

1 *Senate* BILL NO. 437
 2 INTRODUCED BY *D. Miller*-----
 3

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

6
 7 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
 10 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
 24 out of the death or injury of any person as the result of
 25 negligence in rendering professional service by a licensed

1 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
 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.

13 Section 3. Joint underwriting association. (1) A joint
 14 underwriting association is hereby created, consisting of
 15 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
 18 pursuant to the provisions of Title 40, including insurers
 19 covering the perils in multiple peril package policies. Each
 20 of these insurers shall be a member of the association and
 21 shall remain a member as a condition of its authority to
 22 continue to transact this kind of insurance in this state.
 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

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
 4 available for physicians in the voluntary market. Upon 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.

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.

19 (4) If the commissioner of insurance determines at any
 20 time that medical liability insurance can be made available
 21 in the voluntary market for either physicians or hospitals,
 22 hospital-related facilities, or long-term care facilities,
 23 the association shall thereby cease its underwriting
 24 operations for the medical liability insurance which the
 25 commissioner has determined can be made available in the

1 voluntary market.

2 (5) The association has, pursuant to the provisions of
 3 this act and the plan of operation with respect to medical
 4 liability insurance, the power on behalf of its members to:

5 (a) subject to limits as specified in the plan of
 6 operation but not to exceed \$1 million for each claimant
 7 under one policy and \$3 million for all claimants under one
 8 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
 11 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
 22 insurance and shall contain other provisions including but
 23 not limited to preliminary assessment of all members for
 24 initial expenses necessary to commence operations,
 25 establishment of necessary facilities, management of the

1 association, assessment of members to defray losses and
 2 expenses, commission arrangements, reasonable and objective
 3 underwriting standards, acceptance and cession of
 4 reinsurance, appointment of servicing carriers, and
 5 procedures for determining amounts of insurance to be
 6 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.

15 Section 4. Procedures. (1) (a) A licensed physician or
 16 hospital, on or after the effective date of the plan of
 17 operation, is entitled to apply to the association for
 18 coverage. The application may be made on behalf of an
 19 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 having 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.

5 (2) (a) The rates, rating plans, rating rules, rating
 6 classifications, territories, and policy forms applicable to
 7 the insurance written by the association and statistics
 8 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
 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.

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
 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

1 specified, he shall promulgate the policy forms,
2 classifications, rates, rating plans, and rules to be used
3 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:

- 8 (i) an assessment upon the policyholders; or
- 9 (ii) a rate increase applicable prospectively.

10 (d) Effective after the initial year of operation,
11 rates, rating plans, rating rules, and any provision for
12 recoupment through policyholder assessment or premium rate
13 increase shall be based upon the association's loss and
14 expense experience, together with such other information
15 based upon that experience as the commissioner of insurance
16 considers appropriate. The resultant premium rates shall be
17 on an actuarially sound basis and shall be calculated to be
18 self-supporting.

19 (e) In the event that sufficient funds are not
20 available for the sound financial operation of the
21 association, pending recoupment as provided in subsection
22 (2) (d) of this section, all members shall on a temporary
23 basis contribute to the financial requirements of the
24 association in the manner provided for in [section 4].
25 Contributions shall be reimbursed to the members following

1 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
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
25 policyholders, and the aggregate amount not so reimbursed

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

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

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

1 respect to those items the plan of operation defines as
 2 appealable matters, an applicant to the association, a
 3 person insured pursuant to this act, his representative, or
 4 an affected insurer may appeal to the commissioner of
 5 insurance within 30 days after a ruling action or decision
 6 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
 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.

19 Section 9. Annual statements. The association shall
 20 file in the office 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

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
4 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-

STATE OF MONTANA

REQUEST NO. 622-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 15, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 437 pursuant to Chapter 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 members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

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.

Richard L. Drayton
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3.18-77

Approved by Committee
on Business and Industry

Senate BILL NO. 437
Dunbar

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2

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1 physician or a hospital, hospital-related facility, or
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22 continue to transact this kind of insurance in this state.
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25 (2) The association may not commence underwriting

1 operations for physicians until the commissioner of
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 18 coverage. The application may be made on behalf of an
 19 applicant by a broker or agent authorized by the applicant.

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 23 uncontested premium due from the applicant for prior
 24 insurance, as shown by the insured having failed to make
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 11 liability insurance of all of the member companies of the
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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
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 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

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

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 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:

8 (i) an assessment upon the policyholders; or

9 (ii) a rate increase applicable prospectively.

10 (d) Effective after the initial year of operation,
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 12 recoupment through policyholder assessment or premium rate
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 14 expense experience, together with such other information
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 16 considers appropriate. The resultant premium rates shall be
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 20 available for the sound financial operation of the
 21 association, pending recoupment as provided in subsection
 22 (2)(d) of this section, all members shall on a temporary
 23 basis contribute to the financial requirements of the
 24 association in the manner provided for in [section 4].
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 2 INTRODUCED BY *Dubler*

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 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
 22 insurance and shall contain other provisions including but
 23 not limited to preliminary assessment of all members for
 24 initial expenses necessary to commence operations,
 25 establishment of necessary facilities, management of the

1 association, assessment of members to defray losses and
 2 expenses, commission arrangements, reasonable and objective
 3 underwriting standards, acceptance and cession of
 4 reinsurance, appointment of servicing carriers, and
 5 procedures for determining amounts of insurance to be
 6 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.

15 Section 4. Procedures. (1) (a) A licensed physician or
 16 hospital, on or after the effective date of the plan of
 17 operation, is entitled to apply to the association for
 18 coverage. The application may be made on behalf of an
 19 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 having 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.

5 (2) (a) The rates, rating plans, rating rules, rating
 6 classifications, territories, and policy forms applicable to
 7 the insurance written by the association and statistics
 8 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
 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.

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
 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

1 specified, he shall promulgate the policy forms,
2 classifications, rates, rating plans, and rules to be used
3 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:

8 (i) an assessment upon the policyholders; or

9 (ii) a rate increase applicable prospectively.

10 (d) Effective after the initial year of operation,
11 rates, rating plans, rating rules, and any provision for
12 recoupment through policyholder assessment or premium rate
13 increase shall be based upon the association's loss and
14 expense experience, together with such other information
15 based upon that experience as the commissioner of insurance
16 considers appropriate. The resultant premium rates shall be
17 on an actuarially sound basis and shall be calculated to be
18 self-supporting.

19 (e) In the event that sufficient funds are not
20 available for the sound financial operation of the
21 association, pending recoupment as provided in subsection
22 (2)(d) of this section, all members shall on a temporary
23 basis contribute to the financial requirements of the
24 association in the manner provided for in [section 4].
25 Contributions shall be reimbursed to the members following

1 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
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
25 policyholders, and the aggregate amount not so reimbursed

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

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

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

1 respect to those items the plan of operation defines as
 2 appealable matters, an applicant to the association, a
 3 person insured pursuant to this act, his representative, or
 4 an affected insurer may appeal to the commissioner of
 5 insurance within 30 days after a ruling action or decision
 6 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
 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.

19 Section 9. Annual statements. The association shall
 20 file in the office 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

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
4 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-

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
7 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
10 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
24 out of the death or injury of any person as the result of
25 negligence in rendering professional service by a licensed

REFERENCE BILL

1 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
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.

13 Section 3. Joint underwriting association. (1) A joint
14 underwriting association is hereby created, consisting of
15 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
18 pursuant to the provisions of Title 40, including insurers
19 covering the perils in multiple peril package policies. Each
20 of these insurers shall be a member of the association and
21 shall remain a member as a condition of its authority to
22 continue to transact this kind of insurance in this state.
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

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
 4 available for physicians in the voluntary market. Upon 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.

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.

19 (4) If the commissioner of insurance determines at any
 20 time that medical liability insurance can be made available
 21 in the voluntary market for either physicians or hospitals,
 22 hospital-related facilities, or long-term care facilities,
 23 the association shall thereby cease its underwriting
 24 operations for the medical liability insurance which the
 25 commissioner has determined can be made available in the

1 voluntary market.

2 (5) The association has, pursuant to the provisions of
 3 this act and the plan of operation with respect to medical
 4 liability insurance, the power on behalf of its members to:

5 (a) subject to limits as specified in the plan of
 6 operation but not to exceed \$1 million for each claimant
 7 under one policy and \$3 million for all claimants under one
 8 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
 11 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
 22 insurance and shall contain other provisions including but
 23 not limited to preliminary assessment of all members for
 24 initial expenses necessary to commence operations,
 25 establishment of necessary facilities, management of the

1 association, assessment of members to defray losses and
 2 expenses, commission arrangements, reasonable and objective
 3 underwriting standards, acceptance and cession of
 4 reinsurance, appointment of servicing carriers, and
 5 procedures for determining amounts of insurance to be
 6 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.

15 Section 4. Procedures. (1) (a) A licensed physician or
 16 hospital, on or after the effective date of the plan of
 17 operation, is entitled to apply to the association for
 18 coverage. The application may be made on behalf of an
 19 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 having 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.

5 (2) (a) The rates, rating plans, rating rules, rating
 6 classifications, territories, and policy forms applicable to
 7 the insurance written by the association and statistics
 8 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
 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.

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
 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

1 specified, he shall promulgate the policy forms,
2 classifications, rates, rating plans, and rules to be used
3 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:

8 (i) an assessment upon the policyholders; or

9 (ii) a rate increase applicable prospectively.

10 (d) Effective after the initial year of operation,
11 rates, rating plans, rating rules, and any provision for
12 recoupment through policyholder assessment or premium rate
13 increase shall be based upon the association's loss and
14 expense experience, together with such other information
15 based upon that experience as the commissioner of insurance
16 considers appropriate. The resultant premium rates shall be
17 on an actuarially sound basis and shall be calculated to be
18 self-supporting.

19 (e) In the event that sufficient funds are not
20 available for the sound financial operation of the
21 association, pending recoupment as provided in subsection
22 (2)(d) of this section, all members shall on a temporary
23 basis contribute to the financial requirements of the
24 association in the manner provided for in [section 4].
25 Contributions shall be reimbursed to the members following

1 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
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
25 policyholders, and the aggregate amount not so reimbursed

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

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

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

1 respect to those items the plan of operation defines as
 2 appealable matters, an applicant to the association, a
 3 person insured pursuant to this act, his representative, or
 4 an affected insurer may appeal to the commissioner of
 5 insurance within 30 days after a ruling action or decision
 6 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
 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.

19 Section 9. Annual statements. The association shall
 20 file in the office 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

SB 0437/02

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
4 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-