

HOUSE BILL NO. 658

INTRODUCED BY RAMIREZ, SPAETH

IN THE HOUSE

February 4, 1985	Introduced and referred to Committee on Business and Labor.
February 13, 1985	Committee recommend bill do pass. Report adopted.
February 14, 1985	Bill printed and placed on members' desks.
February 16, 1985	Second reading, do pass.
February 18, 1985	Considered correctly engrossed.
February 19, 1985	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 21, 1985	Introduced and referred to Committee on Business and Industry.
March 21, 1985	Committee recommend bill be concurrent in. Report adopted.
March 23, 1985	Second reading, concurred in.
March 26, 1985	Third reading, concurred in. Ayes, 49; Noes, 1. Returned to House.

IN THE HOUSE

March 27, 1985	Received from Senate. Sent to enrolling. Reported correctly enrolled.
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1 HOUSE BILL NO. 658
 2 INTRODUCED BY Ramsey Smith
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4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A JOINT
 5 UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE;
 6 AND PROVIDING A TERMINATION DATE."
 7

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

9 Section 1. Purpose. The legislature finds that an
 10 emergency situation exists because of the high cost and
 11 impending unavailability of medical liability insurance. The
 12 purpose of [this act] is to provide an interim solution to
 13 the unavailability of such insurance, if such insurance
 14 becomes unavailable prior to the next session of the
 15 legislature. Accordingly, [this act] is enacted for a
 16 limited period of time.

17 Section 2. Definitions. As used in [this act], the
 18 following definitions apply:

19 (1) "Association" means the joint underwriting
 20 association established pursuant to the provisions of [this
 21 act].

22 (2) "Medical liability insurance" means insurance
 23 coverage against legal liability of the insured and against
 24 loss, damage, or expense incident to a claim arising out of
 25 the death or injury of any person as a result of negligence

1 in rendering professional service by a licensed physician or
 2 a hospital, health care facility, or long-term care
 3 facility, as defined by 50-5-101.

4 (3) "Net direct premiums" means gross direct premiums
 5 on personal injury liability insurance written pursuant to
 6 the provisions of the insurance laws of Montana, including
 7 the liability component of multiple peril package policies
 8 as computed by the commissioner of insurance, less return
 9 premiums or the unused or unabsorbed portions of premium
 10 deposits.

11 Section 3. Joint underwriting association. (1) A
 12 joint underwriting association is created, consisting of all
 13 insurers authorized to write and engaged in writing within
 14 this state on a direct basis insurance against legal
 15 liability for the death, injury, or disability of any person
 16 pursuant to the provisions of [Title 33], including insurers
 17 covering the perils in multiple peril package policies. Each
 18 of these insurers shall remain a member of the association
 19 as a condition of its authority to continue to transact this
 20 kind of insurance in this state. The purpose of the
 21 association is to provide medical liability insurance on a
 22 self-supporting basis.

23 (2) The association may not commence underwriting
 24 operations for physicians until the commissioner of
 25 insurance, after due hearing and investigation, has



1 determined that medical liability insurance cannot be made
 2 available for physicians in the voluntary market. Upon that
 3 determination the association is the exclusive agency
 4 through which medical liability insurance may be written in
 5 this state on a primary basis for physicians.

6 (3) The association may not commence underwriting
 7 operations for hospitals, health care facilities, or
 8 long-term care facilities until the commissioner of
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 10 determined that medical liability insurance is not readily
 11 available for these facilities in the voluntary market. Upon
 12 that determination the association is authorized to issue
 13 policies of medical liability insurance to hospitals, health
 14 care facilities, or long-term care facilities, but need not
 15 be the exclusive agency through which this insurance may be
 16 written on a primary basis in this state.

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

25 (5) The association has, pursuant to the provisions of

1 [this act] and the plan of operation with respect to medical
 2 liability insurance, the power on behalf of its members to:

3 (a) subject to limits as specified in the plan of
 4 operation but not to exceed \$1,000,000 for each claimant
 5 under one policy and \$3,000,000 for all claimants under one
 6 policy in any one year, issue or cause to be issued policies
 7 of insurance to applicants, including incidental coverages;

8 (b) underwrite the insurance and assume reinsurance
 9 from its members; and

10 (c) cede reinsurance.

11 (6) (a) Within 45 days following the creation of the
 12 association, the directors of the association shall submit
 13 to the commissioner of insurance for his review a proposed
 14 plan of operation consistent with the provisions of [this
 15 act] to be fully effective and operative upon order of the
 16 commissioner of insurance.

17 (b) The plan of operation shall provide for economic,
 18 fair, and nondiscriminatory administration and for the
 19 prompt and efficient provision of medical liability
 20 insurance and shall contain other provisions including but
 21 not limited to preliminary assessment of all members for
 22 initial expenses necessary to commence operations,
 23 establishment of necessary facilities, management of the
 24 association, assessment of members to defray losses and
 25 expenses, commission arrangements, reasonable and objective

1 underwriting standards, acceptance and cession of
 2 reinsurance, appointment of servicing carriers, and
 3 procedures for determining amounts of insurance to be
 4 provided by the association.

5 (c) The plan of operation shall provide that any
 6 profit achieved by the association be added to the reserves
 7 of the association or returned to the policyholders as a
 8 dividend.

9 (d) Amendments to the plan of operation may be made by
 10 the directors of the association, subject to the approval of
 11 the commissioner of insurance, or must be made if directed
 12 by the commissioner.

13 Section 4. Procedures. (1) (a) On or after the
 14 effective date of the plan of operation, a licensed
 15 physician or hospital, health care facility, or long-term
 16 care facility is entitled to apply to the association for
 17 coverage. The application may be made on behalf of an
 18 applicant by a broker or agent authorized by the applicant.

19 (b) If the association determines that the applicant
 20 meets the underwriting standards of the association as
 21 prescribed in the plan of operation and there is no unpaid,
 22 uncontested premium due from the applicant for prior
 23 insurance, as shown by the insured having failed to make
 24 written objections to the premium charges within 30 days
 25 after billing, the association, upon receipt of the premium

1 or such portion thereof as is prescribed in the plan of
 2 operation, shall cause to be issued a policy of medical
 3 liability insurance for a term of 1 year.

4 (2) (a) The rates, rating plans, rating rules, rating
 5 classifications, territories, and policy forms applicable to
 6 the insurance written by the association and statistics
 7 relating thereto are subject to the insurance laws of
 8 Montana, giving due consideration to the past and
 9 prospective loss and expense experience for medical
 10 liability insurance of all of the member companies of the
 11 association, trends in the frequency and severity of losses,
 12 the investment income of the association, and such other
 13 information as the commissioner of insurance may require.

14 (b) Within such time as the commissioner of insurance
 15 directs, the association shall submit for the approval of
 16 the commissioner an initial filing, in proper form, of
 17 policy forms, classifications, rates, rating plans, and
 18 rating rules applicable to medical liability insurance to be
 19 written by the association. If the commissioner disapproves
 20 the initial filing, in whole or in part, the association
 21 shall amend it in accordance with the direction of the
 22 commissioner. If the commissioner is unable to approve the
 23 filing or amended filing within the time specified, he shall
 24 promulgate the policy forms, classifications, rates, rating
 25 plans, and rules to be used by the association in writing

1 such insurance.

2 (c) Any deficit sustained by the association in any
3 one year must be recouped pursuant to the plan of operation
4 and the rating plan then in effect by one or both of the
5 following procedures:

6 (i) an assessment upon the policyholders; or

7 (ii) a rate increase applicable prospectively.

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

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

25 (f) The commissioner of insurance shall consider

1 requiring the association to offer policies on both a claims
2 made and occurrence basis so that applicants may select
3 either policy at their option. However, the premium rate
4 charged for both claims made and occurrence policies must be
5 at rates established on an actuarially sound basis and which
6 are calculated to be self-supporting.

7 Section 5. Participation. All insurers that are
8 members of the association shall participate in its
9 writings, expenses, profits, and losses in the proportion
10 that the net direct premiums of each member written during
11 the preceding calendar year, after excluding that portion of
12 premiums attributable to the operation of the association,
13 bears to the aggregate net direct premiums written in this
14 state by all members of the association. Each insurer's
15 participation in the association must be determined annually
16 on the basis of the net direct premiums written during the
17 preceding calendar year as reported in the annual statements
18 and other reports filed by the insurer with the commissioner
19 of insurance. No member is obligated in any one year to
20 reimburse the association on account of the member's
21 proportionate share in the deficit from operations of the
22 association in that year in excess of 1% of the member's
23 surplus to policyholders, and the aggregate amount not so
24 reimbursed must be reallocated among the remaining members
25 in accordance with the method of determining participation

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

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

21 Section 7. Appeals and judicial review. (1) With
 22 respect to those items the plan of operation defines as
 23 appealable matters, an applicant to the association, a
 24 person insured pursuant to [this act], his representative,
 25 or an affected insurer may appeal to the commissioner of

1 insurance within 30 days after a ruling, action, or decision
 2 by or on behalf of the association.

3 (2) All orders of the commissioner of insurance made
 4 pursuant to [this act] are subject to judicial review as
 5 provided in [Title 33].

6 Section 8. Privileged communications. There is no
 7 liability on the part of and no cause of action of any
 8 nature may arise against the association, its agents or
 9 employees, an insurer, a licensed agent or broker, or the
 10 commissioner of insurance or his authorized representative
 11 for any statement made in good faith by them in any report
 12 or communication concerning risks insured or to be insured
 13 by the association or at any administrative hearing
 14 conducted in connection therewith.

15 Section 9. Annual statements. The association shall
 16 file in the office of the commissioner of insurance annually
 17 on or before March 1 a statement containing information with
 18 respect to its transactions, condition, operations, and
 19 affairs during the preceding year. The statement must
 20 contain the matters and information prescribed and must be
 21 in a form approved by the commissioner. The commissioner may
 22 at any time require the association to furnish additional
 23 information with respect to its transactions, conditions, or
 24 any matter connected therewith considered to be material and
 25 of assistance in evaluating the scope, operation, and

1 experience of the association.

2 Section 10. Examination of association's affairs. The
3 commissioner of insurance shall make an examination into the
4 affairs of the association at least annually. The
5 examination must be conducted and the report thereon filed
6 in the manner provided by law. The expenses of every
7 examination must be borne and paid by the association in the
8 manner prescribed by law.

9 Section 11. Termination date -- enforceability of
10 issued policies. This act terminates October 1, 1987, after
11 which no new policies may be issued by the association.
12 However, all issued policies continue in force until their
13 expiration dates.

14 Section 12. Extension of authority. Any existing
15 authority of the commissioner of insurance to make rules on
16 the subject of the provisions of this act is extended to the
17 provisions of this act.

-End-

APPROVED BY COMM. ON
BUSINESS AND LABOR

HOUSE BILL NO. 658

INTRODUCED BY

Ramsey Smith

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

Section 1. Purpose. The legislature finds that an emergency situation 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, if such insurance becomes unavailable prior to the next session of the legislature. Accordingly, [this act] is enacted for a limited period of time.

Section 2. Definitions. As used in [this act], the following definitions apply:

(1) "Association" means the joint underwriting association established pursuant to the provisions of [this act].

(2) "Medical liability insurance" means insurance coverage against 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 a result of negligence

in rendering professional service by a licensed physician or a hospital, health care facility, or long-term care facility, as defined by 50-5-101.

(3) "Net direct premiums" means 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 premiums or the unused or unabsorbed portions of premium deposits.

Section 3. Joint underwriting association. (1) A joint underwriting association is 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 33], including insurers covering the perils in multiple peril package policies. Each of these insurers shall remain a member of the association 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.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has

1 determined that medical liability insurance cannot be made
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15 authority of the commissioner of insurance to make rules on
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2 INTRODUCED BY Ramsey Smith
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6 policy in any one year, issue or cause to be issued policies
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20 insurance and shall contain other provisions including but
21 not limited to preliminary assessment of all members for
22 initial expenses necessary to commence operations,
23 establishment of necessary facilities, management of the
24 association, assessment of members to defray losses and
25 expenses, commission arrangements, reasonable and objective

1 underwriting standards, acceptance and cession of
 2 reinsurance, appointment of servicing carriers, and
 3 procedures for determining amounts of insurance to be
 4 provided by the association.

5 (c) The plan of operation shall provide that any
 6 profit achieved by the association be added to the reserves
 7 of the association or returned to the policyholders as a
 8 dividend.

9 (d) Amendments to the plan of operation may be made by
 10 the directors of the association, subject to the approval of
 11 the commissioner of insurance, or must be made if directed
 12 by the commissioner.

13 Section 4. Procedures. (1) (a) On or after the
 14 effective date of the plan of operation, a licensed
 15 physician or hospital, health care facility, or long-term
 16 care facility is entitled to apply to the association for
 17 coverage. The application may be made on behalf of an
 18 applicant by a broker or agent authorized by the applicant.

19 (b) If the association determines that the applicant
 20 meets the underwriting standards of the association as
 21 prescribed in the plan of operation and there is no unpaid,
 22 uncontested premium due from the applicant for prior
 23 insurance, as shown by the insured having failed to make
 24 written objections to the premium charges within 30 days
 25 after billing, the association, upon receipt of the premium

1 or such portion thereof as is prescribed in the plan of
 2 operation, shall cause to be issued a policy of medical
 3 liability insurance for a term of 1 year.

4 (2) (a) The rates, rating plans, rating rules, rating
 5 classifications, territories, and policy forms applicable to
 6 the insurance written by the association and statistics
 7 relating thereto are subject to the insurance laws of
 8 Montana, giving due consideration to the past and
 9 prospective loss and expense experience for medical
 10 liability insurance of all of the member companies of the
 11 association, trends in the frequency and severity of losses,
 12 the investment income of the association, and such other
 13 information as the commissioner of insurance may require.

14 (b) Within such time as the commissioner of insurance
 15 directs, the association shall submit for the approval of
 16 the commissioner an initial filing, in proper form, of
 17 policy forms, classifications, rates, rating plans, and
 18 rating rules applicable to medical liability insurance to be
 19 written by the association. If the commissioner disapproves
 20 the initial filing, in whole or in part, the association
 21 shall amend it in accordance with the direction of the
 22 commissioner. If the commissioner is unable to approve the
 23 filing or amended filing within the time specified, he shall
 24 promulgate the policy forms, classifications, rates, rating
 25 plans, and rules to be used by the association in writing

1 such insurance.

2 (c) Any deficit sustained by the association in any
3 one year must be recouped pursuant to the plan of operation
4 and the rating plan then in effect by one or both of the
5 following procedures:

6 (i) an assessment upon the policyholders; or

7 (ii) a rate increase applicable prospectively.

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

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

25 (f) The commissioner of insurance shall consider

1 requiring the association to offer policies on both a claims
2 made and occurrence basis so that applicants may select
3 either policy at their option. However, the premium rate
4 charged for both claims made and occurrence policies must be
5 at rates established on an actuarially sound basis and which
6 are calculated to be self-supporting.

7 Section 5. Participation. All insurers that are
8 members of the association shall participate in its
9 writings, expenses, profits, and losses in the proportion
10 that the net direct premiums of each member written during
11 the preceding calendar year, after excluding that portion of
12 premiums attributable to the operation of the association,
13 bears to the aggregate net direct premiums written in this
14 state by all members of the association. Each insurer's
15 participation in the association must be determined annually
16 on the basis of the net direct premiums written during the
17 preceding calendar year as reported in the annual statements
18 and other reports filed by the insurer with the commissioner
19 of insurance. No member is obligated in any one year to
20 reimburse the association on account of the member's
21 proportionate share in the deficit from operations of the
22 association in that year in excess of 1% of the member's
23 surplus to policyholders, and the aggregate amount not so
24 reimbursed must be reallocated among the remaining members
25 in accordance with the method of determining participation

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

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

21 Section 7. Appeals and judicial review. (1) With
 22 respect to those items the plan of operation defines as
 23 appealable matters, an applicant to the association, a
 24 person insured pursuant to [this act], his representative,
 25 or an affected insurer may appeal to the commissioner of

1 insurance within 30 days after a ruling, action, or decision
 2 by or on behalf of the association.

3 (2) All orders of the commissioner of insurance made
 4 pursuant to [this act] are subject to judicial review as
 5 provided in [Title 33].

6 Section 8. Privileged communications. There is no
 7 liability on the part of and no cause of action of any
 8 nature may arise against the association, its agents or
 9 employees, an insurer, a licensed agent or broker, or the
 10 commissioner of insurance or his authorized representative
 11 for any statement made in good faith by them in any report
 12 or communication concerning risks insured or to be insured
 13 by the association or at any administrative hearing
 14 conducted in connection therewith.

15 Section 9. Annual statements. The association shall
 16 file in the office of the commissioner of insurance annually
 17 on or before March 1 a statement containing information with
 18 respect to its transactions, condition, operations, and
 19 affairs during the preceding year. The statement must
 20 contain the matters and information prescribed and must be
 21 in a form approved by the commissioner. The commissioner may
 22 at any time require the association to furnish additional
 23 information with respect to its transactions, conditions, or
 24 any matter connected therewith considered to be material and
 25 of assistance in evaluating the scope, operation, and

1 experience of the association.

2 Section 10. Examination of association's affairs. The
3 commissioner of insurance shall make an examination into the
4 affairs of the association at least annually. The
5 examination must be conducted and the report thereon filed
6 in the manner provided by law. The expenses of every
7 examination must be borne and paid by the association in the
8 manner prescribed by law.

9 Section 11. Termination date -- enforceability of
10 issued policies. This act terminates October 1, 1987, after
11 which no new policies may be issued by the association.
12 However, all issued policies continue in force until their
13 expiration dates.

14 Section 12. Extension of authority. Any existing
15 authority of the commissioner of insurance to make rules on
16 the subject of the provisions of this act is extended to the
17 provisions of this act.

-End-

1 HOUSE BILL NO. 658

2 INTRODUCED BY RAMIREZ, SPAETH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A JOINT
5 UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE;
6 AND PROVIDING A TERMINATION DATE."
7

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

9 Section 1. Purpose. The legislature finds that an
10 emergency situation exists because of the high cost and
11 impending unavailability of medical liability insurance. The
12 purpose of [this act] is to provide an interim solution to
13 the unavailability of such insurance, if such insurance
14 becomes unavailable prior to the next session of the
15 legislature. Accordingly, [this act] is enacted for a
16 limited period of time.

17 Section 2. Definitions. As used in [this act], the
18 following definitions apply:

19 (1) "Association" means the joint underwriting
20 association established pursuant to the provisions of [this
21 act].

22 (2) "Medical liability insurance" means insurance
23 coverage against legal liability of the insured and against
24 loss, damage, or expense incident to a claim arising out of
25 the death or injury of any person as a result of negligence

1 in rendering professional service by a licensed physician or
2 a hospital, health care facility, or long-term care
3 facility, as defined by 50-5-101.

4 (3) "Net direct premiums" means gross direct premiums
5 on personal injury liability insurance written pursuant to
6 the provisions of the insurance laws of Montana, including
7 the liability component of multiple peril package policies
8 as computed by the commissioner of insurance, less return
9 premiums or the unused or unabsorbed portions of premium
10 deposits.

11 Section 3. Joint underwriting association. (1) A
12 joint underwriting association is created, consisting of all
13 insurers authorized to write and engaged in writing within
14 this state on a direct basis insurance against legal
15 liability for the death, injury, or disability of any person
16 pursuant to the provisions of [Title 33], including insurers
17 covering the perils in multiple peril package policies. Each
18 of these insurers shall remain a member of the association
19 as a condition of its authority to continue to transact this
20 kind of insurance in this state. The purpose of the
21 association is to provide medical liability insurance on a
22 self-supporting basis.

23 (2) The association may not commence underwriting
24 operations for physicians until the commissioner of
25 insurance, after due hearing and investigation, has

1 determined that medical liability insurance cannot be made
 2 available for physicians in the voluntary market. Upon that
 3 determination the association is the exclusive agency
 4 through which medical liability insurance may be written in
 5 this state on a primary basis for physicians.

6 (3) The association may not commence underwriting
 7 operations for hospitals, health care facilities, or
 8 long-term care facilities until the commissioner of
 9 insurance, after due hearing and investigation, has
 10 determined that medical liability insurance is not readily
 11 available for these facilities in the voluntary market. Upon
 12 that determination the association is authorized to issue
 13 policies of medical liability insurance to hospitals, health
 14 care facilities, or long-term care facilities, but need not
 15 be the exclusive agency through which this insurance may be
 16 written on a primary basis in this state.

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

25 (5) The association has, pursuant to the provisions of

1 [this act] and the plan of operation with respect to medical
 2 liability insurance, the power on behalf of its members to:

3 (a) subject to limits as specified in the plan of
 4 operation but not to exceed \$1,000,000 for each claimant
 5 under one policy and \$3,000,000 for all claimants under one
 6 policy in any one year, issue or cause to be issued policies

7 of insurance to applicants, including incidental coverages;

8 (b) underwrite the insurance and assume reinsurance
 9 from its members; and

10 (c) cede reinsurance.

11 (6) (a) Within 45 days following the creation of the
 12 association, the directors of the association shall submit
 13 to the commissioner of insurance for his review a proposed
 14 plan of operation consistent with the provisions of [this
 15 act] to be fully effective and operative upon order of the
 16 commissioner of insurance.

17 (b) The plan of operation shall provide for economic,
 18 fair, and nondiscriminatory administration and for the
 19 prompt and efficient provision of medical liability
 20 insurance and shall contain other provisions including but
 21 not limited to preliminary assessment of all members for
 22 initial expenses necessary to commence operations,
 23 establishment of necessary facilities, management of the
 24 association, assessment of members to defray losses and
 25 expenses, commission arrangements, reasonable and objective

1 underwriting standards, acceptance and cession of
 2 reinsurance, appointment of servicing carriers, and
 3 procedures for determining amounts of insurance to be
 4 provided by the association.

5 (c) The plan of operation shall provide that any
 6 profit achieved by the association be added to the reserves
 7 of the association or returned to the policyholders as a
 8 dividend.

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 10 the directors of the association, subject to the approval of
 11 the commissioner of insurance, or must be made if directed
 12 by the commissioner.

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 14 effective date of the plan of operation, a licensed
 15 physician or hospital, health care facility, or long-term
 16 care facility is entitled to apply to the association for
 17 coverage. The application may be made on behalf of an
 18 applicant by a broker or agent authorized by the applicant.

19 (b) If the association determines that the applicant
 20 meets the underwriting standards of the association as
 21 prescribed in the plan of operation and there is no unpaid,
 22 uncontested premium due from the applicant for prior
 23 insurance, as shown by the insured having failed to make
 24 written objections to the premium charges within 30 days
 25 after billing, the association, upon receipt of the premium

1 or such portion thereof as is prescribed in the plan of
 2 operation, shall cause to be issued a policy of medical
 3 liability insurance for a term of 1 year.

4 (2) (a) The rates, rating plans, rating rules, rating
 5 classifications, territories, and policy forms applicable to
 6 the insurance written by the association and statistics
 7 relating thereto are subject to the insurance laws of
 8 Montana, giving due consideration to the past and
 9 prospective loss and expense experience for medical
 10 liability insurance of all of the member companies of the
 11 association, trends in the frequency and severity of losses,
 12 the investment income of the association, and such other
 13 information as the commissioner of insurance may require.

14 (b) Within such time as the commissioner of insurance
 15 directs, the association shall submit for the approval of
 16 the commissioner an initial filing, in proper form, of
 17 policy forms, classifications, rates, rating plans, and
 18 rating rules applicable to medical liability insurance to be
 19 written by the association. If the commissioner disapproves
 20 the initial filing, in whole or in part, the association
 21 shall amend it in accordance with the direction of the
 22 commissioner. If the commissioner is unable to approve the
 23 filing or amended filing within the time specified, he shall
 24 promulgate the policy forms, classifications, rates, rating
 25 plans, and rules to be used by the association in writing

1 such insurance.

2 (c) Any deficit sustained by the association in any
3 one year must be recouped pursuant to the plan of operation
4 and the rating plan then in effect by one or both of the
5 following procedures:

6 (i) an assessment upon the policyholders; or

7 (ii) a rate increase applicable prospectively.

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

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

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1 requiring the association to offer policies on both a claims
2 made and occurrence basis so that applicants may select
3 either policy at their option. However, the premium rate
4 charged for both claims made and occurrence policies must be
5 at rates established on an actuarially sound basis and which
6 are calculated to be self-supporting.

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8 members of the association shall participate in its
9 writings, expenses, profits, and losses in the proportion
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12 premiums attributable to the operation of the association,
13 bears to the aggregate net direct premiums written in this
14 state by all members of the association. Each insurer's
15 participation in the association must be determined annually
16 on the basis of the net direct premiums written during the
17 preceding calendar year as reported in the annual statements
18 and other reports filed by the insurer with the commissioner
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20 reimburse the association on account of the member's
21 proportionate share in the deficit from operations of the
22 association in that year in excess of 1% of the member's
23 surplus to policyholders, and the aggregate amount not so
24 reimbursed must be reallocated among the remaining members
25 in accordance with the method of determining participation

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 2 computation the total net direct premiums of all members not
 3 sharing in the excess deficit. If the deficit from
 4 operations allocated to all members of the association in
 5 any calendar year exceeds 1% of their respective surplus to
 6 policyholders, the amount of the deficit must be allocated
 7 to each member in accordance with the method of determining
 8 participation prescribed in this section.

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

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 22 respect to those items the plan of operation defines as
 23 appealable matters, an applicant to the association, a
 24 person insured pursuant to [this act], his representative,
 25 or an affected insurer may appeal to the commissioner of

1 insurance within 30 days after a ruling, action, or decision
 2 by or on behalf of the association.

3 (2) All orders of the commissioner of insurance made
 4 pursuant to [this act] are subject to judicial review as
 5 provided in [Title 33].

6 Section 8. Privileged communications. There is no
 7 liability on the part of and no cause of action of any
 8 nature may arise against the association, its agents or
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 11 for any statement made in good faith by them in any report
 12 or communication concerning risks insured or to be insured
 13 by the association or at any administrative hearing
 14 conducted in connection therewith.

15 Section 9. Annual statements. The association shall
 16 file in the office of the commissioner of insurance annually
 17 on or before March 1 a statement containing information with
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 20 contain the matters and information prescribed and must be
 21 in a form approved by the commissioner. The commissioner may
 22 at any time require the association to furnish additional
 23 information with respect to its transactions, conditions, or
 24 any matter connected therewith considered to be material and
 25 of assistance in evaluating the scope, operation, and

1 experience of the association.

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7 examination must be borne and paid by the association in the
8 manner prescribed by law.

9 Section 11. Termination date -- enforceability of
10 issued policies. This act terminates October 1, 1987, after
11 which no new policies may be issued by the association.
12 However, all issued policies continue in force until their
13 expiration dates.

14 Section 12. Extension of authority. Any existing
15 authority of the commissioner of insurance to make rules on
16 the subject of the provisions of this act is extended to the
17 provisions of this act.

-End-