**South Carolina General Assembly**

123rd Session, 2019-2020

**A67, R87, H3760**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Sandifer

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Introduced in the House on January 24, 2019

Introduced in the Senate on February 26, 2019

Last Amended on May 9, 2019

Passed by the General Assembly on May 9, 2019

Governor's Action: May 16, 2019, Signed

Summary: Medical Malpractice Liability Joint Underwriting Association

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/24/2019 House Introduced and read first time ([House Journal‑page 53](file:///h:\hj\20190124.docx))

1/24/2019 House Referred to Committee on **Labor, Commerce and Industry** ([House Journal‑page 53](file:///h:\hj\20190124.docx))

2/14/2019 House Committee report: Favorable with amendment **Labor, Commerce and Industry** ([House Journal‑page 25](file:///h:\hj\20190214.docx))

2/19/2019 Scrivener's error corrected

2/21/2019 House Amended ([House Journal‑page 56](file:///h:\hj\20190221.docx))

2/21/2019 House Read second time ([House Journal‑page 56](file:///h:\hj\20190221.docx))

2/21/2019 House Roll call Yeas‑82 Nays‑19 ([House Journal‑page 97](file:///h:\hj\20190221.docx))

2/25/2019 Scrivener's error corrected

2/26/2019 House Read third time and sent to Senate ([House Journal‑page 22](file:///h:\hj\20190226.docx))

2/26/2019 Senate Introduced and read first time ([Senate Journal‑page 18](file:///h:\sj\20190226.docx))

2/26/2019 Senate Referred to Committee on **Banking and Insurance** ([Senate Journal‑page 18](file:///h:\sj\20190226.docx))

4/30/2019 Senate Committee report: Favorable with amendment **Banking and Insurance** ([Senate Journal‑page 16](file:///h:\sj\20190430.docx))

5/1/2019 Scrivener's error corrected

5/7/2019 Senate Amended ([Senate Journal‑page 113](file:///h:\sj\20190507.docx))

5/8/2019 Scrivener's error corrected

5/8/2019 Senate Committee Amendment Tabled ([Senate Journal‑page 92](file:///h:\sj\20190508.docx))

5/8/2019 Senate Read second time ([Senate Journal‑page 92](file:///h:\sj\20190508.docx))

5/9/2019 Senate Amended ([Senate Journal‑page 34](file:///h:\sj\20190509.docx))

5/9/2019 Senate Read third time and returned to House with amendments ([Senate Journal‑page 34](file:///h:\sj\20190509.docx))

5/9/2019 Senate Roll call Ayes‑37 Nays‑0 ([Senate Journal‑page 34](file:///h:\sj\20190509.docx))

5/9/2019 House Concurred in Senate amendment and enrolled ([House Journal‑page 157](file:///h:\hj\20190509.docx))

5/9/2019 House Roll call Yeas‑99 Nays‑3 ([House Journal‑page 158](file:///h:\hj\20190509.docx))

5/13/2019 Ratified R 87

5/16/2019 Signed By Governor

5/31/2019 Effective date 05/16/19

6/5/2019 Act No.  67

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**VERSIONS OF THIS BILL**

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[2/19/2019](file:///p:\pprever\2019-20\3760_20190219.docx)

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[5/9/2019](file:///p:\pprever\2019-20\3760_20190509.docx)

(A67, R87, H3760)

**AN ACT TO AMEND ARTICLE 3, CHAPTER 79, TITLE 38, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE SOUTH CAROLINA MEDICAL MALPRACTICE LIABILITY JOINT UNDERWRITING ASSOCIATION, SO AS TO MERGE THE JOINT UNDERWRITING ASSOCIATION WITH THE PATIENTS’ COMPENSATION FUND AND TO RENAME THE SURVIVING ENTITY THE SOUTH CAROLINA MEDICAL MALPRACTICE ASSOCIATION, TO DEFINE NECESSARY TERMS, TO ALTER THE MEMBERSHIP OF THE ASSOCIATION, TO ESTABLISH CERTAIN REQUIREMENTS FOR THE INITIAL FILING OF POLICY FORMS, TO REQUIRE THE MEMBERS OF THE ASSOCIATION TO PAY AN ASSESSMENT EQUAL TO THE MEMBER’S PROPORTIONAL SHARE OF THE ACCUMULATED DEFICIT OF THE ASSOCIATION, TO INCREASE POLICY LIMITS FOR POLICIES ISSUED BY THE ASSOCIATION ON BEHALF OF ITS MEMBERS, TO REQUIRE THE ASSOCIATION TO SUBMIT ALL POLICY FORMS, CLASSIFICATIONS, RATES, RATING PLANS, OR RULES TO THE DIRECTOR OF THE DEPARTMENT OF INSURANCE, TO ESTABLISH A UNIFORM ASSESSMENT ON THE MEMBERSHIP OF THE ASSOCIATION AND PROVIDE FOR AN ADDITIONAL SURCHARGE ON PREMIUMS THAT MUST BE ASSESSED ON ASSOCIATION POLICYHOLDERS, TO ESTABLISH CERTAIN OBLIGATIONS FOR TERMINATED MEMBERS OF THE ASSOCIATION, TO ESTABLISH CERTAIN CONDITIONS REGARDING THE ASSOCIATION’S ANNUAL FINANCIAL STATEMENT AND THE EXAMINATION OF THE ASSOCIATION BY THE DIRECTOR OF THE DEPARTMENT OF INSURANCE, TO PROVIDE THE EFFECTIVE DATE OF THE MERGER OF THE PATIENTS’ COMPENSATION FUND AND THE JOINT UNDERWRITING ASSOCIATION, TO PROVIDE FOR THE WINDING DOWN OF THE PATIENTS’ COMPENSATION FUND, AND TO PROVIDE FOR THE COMPOSITION OF THE BOARD AND THE DUTIES OF THE ASSOCIATION; AND BY ADDING SECTION 38‑79‑400 SO AS TO REPEAL ARTICLE 5, CHAPTER 79, TITLE 38 RELATING TO THE PATIENTS’ COMPENSATION FUND, UPON THE MERGER OF THE PATIENTS’ COMPENSATION FUND INTO THE JOINT UNDERWRITING ASSOCIATION.**

Be it enacted by the General Assembly of the State of South Carolina:

**Medical Malpractice Association created, Patients**’ **Compensation Fund and Joint Underwriting Association merged**

SECTION 1. Article 3, Chapter 79, Title 38 of the 1976 Code is amended to read:

“Article 3

South Carolina Medical Malpractice Liability

Joint Underwriting Association

Section 38‑79‑110. As used in this article:

(1) ‘Accumulated deficit’ means the amount that the association’s and the fund’s liabilities exceed their assets, as reported in the association’s and fund’s respective most recently reported financial statements on June 30, 2019.

(2) ‘Association’ means any joint underwriting association established by the General Assembly in 1987 and managed and operated pursuant to the provisions of this article.

(3) ‘Fund’ means the Patients’ Compensation Fund.

(4) ‘Future deficit’ means any deficit accumulated by the association and fund after the most recently reported financial statements as of June 30, 2019.

(5) ‘Licensed health care providers’ means physicians and surgeons, nurses, oral surgeons, dentists, pharmacists, podiatrists, hospitals, nursing homes, or any similar major category of licensed health care providers. The term ‘licensed health care provider’ also includes blood centers which collect, process, and distribute blood to hospitals and physicians for the care of patients if these blood centers as of July 1, 1997, were insured with the Joint Underwriting Association.

(6) ‘Medical malpractice insurance’ means medical professional liability insurance or insurance protection against the 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 the result of negligence or malpractice in rendering or failing to render professional service by any licensed physician, licensed health care provider, or hospital.

(7) ‘Net‑direct premiums’ means gross-direct premiums written on medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, and any other type of professional liability insurance covering risks of licensed health care providers and facilities as determined and computed by the director or his designee, less return premiums or the unused or unabsorbed portions of premium deposits. The net‑direct premium calculation does not include premiums written by the fund.

Section 38‑79‑120. (1) A joint underwriting association (association) is created, containing as members all insurers authorized to write and report net‑direct written premiums for medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers. Membership also includes foreign and domestic risk retention groups and captive insurers authorized to write and report net‑direct premiums for medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risk of licensed health care providers, and authorized to do business in accordance with the provisions of this title. The South Carolina Insurance Reserve Fund is not a member of the association. Each insurer described above is and must remain a member of the association as a condition of the authorization to transact the sale of insurance in this State. The membership of the association shall continue as members in the South Carolina Medical Malpractice Association upon its creation as provided in Section 38‑79‑300.

(2) The purpose of the association is to ensure the availability of medical malpractice and other types of professional liability insurance for health care providers on a self‑supporting basis to the fullest extent possible. The intent of the General Assembly in enacting this section is to eliminate the accumulated deficit of the association and of the fund and to transition the association over time to a market of last resort so that it is no longer in competition with the private market. Specifically, the General Assembly does not intend that the South Carolina Joint Underwriting Association offer rates that are competitive to the private market.

Section 38‑79‑125. (1) As of January 1, 2020, all insurers authorized to write on a direct basis bodily injury liability insurance, other than automobile bodily injury insurance, homeowners liability insurance, an insurer which insures only churches and their property, and farmowners liability insurance including monoline farm liability insurance, including insurers covering such peril in multiple peril package policies and bodily injury insurance, must pay an assessment equal to their proportional share of twenty percent of the accumulated deficit of the association as contained in their most recently reported financial statements as of June 30, 2019, as determined by the director. Each insurer’s share of the assessment must be calculated based upon the net‑direct written premiums for the insurer’s liability lines as identified in this subsection on the most recent year preceding the effective date of this section. All money collected from this assessment must be applied to the accumulated deficit of the association. Each insurer may pay the assessment in one lump sum or, at the insurer’s option, in equal installments over a period not to exceed five years. The assessment may be incorporated into the rate filings of the insurer. Upon satisfaction of the assessment, each insurer may withdraw as members of the association upon submission of:

(a) an application for withdrawal in the format prescribed by the director or his designee;

(b) evidence that it has not written any medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers in the consecutive five years preceding the insurer’s withdrawal application; and

(c) certification by the association and the director or his designee that all obligations to the association have been fully satisfied.

Section 38‑79‑130. The association, pursuant to the provisions of this article and the approved plan of operation in respect to medical malpractice insurance, has the power on behalf of its members to:

(1) issue, or cause to be issued, policies of insurance to applicants including incidental coverages including, but not limited to, premises or operations liability coverage on the premises where services are rendered, all subject to limits of liability as specified in the plan of operation but not to exceed one million dollars for each claim under one policy and three million dollars for all claims under one policy in any one year; provided, however, that the association may offer higher limits per claim and for all claims under one policy in any one year only upon approval of the board of the association and with the written approval of the director;

(2) underwrite medical malpractice insurance and to adjust and pay losses with respect to it or to appoint service companies to perform those functions; and

(3) cede and assume reinsurance.

Section 38‑79‑140. (1) The association must operate pursuant to a plan of operation which shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance and may contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of the members to defray losses and expenses, commissions arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association. The plan of operation must be amended within thirty days following the merger provided for in Section 38‑79‑300. The amended plan must address the orderly and expeditious winding down of the Patients’ Compensation Fund.

(2) The plan of operation shall provide that any profit achieved by the association must be added to the reserves of the association or returned to the policyholders as a dividend. If there is no accumulated deficit, any profit achieved by the association must be added to the reserves of the association.

(3) The approved plan of operation may make provisions for combining insurers under common ownership or management into groups for voting, assessment, and all other purposes and may provide that no more than one of the officers or employees of a group may serve as a director at any one time.

(4) Amendments to the plan of operation may be made by the directors of the association with the approval of the director or his designee or must be made at the direction of the director or his designee after due notice and public hearing.

Section 38‑79‑150. Any licensed health care provider is entitled to apply to the association for coverage. The application may be made on behalf of the applicant by a licensed agent or broker authorized in writing by the applicant. If the association determines that the applicant meets the underwriting standards of the association as set forth in the approved plan of operation and there is no unpaid, uncontested premium due from the applicant for any prior insurance of the same kind, the association, upon receipt of the premium, or a portion thereof as prescribed by the plan of operation, shall cause to be issued a policy of medical malpractice liability insurance for a term of one year.

The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to insurance written by the association and the statistical and experience data relating thereto are subject to this article and to those provisions of Chapter 73 of this title which are not inconsistent with the purposes and provisions of this article.

Section 38‑79‑160. Reserved.

Section 38‑79‑170. In respect to the structuring of rates for medical malpractice liability insurance and the determination of the profit or loss of the association in respect to that insurance, due consideration must be given by the director or his designee to all investment income.

Section 38‑79‑180. The association shall submit, for the approval of the director or his designee, all policy forms, classifications, rates, rating plans, or rules applicable to its insurance product offerings to customers in this State. Such filings must be submitted for approval to the director no less than sixty days prior to their intended effective date. The director may extend the time for his review by an additional sixty days to allow the department sufficient time to evaluate the proposed form, classification, rate, rating plan, or rule to be used by the association. Rates must be actuarially sound, self supporting, and may not be excessive, inadequate, or unfairly discriminatory.

Section 38‑79‑190. (1) The board of directors shall specify whether policy forms and the rate structure must be on a ‘claims‑made’ or ‘occurrence’ basis and coverage may be provided by the association only on the basis specified by the board of directors. The board of directors shall specify the ‘claims‑made’ basis only if the contract makes provision for residual ‘occurrence’ coverage upon the retirement, death, disability, or removal from the State of the insured. Provision may be made for a premium charge allocable to any such residual ‘occurrence’ coverage and the premium charges for the residual coverage must be segregated and separately maintained for such purpose which may include the reinsurance of all or a part of that portion of the risk.

(2) The policy may not contain any limitation in relation to the existing law in tort as provided by the statute of limitations of the State of South Carolina.

(3) The policy form whether on a ‘claims‑made’ or ‘occurrence’ basis may not require as a condition precedent to settlement or compromise of any claim the consent or acquiescence of the insured. However, such settlement or compromise may never be held or considered to be an admission of fault or wrongdoing by the insured.

(4) The premium rate charged for either or both ‘claims‑made’ or ‘occurrence’ coverage must be at rates established on an actuarially sound basis, including consideration of trends in the frequency and severity of losses. After the accumulated deficit has been eliminated, the association must function as a residual market mechanism. After that time, the association may not offer rates competitive with the admitted market but the rates for policies issued by the association must be adequate and established at a level that permits the association to operate as a self‑sustaining mechanism.

Section 38‑79‑200. The association is authorized to provide a rate increase or assessment on policyholders which is subject to the approval of the director or his designee.

Section 38‑79‑210. (1) Any future deficit must be recouped, pursuant to the plan of operation and the rating plan then in effect, by a rate increase applicable prospectively approved by the director or his designee pursuant to the provisions of Section 38‑79‑180.

Section 38‑79‑220. (1) All members of the association, excluding companies who have withdrawn from the association pursuant to Section 38‑79‑125, must contribute to the elimination of the association’s and fund’s accumulated deficit. Beginning on January 1, 2020, a uniform assessment of not less than two percent and not more than six percent of the net-direct written premium must be assessed against each member of the association in order to eliminate the accumulated deficits of the association and the fund. Association members must be notified of the assessment at least sixty days prior to each year end. After each quarter during the year following notification of the assessment, each member of the association must remit an amount equal to the assessment percentage of the previous quarter’s direct written premiums. Monies derived from this assessment and collected must be distributed by the association to the accumulated deficits of the association and fund as determined appropriate by the director. Every member must directly recover from each policyholder one percent of the assessment and is authorized to recoup up to the remaining amount if they so choose. Amounts recouped under this section are not premium and are not subject to premium taxes, fees, or commissions. If one deficit is eliminated before the other, all subsequent monies collected must be distributed to the remaining deficit until it is eliminated. Assessments must cease when both accumulated deficits have been fully eliminated or on December 31, 2035, or whichever occurs first. Funds received by the association under this section will not be considered revenue or considered part of their operating income and will only be used to reduce the accumulated deficit.

(2) Beginning on January 1, 2020, a surcharge on premium shall be assessed on association policyholders equal to the assessment percentage amount on members in any given year pursuant to the provisions of Section 38‑79‑220. Association policyholders will be notified of the surcharge percentage at least sixty days prior to each year end. Surcharges levied under this section are not premiums and are not subject to premium tax, any fees, or any commissions. Monies derived from this assessment and collected under this section must be distributed by the association to the accumulated deficits of the association and fund as determined appropriate by the director. Should one deficit be eliminated before the other deficit, all subsequent monies collected shall be distributed to the remaining deficit until it is eliminated. This surcharge shall cease when the accumulated deficits of both the association and the fund have been fully eliminated or on December 31, 2035, whichever occurs first. Funds received by the association under this section will not be considered revenue or considered part of their operating income and will only be used to reduce the accumulated deficit.

(3) Each member shall remit to the association payment in full of its assessed amount under this section within thirty days of the end of each quarter. If a member fails to remit its assessed amount by the deadline, the association shall report the failure to the director or designee who may immediately take action to suspend or revoke such insurer’s certificate of authority to transact the business of insurance in the State of South Carolina or issue a fine on that member until such time as the association certifies to the director or his designee that such assessment has been paid in full. The issuance of a fine, suspension, or revocation of an insurer’s certificate of authority to transact business in the State of South Carolina shall not affect the right of the association to proceed against such insurer in any court for any remedy provided by law or contract to the association, including the right to collect such insurer’s assessment. In addition to any other remedy, the association may offset assessments due from an insurer against any amounts in any account of such delinquent insurer. By mailing payment of its allocated amount of assessment, as provided herein, a member shall not waive any right it may have to contest the computation of its allocated amount of assessment. Such contest shall not, however, toll the time within which assessments must be paid or the report to be made to the director or his designee or affect or impede any action to be taken by the director or his designee upon receipt of such report.

(4) Beginning January 1, 2020, all surplus lines insurance producers or brokers placing insurance through nonadmitted insurers shall collect from the insured and remit to the department to be distributed to the association and fund a nonadmitted policy surcharge on all premiums for all insurance written by such surplus lines insurance producer or broker for a policy from a nonadmitted insurer for any and all medical malpractice risks in this State. By procuring or selling medical malpractice insurance in this State from a nonadmitted insurer, each surplus lines insurance producer or broker placing insurance through a nonadmitted insurer agrees to be bound by the provisions of this chapter and to collect and remit the nonadmitted policy surcharge provided for herein.

(a) The nonadmitted policy surcharge must be a percentage of the total policy premium, but the nonadmitted policy surcharge shall not be considered premium and is not subject to premium taxes or commissions. However, failure to pay the nonadmitted policy surcharge must be treated the same as failure to pay premium. ‘Total policy premium’ includes taxes and commissions.

(b) The nonadmitted policy surcharge percentage must be the same percentage as the assessment that has been approved by the board and director as applied to the insurers writing medical malpractice insurance, medical professional liability insurance, hospital professional liability insurance, or any other type of professional liability insurance in this State covering the professional liability risks of licensed health care providers as described in Section 38‑79‑220.

(5) Within thirty days of the end of the quarter, surplus lines insurance producers or brokers placing insurance through nonadmitted insurers shall remit to the department all nonadmitted policy surcharges collected in the preceding quarter. Surplus lines insurance producers or brokers placing insurance through nonadmitted insurers may designate another surplus lines insurance producer or broker that actually procured the insurance from the nonadmitted carrier to collect and remit the nonadmitted policy surcharges.

(6) Each insured in this State who directly procures or renews insurance with a nonadmitted insurer on medical malpractice insurance other than insurance procured through a surplus lines licensee, must be subject to the nonadmitted policy surcharge which must be paid by the insured according to the procedures provided for premium taxes in Chapter 45 of this title.

Monies derived from the nonadmitted policy surcharge collected under this section must exclusively be used to reduce the accumulated deficits of the association and fund by equal amounts unless the director or his designee determines that different proportions are appropriate. Once the accumulated deficit of the association or the fund is eliminated, whichever occurs first, all subsequent monies collected through the assessment shall exclusively be used to reduce the remaining deficit until it has also been eliminated. The nonadmitted policy surcharge must continue until the surcharge provided in subsection (1) is eliminated.

(7) The accumulated deficits of the association and the fund have accrued and persisted over a period of decades and being partially attributable to state agencies or institutions or their employees, until the director determines that the accumulated deficits of the association and the fund have been eliminated, he may receive appropriations that are explicitly provided for purposes of reducing the accumulated deficits of the association and fund.

Section 38‑79‑230. Beginning on January 1, 2021, an additional one percent surcharge on the premium must be assessed on association policyholders. The premium surcharge must increase by one additional percentage point annually until it reaches ten percent and does not sunset. Surcharges levied under this section are not premium and therefore not subject to premium taxes, fees, or commissions. Surcharges may not be considered when evaluating whether rates are excessive, adequate, or unfairly discriminatory.

Section 38‑79‑240. Every member of the association is bound by the approved plan of operation of the association, including any amendments made, and by any other rules the board of directors of the association lawfully prescribes.

Section 38‑79‑250. (1) If any member insurer ceases writing business in this State, voluntarily or involuntarily, or by order or authority of the director, the insurer shall continue to be a member of the association until all of its obligations have been satisfied and the director has certified the satisfaction to the association’s board.

(2) If a member insurer merges into, acquires, or consolidates with another insurer transacting business subject to this article or if any other insurer or entity has reinsured or assumed a member insurer’s entire liability business in this State, the surviving insurer, acquiring insurer, its legal successor, or its assuming reinsurer nonetheless remains liable for the member insurer’s obligations in respect to the association.

(3) Any unsatisfied net liability of any insolvent member of the association must be assumed by and apportioned among the remaining members in the same manner in which assessments or gain and loss are apportioned and the association shall thereupon acquire and have all rights and remedies allowed by law on behalf of the remaining members against the estate or funds of the insolvent insurer for funds due the association.

(4) The State is not responsible for any costs, expenses, liabilities, judgments, or other obligations of the association.

Section 38‑79‑260. (1) The provisions of this section only apply until January 1, 2020.

(2) The association is governed by a board of thirteen directors, all of whom must be appointed by the Governor. The Governor shall appoint five health care providers after consultation with the South Carolina Medical Association, the South Carolina Dental Association, and the South Carolina Health Alliance; four insurance representatives after consultation with the insurance industry; one consumer representative who is unaffiliated with the insurance or health care industries or the medical or legal professions; and two licensed insurance agents or brokers. The professional associations listed and the insurance industry may nominate qualified individuals to the Governor for his consideration. The Governor may also receive nominations for appointments to the board from any other individual, group, or association. Notices of vacancies on the board must be published in newspapers of general statewide circulation. The director or his designee shall serve as an ex officio member of the board. The board shall develop a plan of operation which is subject to the approval of the director or his designee as provided in this article. The plan of operation shall provide for staggered terms of the members of the board. The approved plan of operation of the association may make provision for combining insurers under common ownership or management into groups for voting, assessment, and all other purposes and may provide that not more than one of the officers or employees of a group may serve as a director at any one time. The board shall elect a chairman and other necessary officers for two‑year terms. A vacancy must be filled for the unexpired portion of the term only. The Governor may receive recommendations from any individual, group, or association for any vacancy on the board. The board must meet at the call of the chairman or a majority of the members of the board, but in any event it must meet at least once a year.

Section 38‑79‑280. The association shall file a financial statement with the department by March first of each year detailing its transactions, financial condition, operations, and affairs during the previous calendar year. In addition, the director may require the association to file quarterly financial statements with the department on the fifteenth of May, August, and November of each year. The statement shall contain such matters and information as are prescribed by the director or his designee and must be prepared in the format the director prescribes. The director or his designee may require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 38‑79‑290. The director or his designee shall conduct an examination into the financial condition and affairs of the association at least annually and shall file a report thereon with the department, the Governor, and the General Assembly. The expenses of the examination must be paid by the association. The director or his designee may accept an audit of the association performed by a qualified public accounting firm in lieu of conducting his own examination.

Section 38‑79‑300. (A) Effective on January 1, 2020, the Patients’ Compensation Fund provided for in Article 5 of this chapter shall merge into the South Carolina Medical Malpractice Association as created by this article. The surviving entity is the Joint Underwriting Association and referred to herein as the South Carolina Medical Malpractice Association. The South Carolina Medical Malpractice Association shall assume all obligations and responsibilities of the Patients’ Compensation Fund, while retaining all obligations and responsibilities of the Joint Underwriting Association. However, the accumulated deficits of the former Joint Underwriting Association and the Patients’ Compensation Fund must be separately accounted for until such time as the director determines each of them is fully eliminated.

(B) On January 1, 2020, the Board of the Patients’ Compensation Fund shall, with oversight of the Department of Insurance, exercise due diligence in providing for the orderly and expeditious winding down of the Patients’ Compensation Fund. All outstanding affairs and existing contractual obligations of the Patients’ Compensation Fund shall contemporaneously become the responsibility of the South Carolina Medical Malpractice Association on January 1, 2020. After January 1, 2020, the Patients’ Compensation Fund shall cease to exist except as required by law for purposes of winding down its affairs.

(C) The Board of Directors of the South Carolina Medical Malpractice Association must:

(1) be appointed on or before January 1, 2020, and is authorized to enter into contracts for the management of the South Carolina Joint Underwriting Association in accordance with governing law;

(2) have the right to attend any regular or special meeting of the Board of Directors of the Joint Underwriting Association or the Board of Governors of the Patients’ Compensation Fund, but shall have no vote at these meetings;

(3) replace the existing Board of the Joint Underwriting Association as provided for in Section 38‑79‑260;

(4) consist of eleven members all appointed by the Governor, as follows:

(a) four medical providers after consultation with the South Carolina Medical Association, the South Carolina Hospital Association, the South Carolina Nurses Association, and the South Carolina Dental Association;

(b) four representatives from the medical malpractice insurance industry representing member companies of the association after consultation with the three largest members;

(c) two consumer representatives;

(d) one independent insurance agent or broker not affiliated with one of the three medical malpractice insurance companies already represented on the board; and

(e) the Director of the Department of Insurance, who serves ex‑officio and does not have any voting privileges.

(5) elect other necessary officers for two‑year terms after the accumulated deficits of the South Carolina Joint Underwriting Association and the Patients’ Compensation Fund are eliminated. The director or his designee shall serve as chairman of the board.

(D) Upon consultation with and consent of the director, the Board of the South Carolina Medical Malpractice Association:

(1) must select a person or firm for the administration and management of the South Carolina Joint Underwriting Association using a competitive bidding process;

(2) is responsible for the negotiation of the administrator’s contract including, without limitation, compensation, fees, and the length of the contract; and

(3) shall have the authority to terminate or retain the administrator.

(E) Each member of the Board of the South Carolina Medical Malpractice Association shall serve a term of four years; however, any board member may be reappointed for up to two additional four‑year terms. The professional associations listed and the insurance industry may nominate qualified individuals to the Governor for his consideration. The Governor also may receive nominations for appointments to the board from any other individual, group, or association. The South Carolina Medical Malpractice Association and director must publicize all board vacancies to the general public. A vacancy must be filled for the unexpired portion of the term only. The Board of the South Carolina Medical Malpractice Association must meet at the call of the chairman or a majority of the members of the board, but in any event it must meet at least once a year. Any board members of the Joint Underwriting Association or the Patients’ Compensation Fund serving at the time of this enactment may be reappointed by the Governor to the Board of the South Carolina Joint Underwriting Association. The prior service of a board member on the Board of the Joint Underwriting Association or Patients’ Compensation Fund does not count toward the term limits on members of the Board of the South Carolina Medical Malpractice Association.

(F) Each member of the Board of the South Carolina Medical Malpractice Association has a fiduciary relationship to the organization and must discharge his duties accordingly.”

**Patients**’ **Compensation Fund repealed**

SECTION 2. Article 5, Chapter 79, Title 38 of the 1976 Code is amended by adding:

“Section 38‑79‑400. This article must be repealed upon the merger of the Patients’ Compensation Fund for benefit of licensed health care providers into the South Carolina Joint Underwriting Association as provided for in Section 38‑79‑300 on January 1, 2020.”

**Time effective**

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 13th day of May, 2019.

Approved the 16th day of May, 2019.

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