



General Assembly

January Session, 2003

Amendment

LCO No. 7322

SB0108807322SD0

Offered by:

SEN. SULLIVAN, 5th Dist.
REP. LYONS, 146th Dist.
SEN. CRISCO, 17th Dist.
REP. FRITZ, 90th Dist.
SEN. MCDONALD, 27th Dist.
SEN. MURPHY, 16th Dist.

SEN. KISSEL, 7th Dist.
REP. LAWLOR, 99th Dist.
REP. FELTMAN, 6th Dist.
REP. OREFICE, 37th Dist.
REP. WASSERMAN, 106th Dist.

To: Senate Bill No. 1088

File No. 171

Cal. No. 134

"AN ACT CONCERNING MEDICAL MALPRACTICE INSURANCE RATES."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (*Effective from passage*) From the effective date of this
4 section to July 1, 2004, the Insurance Commissioner shall disapprove
5 any rate filed pursuant to section 38a-676 of the general statutes for
6 professional liability insurance for physicians and surgeons who
7 practice neurosurgery or obstetrics and gynecology if the rate
8 represents more than a ten per cent increase over the rate on file with
9 the commissioner on June 1, 2003, for such insurance and insurer,
10 unless the commissioner finds, after a hearing, that a ten per cent
11 increase is inadequate in accordance with section 38a-665 of the

12 general statutes.

13 Sec. 2. Section 52-192a of the general statutes is repealed and the
14 following is substituted in lieu thereof (*Effective from passage, and*
15 *applicable to civil actions commenced on or after said date*):

16 (a) After commencement of any civil action based upon contract or
17 seeking the recovery of money damages, whether or not other relief is
18 sought, the plaintiff may, not later than thirty days before trial, file
19 with the clerk of the court a written "offer of judgment" signed by the
20 plaintiff or the plaintiff's attorney, directed to the defendant or the
21 defendant's attorney, offering to settle the claim underlying the action
22 and to stipulate to a judgment for a sum certain. The plaintiff shall give
23 notice of the offer of settlement to the defendant's attorney or, if the
24 defendant is not represented by an attorney, to the defendant himself
25 or herself. Within sixty days after being notified of the filing of the
26 "offer of judgment" or within any extension or extensions thereof, not
27 to exceed a total of one hundred twenty additional days, granted by
28 the court for good cause shown, and prior to the rendering of a verdict
29 by the jury or an award by the court, the defendant or the defendant's
30 attorney may file with the clerk of the court a written "acceptance of
31 offer of judgment" agreeing to a stipulation for judgment as contained
32 in plaintiff's "offer of judgment". Upon such filing, the clerk shall enter
33 judgment immediately on the stipulation. If the "offer of judgment" is
34 not accepted within sixty days and prior to the rendering of a verdict
35 by the jury or an award by the court, the "offer of judgment" shall be
36 considered rejected and not subject to acceptance unless refiled. Any
37 such "offer of judgment" and any "acceptance of offer of judgment"
38 shall be included by the clerk in the record of the case.

39 (b) After trial the court shall examine the record to determine
40 whether the plaintiff made an "offer of judgment" which the defendant
41 failed to accept. If the court ascertains from the record that the plaintiff
42 has recovered an amount equal to or greater than the sum certain
43 stated in the plaintiff's "offer of judgment", the court, with respect to
44 actions commenced prior to the effective date of this section, shall add

45 to the amount so recovered twelve per cent annual interest on said
46 amount, [computed from the date such offer was filed in actions
47 commenced before October 1, 1981. In those actions commenced on or
48 after October 1, 1981, the interest shall be computed from the date the
49 complaint in the civil action was filed with the court if] and the court,
50 with respect to actions commenced on or after the effective date of this
51 section, shall add to the amount so recovered eight per cent annual
52 interest rate on said amount. If the "offer of judgment" was filed not
53 later than eighteen months from the filing of such complaint the
54 interest shall be computed from the date the complaint in the civil
55 action was filed with the court. If such offer was filed later than
56 eighteen months from the date of filing of the complaint, the interest
57 shall be computed from the date the "offer of judgment" was filed with
58 the court. The court may award reasonable attorney's fees in an
59 amount not to exceed three hundred fifty dollars, and shall render
60 judgment accordingly. This section shall not be interpreted to abrogate
61 the contractual rights of any party concerning the recovery of
62 attorney's fees in accordance with the provisions of any written
63 contract between the parties to the action.

64 Sec. 3. Section 38a-676 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective from passage*):

66 (a) With respect to rates pertaining to commercial risk insurance,
67 and subject to the provisions of subsection (b) of this section with
68 respect to workers' compensation and employers' liability insurance
69 and subsection (c) of this section with respect to certain professional
70 liability insurance, on or before the effective date [thereof, every] of
71 such rates, each admitted insurer shall submit to the Insurance
72 Commissioner for the commissioner's information, except as to inland
73 marine risks which by general custom of the business are not written
74 according to manual rates or rating plans, [every] each manual of
75 classifications, rules and rates, and [every] each minimum, class rate,
76 rating plan, rating schedule and rating system and any modification of
77 the foregoing which it uses. Such submission by a licensed rating

78 organization of which an insurer is a member or subscriber shall be
79 sufficient compliance with this section for any insurer maintaining
80 membership or subscribership in such organization, to the extent that
81 the insurer uses the manuals, minimums, class rates, rating plans,
82 rating schedules, rating systems, policy or bond forms of such
83 organization. The information shall be open to public inspection after
84 its submission.

85 (b) Each filing as described in subsection (a) of this section for
86 workers' compensation or employers' liability insurance shall be on file
87 with the Insurance Commissioner for a waiting period of thirty days
88 before it becomes effective, which period may be extended by the
89 commissioner for an additional period not to exceed thirty days if the
90 commissioner gives written notice within such waiting period to the
91 insurer or rating organization which made the filing that the
92 commissioner needs such additional time for the consideration of such
93 filing. Upon written application by such insurer or rating organization,
94 the commissioner may authorize a filing which the commissioner has
95 reviewed to become effective before the expiration of the waiting
96 period or any extension thereof. A filing shall be deemed to meet the
97 requirements of sections 38a-663 to 38a-696, inclusive, unless
98 disapproved by the commissioner within the waiting period or any
99 extension thereof. If, within the waiting period or any extension
100 thereof, the commissioner finds that a filing does not meet the
101 requirements of said sections, the commissioner shall send to the
102 insurer or rating organization which made such filing written notice of
103 disapproval of such filing, specifying therein in what respects the
104 commissioner finds such filing fails to meet the requirements of said
105 sections and stating that such filing shall not become effective. Such
106 finding of the commissioner shall be subject to review as provided in
107 section 38a-19.

108 (c) (1) Each filing as described in subsection (a) of this section for
109 professional liability insurance for physicians and surgeons, hospitals
110 or advanced practice registered nurses shall be subject to prior rate
111 approval. Whenever a rate for such liability insurance is filed pursuant

112 to this section, the commissioner shall give notice, to the extent
113 practicable, to insureds affected by the filing, including, but not limited
114 to, associations of such insureds.

115 (2) The commissioner shall accept public comment on the filing for
116 thirty days after the date the commissioner provides the notice
117 required in subdivision (1) of this subsection. The commissioner shall
118 hold a hearing on the rate filing if the commissioner receives a request
119 for such hearing from an insured or association of insureds during the
120 thirty-day period. The commissioner shall hold the hearing not later
121 than thirty days after receiving the request for a hearing. If no hearing
122 is requested, the commissioner may hold a hearing not later than ten
123 days after the expiration of the thirty-day period.

124 (3) The commissioner may approve a filing if the commissioner
125 finds that the filing meets the requirements of sections 38a-663 to 38a-
126 696, inclusive, or may approve the filing subject to conditions the
127 commissioner prescribes as necessary to meet the requirements of
128 sections 38a-663 to 38a-696, inclusive. If the commissioner finds that a
129 filing does not meet the requirements of sections 38a-663 to 38a-696,
130 inclusive, the commissioner shall disapprove the rate and shall send to
131 the insurer or rating organization which made such filing written
132 notice of disapproval of such filing, specifying in what respects the
133 commissioner finds such filing fails to meet the requirements of
134 sections 38a-663 to 38a-696, inclusive, and stating that such filing shall
135 not become effective. Such approval or disapproval shall be made not
136 later than ten days after the conclusion of any hearing held pursuant to
137 subdivision (2) of this subsection, or not later than ten days after the
138 conclusion of the thirty-day inspection period if no hearing was
139 requested or held. If the commissioner takes no action within the ten-
140 day period, the filing shall be deemed approved. Such finding of the
141 commissioner shall be subject to review as provided in section 38a-19.

142 (4) In determining the rate for professional liability insurance for
143 physicians and surgeons, hospitals or advanced practice registered
144 nurses, an insurer or rating organization shall apply a credit or debit

145 based on the insured's loss experience, or shall establish an alternate
146 method of determining rates on the basis of the insured's loss
147 experience. The insurer or rating organization shall include with any
148 rate filed pursuant to this section a schedule of all such credits and
149 debits or a description of such alternate method. No insurer or rating
150 organization may use a rate for such liability insurance unless the
151 insurer or rating organization has filed such schedule or alternate
152 method with the commissioner and the commissioner has approved
153 such schedule or alternate method in accordance with this section.

154 [(c)] (d) The form of any insurance policy or contract the rates for
155 which are subject to the provisions of sections 38a-663 to 38a-696,
156 inclusive, other than fidelity, surety or guaranty bonds, and the form
157 of any endorsement modifying such insurance policy or contract, shall
158 be filed with the Insurance Commissioner prior to its issuance. The
159 commissioner shall adopt regulations in accordance with the
160 provisions of chapter 54 establishing a procedure for review of such
161 policy or contract. If at any time the commissioner finds that any such
162 policy, contract or endorsement is not in accordance with such
163 provisions or any other provision of law, the commissioner shall issue
164 an order disapproving the issuance of such form and stating the
165 reasons for disapproval. The provisions of section 38a-19 shall apply to
166 any such order issued by the commissioner.

167 Sec. 4. Section 38a-44 of the general statutes is repealed and the
168 following is substituted in lieu thereof (*Effective from passage*):

169 (a) [Any] Each insurer licensed to do business in this state, or
170 authorized to do business on a nonadmitted basis, which intends to
171 discontinue offering or substantially reduce its writings in a line or
172 subline of insurance in this state shall send, by registered or certified
173 mail, or deliver to the Insurance Commissioner written notice of its
174 intent to take such action at least sixty days before the initial notice of
175 cancellation or nonrenewal is delivered or mailed to the insureds. This
176 [section] subsection shall not apply to life insurance policies, [or]
177 annuity contracts, or professional liability insurance policies covering

178 physicians and surgeons, hospitals or advanced practice registered
179 nurses.

180 (b) Each insurer licensed to do business in this state, or authorized
181 to do business on a nonadmitted basis, which intends to discontinue
182 offering or substantially reduce its writings in the lines of professional
183 liability insurance covering physicians and surgeons, hospitals or
184 advanced practice registered nurses in this state on a claims made
185 basis shall send, by registered or certified mail, or deliver to the
186 Insurance Commissioner written notice of its intent to take such action
187 at least ninety days before the initial notice of cancellation or
188 nonrenewal is delivered or mailed to the insureds. Upon receiving the
189 notice from the insurer, if the commissioner determines that such
190 liability insurance market does not provide for sufficient competition
191 or availability of alternative insurance coverage options, the
192 commissioner shall require the insurer to continue to provide such
193 insurance coverage at the same or substantially the same premium to
194 its insureds for an additional six-month period beyond the date the
195 insurer intended to deliver or mail the initial notice of cancellation or
196 nonrenewal to its insureds.

197 Sec. 5. Section 52-190a of the general statutes is repealed and the
198 following is substituted in lieu thereof (*Effective from passage, and*
199 *applicable to civil actions pending on or filed on or after said date*):

200 (a) No civil action or apportionment complaint shall be filed to
201 recover damages resulting from personal injury or wrongful death
202 occurring on or after October 1, 1987, whether in tort or in contract, in
203 which it is alleged that such injury or death resulted from the
204 negligence of a health care provider, unless the attorney or party filing
205 the action or apportionment complaint has made a reasonable inquiry
206 as permitted by the circumstances to determine that there are grounds
207 for a good faith belief that there has been negligence in the care or
208 treatment of the claimant. The complaint, [or] initial pleading or
209 apportionment complaint shall contain a certificate, on a form
210 prescribed by the rules of the superior court, of the attorney or party

211 filing the action or apportionment complaint that such reasonable
212 inquiry gave rise to a good faith belief that grounds exist for an action
213 against each named defendant or for an apportionment complaint
214 against each named apportionment defendant. For purposes of this
215 section, such good faith may be shown to exist if the claimant or [his]
216 such claimant's attorney, or the apportionment complainant or such
217 apportionment complainant's attorney, as the case may be, has
218 received a written opinion, which shall not be subject to discovery by
219 any party except for questioning the validity of the certificate, of a
220 similar health care provider as defined in section 52-184c, which
221 similar health care provider shall be selected pursuant to the
222 provisions of said section, that there appears to be evidence of medical
223 negligence. In addition to such written opinion, the court may consider
224 other factors with regard to the existence of good faith. If the court
225 determines after the completion of discovery, that such certificate was
226 not made in good faith and that no justiciable issue was presented
227 against a health care provider that fully cooperated in providing
228 informal discovery, the court upon motion or upon its own initiative,
229 shall impose upon the person who signed such certificate, a
230 represented party or both, an appropriate sanction, which may include
231 an order to pay to the other party or parties the amount of the
232 reasonable expenses incurred because of the filing of the pleading,
233 motion or other paper, including a reasonable attorney's fee. The court
234 may also submit the matter to the appropriate authority for
235 disciplinary review of the attorney if the claimant's attorney or the
236 apportionment complainant's attorney submitted the certificate.

237 (b) If a claimant in a civil action asserts a claim against an
238 apportionment defendant pursuant to subsection (d) of section 52-
239 102b, the requirement under subsection (a) of this section that the
240 attorney or party filing the action make a reasonable inquiry and
241 submit a certificate of good faith shall be satisfied by the submission of
242 a certificate of good faith by the apportionment complainant pursuant
243 to subsection (a) of this section.

244 ~~[(b)]~~ (c) Upon petition to the clerk of the court where the action will

245 be filed, an automatic ninety-day extension of the statute of limitations
246 shall be granted to allow the reasonable inquiry required by subsection
247 (a) of this section. This period shall be in addition to other tolling
248 periods.

249 Sec. 6. (NEW) (*Effective from passage, and applicable to causes of action*
250 *pending on or accruing on or after said date*) No physician, hospital or
251 other health care provider, or any person, firm, corporation or other
252 entity acting on behalf of such physician, hospital or health care
253 provider, shall as a condition of settling any medical claim or dispute
254 with such physician, hospital or health care provider, require any
255 person to enter into an agreement that contains a provision that
256 prevents such person from (1) reporting the conduct of such physician,
257 hospital or health care provider to any federal, state or municipal
258 agency, or (2) voluntarily cooperating with any federal, state or
259 municipal agency in an investigation of the conduct of such physician,
260 hospital or health care provider.

261 Sec. 7. Subsection (b) of section 52-251c of the general statutes is
262 repealed and the following is substituted in lieu thereof (*Effective from*
263 *passage and applicable to contingency fee arrangements entered into on or*
264 *after said date*):

265 (b) [In] Unless the attorney agrees to pay the claimant's expenses
266 during the course of the representation and forgo reimbursement of
267 such paid expenses if there is no recovery, in any such contingency fee
268 arrangement such fee shall be the exclusive method for payment of the
269 attorney by the claimant and shall not exceed an amount equal to a
270 percentage of the damages awarded and received by the claimant or of
271 the settlement amount received by the claimant as follows: (1) Thirty-
272 three and one-third per cent of the first three hundred thousand
273 dollars; (2) twenty-five per cent of the next three hundred thousand
274 dollars; (3) twenty per cent of the next three hundred thousand dollars;
275 (4) fifteen per cent of the next three hundred thousand dollars; and (5)
276 ten per cent of any amount which exceeds one million two hundred
277 thousand dollars.

278 Sec. 8. (*Effective from passage*) (a) The Department of Public Health, in
 279 consultation with the chairpersons and ranking members of the joint
 280 standing committees of the General Assembly having cognizance of
 281 matters relating to public health, insurance and the judiciary, shall
 282 develop a plan to require all physicians licensed pursuant to chapter
 283 370 of the general statutes to report to the department the occurrence
 284 of adverse events, as defined in section 19a-127n of the general
 285 statutes. Such plan shall provide for a structured and uniform
 286 reporting system that will commence July 1, 2004.

287 (b) Not later than February 4, 2004, the department shall report on
 288 the development of such plan to the joint standing committees of the
 289 General Assembly having cognizance of matters relating to public
 290 health, insurance and the judiciary in accordance with the provisions
 291 of section 11-4a of the general statutes."

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| This act shall take effect as follows: | |
| Section 1 | <i>from passage</i> |
| Sec. 2 | <i>from passage, and applicable to civil actions commenced on or after said date</i> |
| Sec. 3 | <i>from passage</i> |
| Sec. 4 | <i>from passage</i> |
| Sec. 5 | <i>from passage, and applicable to civil actions pending on or filed on or after said date</i> |
| Sec. 6 | <i>from passage, and applicable to causes of action pending on or accruing on or after said date</i> |
| Sec. 7 | <i>from passage and applicable to contingency fee arrangements entered into on or after said date</i> |
| Sec. 8 | <i>from passage</i> |