

House Bill 378

By: Representatives Mumford of the 95<sup>th</sup>, Lunsford of the 110<sup>th</sup>, Holt of the 112<sup>th</sup>, Bearden of the 68<sup>th</sup>, Powell of the 29<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to  
2 regulation of rates, underwriting rules, and related organizations with regard to insurance,  
3 so as to enact the "Medical Malpractice Insurance Reform Act"; to provide a short title; to  
4 require medical malpractice insurers to file rates, rating plans, rating systems, and  
5 underwriting rules; to require that medical malpractice insurers develop rates based on each  
6 insurer's experience in this state; to provide for the content of experience filings; to prohibit  
7 the retention of excess loss reserves; to require medical malpractice insurers to file certain  
8 reports and information; to provide for a summary report to the General Assembly by the  
9 Commissioner of Insurance and the contents thereof; to authorize the Commissioner to  
10 promulgate certain rules and regulations; to provide for public hearings in connection with  
11 certain medical malpractice insurance filings; to provide for an effective date; to repeal  
12 conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 This Act shall be known and may be cited as the "Medical Malpractice Insurance Reform  
16 Act."

17 style="text-align:center">**SECTION 2.**

18 Chapter 9 of Title 33 of the Official Code of Georgia Annotated, relating to regulation of  
19 rates, underwriting rules, and related organizations with regard to insurance, is amended by  
20 revising subsection (b) of Code Section 33-9-21, relating to maintenance and filing of rates,  
21 rating plans, rating systems, and underwriting rules, as follows:

22 "(b)(1) Any domestic, foreign, or alien insurer that is authorized to write insurance in this  
23 state must file with the Commissioner any rate, rating plan, rating system, or underwriting  
24 rule for all personal private passenger motor vehicle insurance and medical malpractice  
25 insurance. No such rate, rating plan, rating system, or underwriting rule will become

1 effective, nor may any premium be collected by any insurer thereunder, unless the filing  
2 has been received by the Commissioner in his or her office and such filing has been  
3 approved by the Commissioner or a period of 45 days has elapsed from the date such  
4 filing was received by the Commissioner during which time such filing has not been  
5 disapproved by the Commissioner. The Commissioner shall be authorized to extend such  
6 45 day period by no more than 55 days at his or her discretion. If a filing is disapproved,  
7 notice of such disapproval order shall be given within 100 days of receipt of filing by the  
8 Commissioner, specifying in what respects such filing fails to meet the requirements of  
9 this chapter. The filer shall be given a hearing upon written request made within 30 days  
10 after the issuance of the disapproval order, and such hearing shall commence within 30  
11 days after such request unless postponed by mutual consent. Such hearing, once  
12 commenced, may be postponed or recessed by the Commissioner only for weekends,  
13 holidays, or after normal working hours or at any time by mutual consent of all parties  
14 to the hearing. The Commissioner may also, at his or her discretion, recess any hearing  
15 for not more than two recess periods of up to 15 consecutive days each. In connection  
16 with any hearing or judicial review with respect to the approval or disapproval of such  
17 rates, the burden of persuasion shall fall upon the affected insurer or insurers to establish  
18 that the challenged rates are adequate, not excessive, and not unfairly discriminatory.  
19 After such a hearing, the Commissioner must affirm, modify, or reverse his or her  
20 previous action within the time period provided in subsection (a) of Code Section 33-2-23  
21 relative to orders of the Commissioner. The requirement of approval or disapproval of  
22 a rate filing by the Commissioner under this subsection shall not prohibit actions by the  
23 Commissioner regarding compliance of such rate filing with the requirements of Code  
24 Section 33-9-4 brought after such approval or disapproval.

25 (2) Each domestic, foreign, and alien insurer writing or authorized to write medical  
26 malpractice insurance in this state shall develop and establish rates based upon each  
27 individual insurer's experience in this state. All such filings shall include the total  
28 number of claims made and the total dollar amount paid out on claims in Georgia during  
29 the preceding reporting period and any other data and information required by the  
30 Commissioner. In establishing and maintaining loss reserves, no medical malpractice  
31 insurer shall be allowed to maintain any excess loss reserve for any claim or potential  
32 claim for more than 90 days after the amount of liability for such claim or potential claim  
33 has been established, whether by final judgment, settlement agreement, or otherwise.  
34 This limitation on the maintenance of loss reserves shall be enforced through this Code  
35 section as well as through Code Section 33-9-23, relating to examination of insurers. The  
36 Commissioner is authorized to accept such rate classifications as are reasonable and  
37 necessary for compliance with this chapter.

1 (3) As used in paragraph (2) of this subsection, the term 'excess loss reserve' means any  
 2 reserve amount in excess of the industry's standard or reserve otherwise required by law."

### 3 SECTION 3.

4 Said chapter is further amended by adding new Code Sections 33-9-21.3 and 33-9-21.4 to  
 5 read as follows:

6 "33-9-21.3.

7 (a) Every domestic, foreign, and alien insurer providing medical malpractice insurance to  
 8 a health care provider in this state and every health care provider in this state who  
 9 maintains professional liability coverage through a plan of self-insurance shall submit to  
 10 the Commissioner a report of all claims, including both open claims and closed claims filed  
 11 during the reporting period, for medical malpractice made against any of its insureds in this  
 12 state during the preceding three-month period.

13 (b) The report provided for in subsection (a) of this Code section shall be in writing and  
 14 include claim specific data including the amounts paid on each medical malpractice claim  
 15 and other details of those payments as prescribed by the Commissioner. Said reports shall  
 16 include the following:

17 (1) The number of claims made, other than claims made in lawsuits, listed by the type  
 18 of provider and an indication of specialty, if any;

19 (2) The number of lawsuits filed, listed by the type of provider and an indication of  
 20 specialty, if any;

21 (3) The amount paid on claims, other than claims made in lawsuits. To the extent  
 22 possible, the information submitted should identify separate amounts paid for economic  
 23 damages, noneconomic damages, and punitive damages in personal injury claims, as well  
 24 as separate amounts for economic value and intangible value of life in wrongful death  
 25 claims arising out of medical malpractice; and

26 (4) The amount paid on claims made in lawsuits, with a separate list of amounts paid by  
 27 settlement and amounts paid pursuant to a judgment. To the extent possible, the  
 28 information submitted should also identify separately the amounts paid for economic  
 29 damages, noneconomic damages, and punitive damages in personal injury claims, as well  
 30 as separate amounts paid for economic value and intangible value of life in wrongful  
 31 death claims arising out of medical malpractice.

32 (c) The Commissioner shall provide to the General Assembly in accordance with Code  
 33 Section 33-2-8.1 an annual summary of the information contained in the reports submitted  
 34 under this Code section.

35 (d) The Commissioner shall by rule or regulation promulgated not later than July 1, 2007,  
 36 establish the form of the report required to be filed in accordance with this Code section,

1 including the manner of reporting the elements of the report. The Commissioner is  
2 authorized to promulgate rules and regulations to require such reports to include  
3 information in addition to that specified in this Code section.

4 33-9-21.4.

5 When a rate filing of a medical malpractice insurer submitted under subsection (b) of Code  
6 Section 33-9-21 will result in an increase of more than 10 percent, the Commissioner shall  
7 notify the public of the rate increase and shall hold a public hearing as to the  
8 appropriateness of the rate increase. The hearing shall be conducted in accordance with  
9 the provisions of Chapter 2 of this title. Any interested person or group may participate in  
10 any hearing held pursuant to this Code section."

11 **SECTION 4.**

12 This Act shall become effective upon its approval by the Governor or upon its becoming law  
13 without such approval.

14 **SECTION 5.**

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