under one policy and \$3 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of insurance to applicants, including incidental coverages:
- 10 (b) underwrite the insurance and assume reinsurance
 11 from its members: and
 - (c) cede reinsurance.
 - (6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this act to be fully effective and operative upon order of the commissioner of insurance.
 - (b) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the

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- association, assessment of members to defray losses and
 expenses, commission arrangements, reasonable and objective
 underwriting standards, acceptance and cession of
 reinsurance, appointment of servicing carriers, and
 procedures for determining amounts of insurance to be
 provided by the association.
- 7 (c) The plan of operation shall provide that any 8 profit achieved by the association be added to the reserves 9 of the association or returned to the policyholders as a 10 dividend.
- 11 (d) Amendments to the plan of operation may be made by
 12 the directors of the association, subject to the approval of
 13 the commissioner of insurance, or shall be made at the
 14 direction of the commissioner.

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- Section 4. Procedures. (1) (a) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.
- 20 (b) If the association determines that the applicant
 21 meets the underwriting standards of the association as
 22 prescribed in the plan of operation and there is no unpaid,
 23 uncontested premium due from the applicant for prior
 24 insurance, as shown by the insured baying failed to make
 25 written objections to the premium charges within 30 days

- 1 after billing, then the association, upon receipt of the
 2 premium or such portion thereof as is prescribed in the plan
 3 of operation, shall cause to be issued a policy of
 4 professional liability insurance for a term of 1 year.
- (2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to 7 the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and 10 prospective loss and expense experience for medical 11 liability insurance of all of the member companies of the 12 association, trends in the frequency and severity of 13 losses, the investment income of the association, and such other information as the commissioner of insurance may 14 15 require.
- (b) Within such time as the commissioner of insurance 16 directs, the association shall submit for the approval of 18 the commissioner an initial filing, in proper form, of 19 policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be 20 written by the association. In the event the commissioner 22 disapproves the initial filing, in whole or in part, the 23 association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to 25 approve the filing or amended filing within the time

- specified, he shall promulgate the policy forms,
 classifications, rates, rating plans, and rules to be used
 by the association in writing such insurance.
- 4 (c) Any deficit sustained by the association in any 1
 5 year shall be recouped pursuant to the plan of operation and
 6 the rating plan then in effect by one or both of the
 7 following procedures:
 - (i) an assessment upon the policyholders; or

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- 9 (ii) a rate increase applicable prospectively.
 - (d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupsent through policyholder assessment or presium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant presium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.
 - (e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in [section 4]. Contributions shall be reimbursed to the members following

- recoupment as provided in subsection (2) (d) of this section.
- 2 (f) The commissioner of insurance shall consider
 3 requiring the association to effer policies on both a claims
 4 made and occurrence basis so that applicants may select
 5 either policy at their option. However, the premiur rate
 6 charged for both claims made and occurrence policies shall
 7 be at rates established on an actuarially sound basis and
 8 which are calculated to be self-supporting.
- 9 Section 5. Participation. All insurers which are 10 members of the association shall participate in its 11 writings, expenses, profits, and losses in the proportion 12 that the net direct premiums of each member written during 13 the preceding calendar year, after excluding that portion of 14 premiums attributable to the operation of the association, 15 bears to the aggregate net direct premiums written in this 16 state by all members of the association. Each insurer's 17 participation in the association shall be determined 18 annually on the basis of the net direct premiums written 19 during the preceding calendar year as reported in the annual 20 statements and other reports filed by the insurer with the 21 commissioner of insurance. No member is obligated in any 1 22 year to reimburse the association on account of its 23 proportionate share in the deficit from operations of the 24 association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed

shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this section.

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Section 6. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner of insurance as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

25 Section 7. Appeals and judicial review. (1) With

respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this act, his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling action or decision

7 (2) All orders of the commissioner of insurance made 8 pursuant to this act are subject to judicial review as 9 provided in Title 40.

by or on behalf of the association.

10 Section 8. Privileged communications. There is no 11 liability on the part of and no cause of action of any 12 nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the 13 14 commissioner of insurance or his authorized representatives 15 for any statements made in good faith by them in any reports 16 or communications concerning risks insured or to be insured 17 by the association or at any administrative hearings 18 conducted in connection therewith.

file in the effice of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain the matters and information prescribed and shall be in a form approved by the commissioner. The commissioner may

at any time require the association to furnish additional 1 information with respect to its transactions, condition, or 2 3 any matter connected therewith considered to be material and of assistance in evaluating the score, operation, and 5 experience of the association. Section 10. Examinations of association's affairs. The 6 7 commissioner of insurance shall make an examination into the 8 affairs of the association at least annually. The examination shall be conducted and the report thereon filed in the manner provided by law. The expenses of every 10 11 examination shall be borne and paid by the association in the manner prescribed by law. 12 13 Section 11. Effective date. This act is effective on its passage and approval and expires on December 31, 1979, 14 after which no new policies may be issued by the 15 association. However, all issued policies continue in force 16 17 until their expiration date.

-End-

STATE OF MONTANA

REQUEST	NO.	 622 –	-77

FISCAL NOTE

Form BD-15

	e
for Senate Bill 437 pursuant to Chapte 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.	
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to member	۲۹
of the Legislature upon request.	****

DESCRIPTION OF PROPOSED LUGISLATION:

An act to establish a joint underwriting association for medical liability insurance.

FISCAL IMPACT:

None, unless the Commissioner of Insurance determines that the Association is required to provide coverage. If this is case, approximately \$12,000 per year for actuarial services would be required.

Kinhard &. 2 ranger BUDGET DIRECTOR

BODGET DIRECTOR

Office of Budget and Program Planning

Date: 3.18--77

Approved by Committee on Business and Industry

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19 Section 2. Definitions. As used in this act the 20 following definitions apply:

(1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by a licensed

- physician or a hospital, hospital-related facility, cr
 long-term care facility, as defined by 69-5201.
- 3 (2) "Association" means the joint underwriting
 4 association established pursuant to the provisions of this
 5 act.
- (3) "Net direct premiums" mean gross direct premiums

 on personal injury liability insurance written pursuant to

 the provisions of the insurance laws of Montana, including

 the liability component of multiple peril package policies

 as computed by the commissioner of insurance, less return

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- 13 Section 3. Joint underwriting association. (1) A joint underwriting association is hereby created, consisting of 14 15 all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal 16 liability for the death, injury, or disability of any person 17 pursuant to the provisions of Title 40, including insurers 18 19 covering the perils in multiple peril package policies. Each of these insurers shall be a member of the association and 20 21 shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. 22 23 The purpose of the association is to provide medical 24 liability insurance on a self-supporting basis.
- 25 (2) The association may not commence underwriting

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1 operations for physicians until the commissioner of 2 insurance, after due hearing and investigation, has 3 determined that medical liability insurance cannot be made þ available for physicians in the voluntary market. Open that 5 determination the association is the exclusive agency 6 through which medical liability insurance may be written in 7 this state on a primary basis for physicians.

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- (3) The association may not commence underwriting operations for hospitals, hospital-related facilities, or long-term care facilities until the commissioner of insurance, after due bearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals. hospital-related facilities, or long-term care facilities but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.
- (4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals. hospital-related facilities, or long-term care facilities. the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the

voluntary market.

- 2 (5) The association has, pursuant to the provisions of 3 this act and the plan of operation with respect to medical liability insurance, the power on behalf of its members to: 5 (a) subject to limits as specified in the plan of operation but not to exceed \$1 million for each claimant under one policy and \$3 million for all claimants under one policy in any 1 year, issue or cause to be issued policies 9 of insurance to applicants, including incidental coverages; 10 (b) underwrite the insurance and assume reinsurance
- from its members; and 12 (c) cede reinsurance.

- 13 (6) (a) Within 45 days following the creation of the 14 association, the directors of the association shall submit 15 to the commissioner of insurance for his review a proposed 16 plan of operation consistent with the provisions of this act 17 to be fully effective and operative upon order of the 18 commissioner of insurance.
- 19 (b) The plan of operation shall provide for economic. 20 fair, and nondiscriminatory administration and for the 21 prompt and efficient provision of medical liability insurance and shall contain other provisions including but 23 not limited to preliminary assessment of all members for initial expenses necessary to commence operations, 24 establishment of necessary facilities, management of the

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- association, assessment of members to defray losses and
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- (d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or shall be made at the direction of the commissioner.
- section 4. Procedures. (1) (a) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.
- (b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days

- 1 after billing, then the association, upon receipt of the 2 premium or such portion thereof as is prescribed in the plan 3 of operation, shall cause to be issued a policy of 4 professional liability insurance for a term of 1 year.
- (2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of 9 Montana, giving due consideration to the past and 10 prospective loss and expense experience for medical liability insurance of all of the member companies of the 11 12 association, trends in the frequency and severity of 13 losses, the investment income of the association, and such other information as the commissioner of insurance may 14 15 require.
- 16 (b) Within such time as the commissioner of insurance 17 directs, the association shall submit for the approval of 18 the commissioner an initial filing, in proper form, of 19 policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association. In the event the commissioner 21 22 disapproves the initial filing, in whole or in part, the 23 association shall amend it is accordance with the direction of the commissioner. If the commissioner is unable to 24 approve the filing or amended filing within the time 25

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specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

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- 4 (c) Any deficit sustained by the association in any 1
 5 year shall be recouped pursuant to the plan of operation and
 6 the rating plan then in effect by one or both of the
 7 following procedures:
 - (i) an assessment upon the policyholders; or
 - (ii) a rate increase applicable prospectively.
 - (d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.
 - (e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in [section 4]. Contributions shall be reimbursed to the members following

- recoupment as provided in subsection (2)(d) of this section.
- 2 (f) The commissioner of insurance shall consider
 3 requiring the association to offer policies on both a claims
 4 made and occurrence basis so that applicants may select
 5 either policy at their option. However, the premium rate
 6 charged for both claims made and occurrence policies shall
 7 be at rates established on an actuarially sound basis and
 8 which are calculated to be self-supporting.
- 9 Section 5. Participation. All insurers which are 10 members of the association shall participate in its writings, expenses, profits, and losses in the proportion 11 12 that the net direct premiums of each member written during 13 the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, 14 15 bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's 17 participation in the association shall be determined 18 annually on the basis of the net direct presides written during the preceding calendar year as reported in the annual 19 20 statements and other reports filed by the insurer with the commissioner of insurance. No member is obliquated in any 1 21 22 year to reimburse the association on account of its 23 proportionate share in the deficit from operations of the association in that year in excess of 1% of its surplus to 24 25 policyholders, and the aggregate amount not so reimbursed

shall be reallocated among the remaining members in 1 Z accordance with the method of determining participation prescribed in this section after excluding from the 3 computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the 5 deficit from operations allocated to all members of the 7 association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this 10 11 section.

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- respect to those items the plan of operation defines as
 appealable matters, an applicant to the association, a
 person insured pursuant to this act, his representative, or
 an affected insurer may appeal to the commissioner of
 insurance within 30 days after a ruling action or decision
- 7 (2) All orders of the commissioner of insurance made 8 pursuant to this act are subject to judicial review as 9 provided in Title 40.

by or cm behalf of the association.

- 10 Section 8. Privileged communications. There is no 11 liability on the part of and no cause of action of any 12 nature may arise against the association, its agents or 13 employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representatives 14 15 for any statements made in good faith by them in any reports 16 or communications concerning risks insured or to be insured by the association or at any administrative hearings 17 18 conducted in connection therewith.
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 respect to its transactions, condition, operations, and
 affairs during the preceding year. The statement shall
 contain the matters and information prescribed and shall be
 in a form approved by the commissioner. The commissioner may

- 1 at any time require the association to furnish additional
- 2 information with respect to its transactions, condition, or
- 3 any matter connected therewith considered to be material and
- of assistance in evaluating the scope, operation, and
- 5 experience of the association.
- 6 Section 10. Framinations of association's affairs. The
- 7 commissioner of insurance shall make an examination into the
- 8 affairs of the association at least annually. The
- 9 examination shall be conducted and the report thereon filed
- 10 in the manner provided by law. The expenses of every
- 11 examination shall be borne and paid by the association in
- 12 the manner prescribed by law.
- 13 Section 11. Effective date. This act is effective on
- 14 its passage and approval and expires on December 31, 1979,
- 15 after which no new policies may be issued by the
- 16 association. However, all issued policies continue in force
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A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE. *

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8 Section 1. Purpose. (1) The legislature finds that a crisis exists because of the high cost and impending 9 10 unavailability of medical liability insurance. The purpose of this act is to provide an interim solution to the 11 12 unavailability of such insurance. This legislation will not 13 resolve the underlying causes of the unavailability and high 14 cost, which extend beyond the insurance sechanism. It is 15 anticipated that future legislation will deal on a scre 16 permanent basis with the root causes of the current crisis. 17 Accordingly, this act is enacted for a limited period of 18 time.

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- physician or a hospital, hospital-related facility, or 2 long-term care facility, as defined by 69-5201.
- 3 (2) "Association" means the joint underwriting association established pursuant to the provisions of this 5 act.
- 6 (3) "Net direct premiums" mean gross direct premiums 7 on personal injury liability insurance written pursuant to the provisions of the insurance laws of Bontana, including the liability component of multiple peril package policies 9 10 as computed by the commissioner of insurance. less return 11 premiums or the unused or unabsorbed portions of premium 12 deposits.

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- 25 (2) The association may not commence underwriting

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- (6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this act 17 to be fully effective and operative upon order of the commissioner of insurance.
- (b) The plan of operation shall provide for economic, 19 20 fair, and nondiscriminatory administration and for the 21 prompt and efficient provision of medical liability insurance and shall contain other provisions including but 22 23 not limited to preliminary assessment of all members for initial expenses necessary to commence operations, 24 25 establishment of necessary facilities, management of the

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 - Section 4. Procedures. (1) (a) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.
 - (b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for price insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days

- after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of 3 professional liability insurance for a term of 1 year.
- (2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics 7 relating thereto are subject to the insurance laws of Bontana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the 11 association, trends in the frequency and severity of 12 losses, the investment income of the association, and such 13 other information as the commissioner of insurance may 15 require.
- (b) Within such time as the commissioner of insurance 16 17 directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of 18 policy forms, classifications, rates, rating plans, and 19 20 rating rules applicable to medical liability insurance to be written by the association. In the event the commissioner 21 22 disapproves the initial filing, in whole cr in part, the 23 association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to 24 25 approve the filing or amended filing within the time

- specified, he shall promulgate the policy forms,
 classifications, rates, rating plans, and rules to be used
 by the association in writing such insurance.
- 4 (c) Any deficit sustained by the association in any 1
 5 year shall be recouped pursuant to the plan of operation and
 6 the rating plan then in effect by one or both of the
 7 following procedures:
 - (i) an assessment upon the policyholders; or
 - (ii) a rate increase applicable prospectively.

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- (d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupsent through policyholder assessment or preside rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant preside rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.
- (e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in [section 4]. Contributions shall be reimbursed to the members following

- recoupment as provided in subsection (2)(d) of this section.
- 2 (f) The commissioner of insurance shall consider
 3 requiring the association to effer policies on both a claims
 4 made and occurrence basis so that applicants may select
 5 either policy at their option. However, the premium rate
 6 charged for both claims made and occurrence policies shall
 7 be at rates established on an actuarially sound basis and
 8 which are calculated to be self-supporting.
- Section 5. Participation. All insurers which are 9 members of the association shall participate in its 10 writings, expenses, profits, and lesses in the proportion 11 12 that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of 13 premiums attributable to the operation of the association. 14 15 bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's 16 17 participation in the association shall be determined 18 annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual 19 20 statements and other reports filed by the insurer with the commissioner of insurance. No member is obliquated in any 1 21 22 year to reimburse the association on account of its proportionate share in the deficit from operations of the 23 24 association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed 25

shall be reallocated among the remaining members in ı 2 accordance with the method of determining participation prescribed in this section after excluding from the 3 computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the deficit from operations allocated to all members of the 7 association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this 10 section. 11

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Section 6. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner of insurance as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

25 Section 7. Appeals and judicial review. (1) With

respect to those items the plan of operation defires as
appealable matters, an applicant to the association, a
person insured pursuant to this act, his representative, or
an affected insurer may appeal to the commissioner of
insurance within 30 days after a ruling action or decision
by or on behalf of the association.

7 (2) All orders of the commissioner of insurance made 8 pursuant to this act are subject to judicial review as 9 provided in Title 40.

10 Section 8. Privileged communications. There is no 11 liability on the part of and no cause of action of any 12 nature may arise against the association, its agents or 13 employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representatives 14 15 for any statements made in good faith by them in any reports 16 or communications concerning risks insured or to be insured by the association or at any administrative hearings 17 18 conducted in connection therewith.

19 Section 9. Annual statements. The association shall
20 file in the effice of the commissioner of insurance annually
21 on or before March 1 a statement containing information with
22 respect to its transactions, condition, operations, and
23 affairs during the preceding year. The statement shall
24 contain the matters and information prescribed and shall be
25 in a form approved by the commissioner. The commissioner may

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1 at any time require the association to furnish additional

2 information with respect to its transactions, condition, or

3 any matter connected therewith considered to be material and

of assistance in evaluating the scope, operation, and

5 experience of the association.

6 Section 10. Examinations of association's affairs. The

7 commissioner of insurance shall make an examination into the

8 affairs of the association at least annually. The

9 examination shall be conducted and the report thereon filed

10 in the manner provided by law. The expenses of every

11 examination shall be borne and paid by the association in

12 the manner prescribed by law.

13 Section 11. Effective date. This act is effective on

14 its passage and approval and expires on December 31, 1979,

15 after which no new policies may be issued by the

16 association. However, all issued policies continue in force

17 until their expiration date.

-End-

45th Legislature SB 0437/02

1	SENATE BILL NO. 437
2	INTRODUCED BY DUNKLE
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A JOINT
5	UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE.
6	
1	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
8	Section 1. Purpose. {1} The legislature finds that a
9	crisis exists because of the high cost and impending
16	unavailability of medical liability insurance. The purpose
11	of this act is to provide an interim solution to the
12	unavailability of such insurance. This legislation will not
13	resolve the underlying causes of the unavailability and high
14	cost, which extend beyond the insurance mechanism. It is
15	anticipated that future legislation will deal on a more
16	permanent basis with the root causes of the current crisis.
17	Accordingly, this act is enacted for a limited period of
18	time.
19	Section 2. Definitions. As used in this act the
20	following definitions apply:
21	(1) "Medical liability insurance" means insurance
22	coverage against the legal liability of the insured and
23	against loss, damage, or expense incident to a claim arising

- physician or a hospital, hospital-related facility, or long-term care facility, as defined by 69-5201.
- 3 (2) "Association" means the joint underwriting
 4 association established pursuant to the provisions of this
 5 act.
- 6 (3) "Net direct premiums" mean gross direct premiums
 7 on personal injury liability insurance written pursuant to
 8 the provisions of the insurance laws of Montana, including
 9 the liability component of multiple peril package policies
 10 as computed by the commissioner of insurance, less return
 11 premiums or the unused or unabsorbed portions of premium
 12 deposits.

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- Section 3. Joint underwriting association. (1) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of Title 40, including insurers covering the perils in multiple peril package policies. Each of these insurers shall be a member of the association and shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.
- 25 (2) The association may not commence underwriting

out of the death or injury of any person as the result of

negligence in rendering professional service by a licensed

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operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

- operations for hospitals, hospital-related facilities, or long-term care facilities until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, hospital-related facilities, or long-term care facilities but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.
- (4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals. hospital-related facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the

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voluntary market.

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- (5) The association has, pursuant to the provisions of this act and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:
- (a) subject to limits as specified in the plan of operation but not to exceed \$1 million for each claimant under one policy and \$3 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;
- 10 (b) underwrite the insurance and assume reinsurance
 11 from its members; and
 - (c) cede reinsurance.
 - (6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this act to be fully effective and operative upon order of the commissioner of insurance.
 - (b) The plan of operation shall provide for economic+
 fair, and nondiscriminatory administration and for the
 prompt and efficient provision of medical liability
 insurance and shall contain other provisions including but
 not limited to preliminary assessment of all members for
 initial expenses necessary to commence operations+
 establishment of necessary facilities, management of the

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association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

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- (c) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.
- (d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or shall be made at the direction of the commissioner.
- Section 4. Procedures. (1) (a) A licensed physician or nospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.
- (b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days

- after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of professional liability insurance for a term of 1 year.
- (2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to 6 7 the insurance written by the association and statistics relating thereto are subject to the insurance laws of 9 Montana, giving due consideration to the past and prospective loss and expense experience for medical 10 11 liability insurance of all of the member companies of the 12 association, trends in the frequency and severity of 13 losses, the investment income of the association, and such 14 other information as the commissioner of insurance may 15 require.
- (b) Within such time as the commissioner of insurance 16 17 directs, the association shall submit for the approval of 18 the commissioner an initial filing, in proper form, of 19 policy forms, classifications, rates, rating plans, and 20 rating rules applicable to medical liability insurance to be 21 written by the association. In the event the commissioner 22 disapproves the initial filing, in whole or in part, the 23 association shall amend it in accordance with the direction 24 of the commissioner. If the commissioner is unable to 25 approve the filing or amended filing within the time

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- specified, he shall promulgate the policy forms,
 classifications, rates, rating plans, and rules to be used
 by the association in writing such insurance.
 - (c) Any deficit sustained by the association in any 1 year shall be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

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- (i) an assessment upon the policyholders; or
- (ii) a rate increase applicable prospectively.
- (d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.
- (e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in [section 4]. Contributions shall be reimbursed to the members following

recoupment as provided in subsection (2)(d) of this section.

- (f) The commissioner of insurance shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies shall be at rates established on an actuarially sound basis and which are calculated to be self-supporting.
- Section 5. Participation. All insurers which are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner of insurance. No member is obligated in any 1 year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed

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ì shall be reallocated among the remaining members in accordance with the method of determining participation 2 3 prescribed in this section after excluding from the computation the total net direct premiums of all members not sparing in the excess deficit. In the event that the • deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their 7 respective surplus to policyholders, the amount of the 8 9 deficit shall be allocated to each member in accordance with 10 the method of determining participation prescribed in this 11 section.

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Section 6. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner of insurance as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

25 Section 7. Appeals and judicial review. (1) With

respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this act, his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling action or decision by or on behalf of the association.

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(2) All orders of the commissioner of insurance made pursuant to this act are subject to judicial review as provided in Title 40.

10 Section 8. Privileged communications. There is no 11 liability on the part of and no cause of action of any 12 nature may arise against the association, its agents or 13 employees, an insurer, a licensed agent or broker, or the 14 commissioner of insurance or his authorized representatives 15 for any statements made in good faith by them in any reports ló or communications concerning risks insured or to be insured 17 by the association or at any administrative hearings 18 conducted in connection therewith.

Section 9. Annual statements. The association shall file in the office of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain the matters and information prescribed and shall be in a form approved by the commissioner. The commissioner may

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at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

 Section 10. Examinations of association's affairs. The commissioner of insurance shall make an examination into the affairs of the association at least annually. The examination shall be conducted and the report thereon filed in the manner provided by law. The expenses of every examination shall be borne and paid by the association in the manner prescribed by law.

Section 11. Effective date. This act is effective on its passage and approval and expires on December 31, 1979, after which no new policies may be issued by the association. However, all issued policies continue in force until their expiration date.

-End-