

WORKING DRAFT

HOUSE BILL NO. _____

Medical malpractice insurance premium account.

Sponsored by: Representative(s) Robinson

A BILL

for

1 AN ACT relating to a medical malpractice insurance premium
2 assistance; creating the medical malpractice insurance
3 premium account; providing legislative findings and
4 purposes; authorizing payments of physicians' medical
5 malpractice insurance premiums as specified; providing
6 requirements; specifying duties of insurance commissioner;
7 providing an appropriation; providing a sunset date; and
8 providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 26-33-201 and 26-33-202 are created
13 to read:

14

15

ARTICLE 2

1 MEDICAL MALPRACTICE INSURANCE PREMIUM POOL

2 *** STAFF COMMENTS ***

3 This bill, the Massie bill (609) and the Mockler
4 bill (635) all provide subsidies to physicians
5 for medmal premiums. Major differences are
6 highlighted with staff comments.
7

8 26-33-201. Medical malpractice insurance pool;
9 findings; purpose.

10

11 (a) The legislature finds that there is a medical
12 malpractice insurance crisis in Wyoming that is causing
13 physicians' professional insurance premiums to increase to
14 the point that some physicians practicing in some medical
15 subspecialties are unable to afford insurance premium
16 increases and are closing their practices and leaving, or
17 contemplating closing their practices and leaving, the
18 state. The loss of those physicians will or may result in
19 decreased availability of adequate medical care for Wyoming
20 citizens throughout the state. The legislature further
21 finds that Wyoming, as a demographically frontier state,
22 has difficulty recruiting sufficient numbers of physicians
23 to practice in more rural areas of the state.

24 *** STAFF COMMENTS ***

25 The three bills all contain slightly different
26 legislative findings. It is important for the
27 Committee to review those and determine which it
28 believes most accurately represents testimony
29 provided. Generally speaking the Massie draft

1 speaks in a more limited fashion regarding the
2 malpractice situation; i.e., "some physicians may
3 be unable to afford"; versus "are unable"; and
4 "may be forced to limit or close" versus "are
5 closing" practices. This bill speaks to "some
6 medical subspecialties" in the findings.
7

8 (b) It is the purpose of this article to attempt:

9
10 (i) To retain physicians who may otherwise close
11 their practices in Wyoming because of the cost of medical
12 malpractice insurance;
13

14 (ii) To maintain an adequate number of
15 physicians in the state to meet the needs of Wyoming
16 citizens, particularly those citizens who could not
17 otherwise afford or obtain necessary medical care.

18 *** STAFF COMMENTS ***

19 The purpose is identical to the Mockler bill.
20 The Massie bill contains no separate purpose, but
21 it is implicit in the findings of a compelling
22 state interest and encouraging physicians to
23 offer medical care to the poor.
24

25 *** STAFF COMMENTS ***

26 This bill and the Massie bill place
27 administration with the insurance commissioner.
28 Mockler's with the Department of Health.
29

30 26-33-202. Medical malpractice insurance account;
31 creation; duties of state treasurer and insurance
32 commissioner; terms of assistance; recoupment.

1

2 (a) There is created a medical malpractice insurance
3 premium account. The account and any investment income
4 earned from the account shall be invested and reinvested by
5 the state treasurer pursuant to W.S. 9-4-711. Funds within
6 the account shall be used to provide assistance as
7 authorized under this section and to pay for administration
8 of this article.

9

***** STAFF COMMENTS *****

10 **The Mockler bill specifies a continuous**
11 **appropriation of the account. This bill and the**
12 **Massie bill do not, but both of those bills**
13 **sunset by statute.**

14

15 (b) The insurance commissioner shall:

16

17 (i) Annually examine premiums for each medical
18 specialty or subspecialty in each of the fifty (50) states
19 and calculate the average of those rates for each medical
20 specialty or subspecialty;

21

***** STAFF COMMENTS *****

22 **There is no averaging of the premiums in either**
23 **the Massie or Mockler bills.**

24

25 (ii) Develop and make available application
26 forms for medical malpractice insurance premium assistance
27 under this section.

28

***** STAFF COMMENTS *****

1 **The listing of the commissioner's duties is more**
2 **detailed and specific in the Massie bill.**

3

4 (c) Any physician who is licensed and practicing in
5 the state may apply to the commissioner for assistance in
6 paying a portion of the physician's medical malpractice
7 insurance premium as provided in this section. As a
8 condition of receiving assistance under this section, the
9 physician shall enter into a contract with the state,
10 wherein the physician shall agree:

11

12 (i) To practice in the area of medical specialty
13 or subspecialty for the entire period of the contract for
14 which malpractice insurance premium assistance is provided
15 under this section;

16

17 ***** STAFF COMMENTS *****
18 **Same requirement as the Mockler bill. The Massie**
19 **bill does not specify "specialty".**

19

20 (ii) To provide medical care for the entire
21 period of the contract to Wyoming residents qualified under
22 the Wyoming Medical Assistance and Services Act or the
23 Wyoming uninsured child health insurance program
24 established under W.S. 35-25-101 who are seeking medical
25 care which the physician is qualified to provide; and

26

***** STAFF COMMENTS *****

1 **All three bills nearly identical on this**
2 **requirement.**
3

4 (iii) In the event of breaching the contract, to
5 repay the state all funds provided to the physician under
6 this section, including interest.

7 ***** STAFF COMMENTS *****
8 **Neither Mockler nor Massie drafts require**
9 **repayment with interest. The Mockler version**
10 **provides attorney fees and costs of collection -**
11 **neither this nor the Massie bills do.**
12

13 (d) The commissioner shall compare the insurance
14 premium of a physician who meets the requirements specified
15 in subsection (c) of this section with the average premium
16 calculated most recently under paragraph (b)(i) of this
17 section for the physician's medical specialty or
18 subspecialty. If the physician's insurance premium exceeds
19 the average calculated most recently under paragraph (b)(i)
20 of this section, the commissioner shall, to the extent
21 funding is available and subject to other provisions of
22 this section, pay a portion of the physician's insurance
23 that is in excess of the average calculated most recently
24 under paragraph (b)(i) of this section, not to exceed an
25 amount equal to twenty-five percent (25%) of that average,
26 from the account established by this section. The

1 commissioner may deny assistance to any physician if the
2 physician has a significantly negative claims history.

3 ***** STAFF COMMENTS *****

4 **The Mockler bill provides a payment based on**
5 **Medicaid and CHIPS patient load. The Massie -**
6 **"up to" 25%, capped at \$35,000. There is no**
7 **statutory definition of significantly negative**
8 **claims history; it would be established by rule.**
9 **The Mockler bill does not use this limitation.**
10 **The Massie bill includes similar language along**
11 **with other language which is to be considered by**
12 **the commissioner in exercising authority to limit**
13 **or eliminate payments.**
14

15 (e) Any physician eligible to receive assistance
16 under this section shall submit documentation that the
17 physician has provided medical care during the contract
18 period to individuals specified under paragraph (c)(ii) of
19 this section. The physician shall receive assistance with
20 medical malpractice insurance premium in a dollar amount
21 not to exceed sixty percent (60%) of the dollar amount
22 billed, and approved, for services provided under the
23 programs specified under paragraph (c)(ii) of this section.

24 ***** STAFF COMMENTS *****

25 **This is a second calculation "capping" payments.**
26 **The first is the limit of not more than 25% of**
27 **the average; this would then limit the amount**
28 **paid to a dollar amount of not more than 60% of**
29 **approved billings to Medicaid and CHIPS patients.**
30 **The Massie bill limit of \$35,000 has no such tie,**
31 **the Mockler bill uses the Medicaid and CHIPS**
32 **patient workload in calculating the payment.**
33

1 (f) If funding available from the account created by
2 this section is insufficient to pay the amount of insurance
3 premium assistance authorized in subsection (e) of this
4 section for all physicians who apply for assistance under
5 this section, the commissioner may at his discretion pay
6 only a portion of the amount of each eligible physician's
7 insurance authorized in subsection (e) of this section, in
8 a manner to maximize the number of physicians who may
9 receive assistance under this section.

10 ***** STAFF COMMENTS *****

11 **Mockler's draft explicitly states the reduction**
12 **will be pro rata - this draft does not contain**
13 **that limitation. The Massie bill does not have**
14 **explicit language, but the commissioner generally**
15 **has authority to pay "up to" the amounts**
16 **provided, which with other language appears to be**
17 **sufficient to address a shortfall.**
18

19 (g) Any physician who receives assistance for medical
20 malpractice insurance premiums under this section and who
21 fails or refuses to fulfill the terms of the contract
22 required under subsection (c) of this section, shall be in
23 breach of the contract. The commissioner shall obtain the
24 assistance of the attorney general in recouping the amount
25 of assistance provided under the contract. The commissioner
26 may waive recoupment for good cause shown.

27 ***** STAFF COMMENTS *****

28 **There is no provision for waiver for good cause**
29 **in the Massie or Mockler drafts. There are other**

1 statutes providing for waiver for good cause.
2 They must be interpreted in light of the
3 Constitutional provision Article 3, section 40
4 which states:

5
6 No obligation or liability of any person,
7 association or corporation held or owned by the
8 state or any municipal corporation therein shall
9 ever be exchanged, transferred, remitted,
10 released, postponed or in any way diminished
11 except as may be prescribed by the legislature.
12 The liability or obligation shall not be
13 extinguished except by payment into the proper
14 treasury or as may otherwise be prescribed by the
15 legislature in cases where the obligation or
16 liability is not collectible.
17

18 (h) A physician who receives assistance for medical
19 malpractice insurance under this section may, upon full
20 reimbursement including interest to the medical malpractice
21 insurance premium account for the assistance received in a
22 contract period, cancel the contract at any time.

23 ***** STAFF COMMENTS *****

24 **There is no provision similar to subsection (h)**
25 **in either the Mockler or Massie bills.**
26

27 (j) The insurance commissioner shall have authority
28 to:

29
30 (i) Establish the rate of interest, not to
31 exceed six percent (6%) per annum, that shall be paid under
32 paragraph (c)(iii) and subsection (h) of this section; and

33 ***** STAFF COMMENTS *****

1 **There is no interest provision and thus no**
2 **provision similar to paragraph (i) in either the**
3 **Mockler or Massie bills.**
4

5 (ii) Promulgate rules and regulations
6 establishing standards for what may constitute a
7 significantly negative claims history for purposes of
8 subsection (d) of this section.

9

10 ***** STAFF COMMENTS *****
11 **The following section contains conforming**
12 **amendments added to the version reviewed by the**
13 **Labor and Judiciary committee. They are needed**
14 **if the above remains in the insurance code as 26-**
15 **33-201 et. seq.**
16

17 ***** STAFF COMMENTS *****
18 **Note that there are no definitions above. The**
19 **most critical for policy purposes is "physician".**
20 **This bill states any physician licensed and**
21 **practicing in this state. The Mockler bill**
22 **defines physicians as persons licensed W.S. 33-**
23 **26-303. This would include medical doctors,**
24 **doctors of osteopathy and physician assistants**
25 **but would not include dentists, podiatrists,**
26 **optometrists or chiropractors.**
27

28 **Section 2.** W.S. 26-33-101(a) (intro), 26-33-102(a) and
29 (b), 26-33-103, 26-33-105(a), 26-33-109 and 26-33-110(a)
30 are amended to read:

31

32 **26-33-101. Definitions.**

33

1 (a) As used in this ~~chapter~~ article:

2

3 **26-33-102. Qualification.**

4

5 (a) To be qualified under this ~~chapter~~ article, a
6 physician shall annually purchase health care professional
7 liability insurance coverage of not less than fifty
8 thousand dollars (\$50,000.00) per occurrence for any act,
9 error or omission relating to medical care rendered during
10 the policy year and pay the surcharge pursuant to W.S.
11 26-33-105(c).

12

13 (b) A physician failing to qualify under this section
14 is not covered by this ~~chapter~~ article.

15

16 **26-33-103. Insurance coverage.**

17

18 A qualified physician shall be insured in a minimum amount
19 of fifty thousand dollars (\$50,000.00) against a claim for
20 malpractice. Any award or settlement adjudicated or
21 allowed on a malpractice claim in excess of fifty thousand
22 dollars (\$50,000.00) or limits of other underlying coverage
23 if greater occurring during any year in which the physician
24 is qualified under this ~~chapter~~ article shall be paid from

1 the account subject to the limitation that obligations from
2 the account shall not exceed one million dollars
3 (\$1,000,000.00) in any calendar year for one (1) or more
4 awards or settlements against an individual physician.

5

6 **26-33-105. Medical liability compensation fund.**

7

8 (a) There is created a medical liability compensation
9 account within the trust and agency fund, the monies of
10 which shall be collected by the commissioner for exclusive
11 use for the purposes stated in this ~~chapter~~ article. The
12 account and any investment income from it shall be held in
13 trust and invested and reinvested by the state treasurer
14 pursuant to W.S. 9-4-711.

15

16 **26-33-109. Contents of policies.**

17

18 Any policy issued under this ~~chapter~~ article is presumed to
19 comply with this ~~chapter~~ article. The insurer assumes all
20 obligations to pay an award imposed against its insured
21 under this ~~chapter~~ article and no policy termination by
22 cancellation is effective unless at least ninety (90) days
23 before the effective date of the cancellation both the
24 insured and the commissioner receive at their offices, a

1 written notice giving the date upon which termination is
2 effective.

3

4 **26-33-110. Failure to pay claims.**

5

6 (a) If a professional liability insurer, in the
7 regular course of business, fails to pay its portion of any
8 judgment rendered against any physician or any other person
9 insured under this ~~chapter~~ article, the commissioner shall
10 suspend that insurer's certificate of authority until the
11 portion of the judgment allocable to the insurer is paid in
12 full, provided the insurer has the right to a hearing in
13 accordance with W.S. 26-3-115(b).

14

15 **Section 3.** W.S. 26-33-201 and 26-33-202 are repealed
16 effective June 30, 2007.

17

***** STAFF COMMENTS *****

18

The Massie bill has a sunset of June 30, 2006.

19

Mockler's has no sunset.

20

21 **Section 3.** There is appropriated from the budget
22 reserve account to the medical malpractice insurance
23 premium account created by W.S. 26-33-202, ten million
24 dollars (\$10,000,000.00) to implement the purposes of this
25 act, including payment of physicians' qualified medical

1 malpractice insurance premiums and administrative costs
2 incurred by the insurance commissioner in the
3 implementation of the act. Any funds unobligated or
4 unencumbered on June 30, 2007 shall revert to the general
5 fund.

6 ***** STAFF COMMENTS *****

7 **The Mockler bill contains a lump sum**
8 **appropriation of \$10 million from the BRA. The**
9 **Massie bill \$10.8 million for premium payments**
10 **and \$300,000 for administration - both from the**
11 **BRA.**
12

13 **Section 4.** No contract under this act shall extend
14 beyond June 30, 2007. Notwithstanding the repeal of W.S.
15 26-33-202(g) pursuant to Section 2 of this act, the
16 insurance commissioner may, after June 30, 2007, seek
17 recoupment of assistance provided under this act for any
18 breach of contract that occurs as a result of a contract
19 executed under this act, subject to any limitations that
20 may apply under title 1, chapter 3 of the Wyoming statutes.

21 ***** STAFF COMMENTS *****

22 **No similar provision in either the Massie or**
23 **Mockler bills.**
24

25 **Section 5.** This act is effective immediately upon
26 completion of all acts necessary for a bill to become law
27 as provided by Article 4, Section 8 of the Wyoming
28 Constitution.

1

(END)