

SENATE BILL 2

EMERGENCY BILL

C4

4lr6010

By: **Senator Frosh (Chairman, Senate Special Commission on Medical Malpractice Liability Insurance) and Senators Currie, Garagiola, Giannetti, Gladden, Hughes, McFadden, Middleton, and Pinsky**

Introduced and read first time: December 28, 2004

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Professional Liability Insurance Rate Stabilization Act of**
3 **2004**

4 FOR the purpose of requiring certain alternative dispute resolution of certain health
5 care malpractice actions under certain circumstances; authorizing the Court of
6 Appeals to adopt rules relating to certain alternative dispute resolution;
7 providing for certain alternative dispute resolution procedures and costs;
8 authorizing an arbitration panel or court to make a certain finding as to
9 whether a certain claim or action was brought or maintained in bad faith or
10 without substantial justification; providing for certain procedures related to
11 attorneys who bring a claim or action in bad faith or without substantial
12 justification; providing for a certain limitation on noneconomic damages for
13 personal injury and wrongful death actions concerning health care malpractice;
14 limiting a certain limitation on noneconomic damages for personal injury and
15 wrongful death actions concerning health care malpractice in which there are
16 multiple claims, claimants, plaintiffs, or beneficiaries; providing that a certain
17 limitation on noneconomic damages shall be increased by a certain amount on
18 an annual basis; providing that in wrongful death actions in which there are two
19 or more claimants or beneficiaries, the total amount of noneconomic damages
20 may not exceed a certain percentage of the limitation on noneconomic damages;
21 prohibiting a jury from being informed of certain limitations on noneconomic
22 damages; requiring the court to reduce certain jury awards for noneconomic
23 damages that exceed a certain limitation; requiring the court to take certain
24 actions in wrongful death actions with two or more claimants or beneficiaries if
25 a jury awards noneconomic damages in excess of a certain limitation; requiring
26 the court to take certain actions in cases in which there is a personal injury and
27 a wrongful death action if the jury awards noneconomic damages in excess of a
28 certain limitation; providing for immunity from suit for individuals who conduct
29 alternative dispute resolution under certain circumstances; prohibiting the use
30 of certain expressions of regret or apology as evidence of liability in certain
31 actions and proceedings; providing that certain provisions relating to damages
32 in personal injury and wrongful death actions do not apply to causes of action for
33 medical injury arising on or after a certain date; requiring a hospital or related

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 institution to report certain adverse events to the Department of Health and
2 Mental Hygiene under certain circumstances; authorizing the imposition of a
3 certain penalty for a violation of a certain reporting requirement; requiring the
4 Secretary of Health and Mental Hygiene to adopt certain regulations; requiring
5 a court to award certain costs and fees to certain prevailing parties in certain
6 actions relating to decisions of certain medical review committees under certain
7 circumstances; altering the standard of proof for certain findings by the State
8 Board of Physicians; providing that formal rules of evidence shall be observed at
9 certain hearings; including the cross-examination of witnesses; requiring the
10 Maryland Insurance Administration to prepare annually a certain comparison
11 guide of medical professional liability insurance premiums for health care
12 providers that includes certain information; requiring insurers providing
13 professional liability insurance to a health care provider in the State to submit
14 certain information to the Maryland Insurance Commissioner on a certain form;
15 requiring the Commissioner to submit a certain report on medical malpractice
16 liability insurance to the Governor and the General Assembly on or before a
17 certain date each year; requiring the Commissioner to adopt certain regulations
18 relating to the submission of certain information on medical professional
19 liability insurance; applying a certain tax to premiums of certain health
20 maintenance organizations and managed care organizations under certain
21 circumstances; requiring certain reporting of gross receipts by a managed care
22 organization; prohibiting certain insurers from entering into certain exclusive
23 appointment agreements with certain producers; prohibiting an insurer from
24 including in a medical professional liability insurance policy coverage for the
25 defense of an insured in disciplinary hearings; requiring insurers that issue or
26 deliver medical professional liability insurance policies in the State to offer
27 certain policies with certain deductibles; authorizing the insurer to cancel a
28 policy for failure to pay a deductible in certain amounts; requiring an insurer to
29 comply with certain notice provisions of law when canceling a policy due to
30 nonpayment of certain deductibles; providing that a medical professional
31 liability insurer that issues or delivers a new policy is not subject to a certain
32 provision of law; providing that the Commissioner shall make a certain
33 determination within 90 days of a request to review a cancellation or refusal to
34 renew a policy for medical professional liability insurance; establishing a
35 People's Insurance Counsel Division in the Office of the Attorney General;
36 providing for the appointment, qualifications, and compensation of the People's
37 Insurance Counsel; providing for certain procedures related to the People's
38 Insurance Counsel Division; requiring the Attorney General's Office to provide
39 money in its annual budget for the People's Insurance Counsel Division;
40 requiring the Maryland Insurance Commissioner to collect a certain assessment
41 from certain insurers and deposit the amounts collected into the People's
42 Insurance Counsel Fund; establishing the People's Insurance Counsel Fund as a
43 continuing, nonlapsing fund; providing for the purpose and administration of
44 the Fund; providing for the powers and duties of the People's Insurance Counsel
45 Division; requiring the People's Insurance Counsel Division to report on its
46 activities to the Governor and the General Assembly on or before a certain date
47 each year; prohibiting certain actions constituting false claims against a State
48 health plan; providing certain penalties for making false claims against a State

1 health plan; providing for certain procedures related to making a false claim
2 against a State health plan; providing for certain remedies under a civil action
3 for making a false claim against a State health plan; prohibiting an employer
4 from taking retaliatory action against an employee under certain circumstances;
5 providing certain remedies for retaliatory action; providing certain limitations
6 on civil actions; establishing the Maryland Medical Professional Liability
7 Insurance Rate Stabilization Program; establishing the purposes of the
8 Program; establishing the Maryland Medical Professional Liability Insurance
9 Rate Stabilization Board; providing for the membership of the Board; requiring
10 the Board to make certain determinations; establishing the Maryland Medical
11 Professional Liability Insurance Rate Stabilization Fund; establishing the
12 purpose of the Fund; providing that the Fund is a special, nonlapsing fund;
13 requiring the State Treasurer to hold the Fund and the Comptroller to account
14 for the Fund; requiring the Insurance Commissioner to deposit the revenue from
15 the premium tax on health maintenance organizations and managed care
16 organizations into the Fund; requiring the Board to transfer a certain amount
17 from the Fund to administer the Program; providing for certain disbursements
18 in certain years from the Fund to the Rate Stabilization Account and the
19 Medical Assistance Program Account; requiring a medical professional liability
20 insurer to reduce medical professional liability insurance rates in the form of a
21 rate reduction or rebate for certain health care providers; prohibiting a medical
22 professional liability insurer from reducing rates or providing a rebate on
23 certain portions of a policy; requiring that a rate reduction or rebate be reduced
24 by the value of a dividend; providing that disbursements from the Rate
25 Stabilization Account may not exceed a certain amount; providing that the debts
26 and obligations of the Fund are not debts and obligations of the State or a pledge
27 of the full faith and credit of the State; providing that the Board is not required
28 to use the balance of the Rate Stabilization Account when determining the
29 amount of the rate reduction or rebate; requiring disbursements from the
30 Medical Assistance Program Account be made to increase certain fee-for-service
31 physician rates and to increase capitation payments to managed care
32 organizations for certain procedures commonly performed by certain health care
33 providers; providing that certain portions of the Medical Assistance Program
34 Account shall be used to support the operations of the Maryland Medical
35 Assistance Program; requiring a certain audit of the Fund and its accounts;
36 requiring the Board to report certain information to the Legislative Policy
37 Committee on or before a certain date each year; requiring the Governor to
38 process a certain budget amendment on or before a certain date; defining certain
39 terms; providing for the application of certain provisions of this Act; making this
40 Act an emergency measure; providing for an alternate effective date under
41 certain circumstances; and generally relating to the Maryland Medical
42 Professional Liability Insurance Rate Stabilization Act of 2004.

43 BY repealing and reenacting, with amendments,

44 Article - Courts and Judicial Proceedings

45 Section 3-2A-01, 3-2A-09, 5-615, and 11-108(c)

46 Annotated Code of Maryland

47 (2002 Replacement Volume and 2004 Supplement)

1 BY adding to

2 Article - Courts and Judicial Proceedings

3 Section 3-2A-06C, 3-2A-07A, 3-2A-09, 10-920, and 11-108(e)

4 Annotated Code of Maryland

5 (2002 Replacement Volume and 2004 Supplement)

6 BY adding to

7 Article - Health - General

8 Section 15-102.7 and 19-304

9 Annotated Code of Maryland

10 (2000 Replacement Volume and 2004 Supplement)

11 BY repealing and reenacting, with amendments

12 Article - Health - General

13 Section 19-727

14 Annotated Code of Maryland

15 (2000 Replacement Volume and 2004 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article - Health Occupations

18 Section 1-401, 14-405, and 14-413

19 Annotated Code of Maryland

20 (2000 Replacement Volume and 2004 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Insurance

23 Section 2-213, 4-401, 6-101, 6-102, 6-103, 6-104, 6-107, and 10-118(h)
24 through (j)

25 Annotated Code of Maryland

26 (2003 Replacement Volume and 2004 Supplement)

27 BY adding to

28 Article - Insurance

29 Section 2-303.2 and 10-118(h)

30 Annotated Code of Maryland

31 (2003 Replacement Volume and 2004 Supplement)

32 BY repealing and reenacting, with amendments,

33 Article - Insurance

34 Section 19-104, 27-501(a) and (f), and 27-505

35 Annotated Code of Maryland

36 (2002 Replacement Volume and 2004 Supplement)

1 BY adding to

2 Article - Insurance

3 Section 19-104.1 and 19-114

4 Annotated Code of Maryland

5 (2002 Replacement Volume and 2004 Supplement)

6 BY adding to

7 Article - State Government

8 Section 6-301 through 6-308, inclusive, to be under the new subtitle "Subtitle

9 3. People's Insurance Counsel"; and 12-601 through 12-608, inclusive, to

10 be under the new subtitle "Subtitle 6. Reporting of False Claims Against

11 State Health Plans"

12 Annotated Code of Maryland

13 (2004 Replacement Volume)

14 BY repealing and reenacting, without amendments,

15 Article - Tax - General

16 Section 10-104

17 Annotated Code of Maryland

18 (2004 Replacement Volume)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Courts and Judicial Proceedings**

22 3-2A-01.

23 (a) In this subtitle the following terms have the meanings indicated unless the
24 context of their use requires otherwise.

25 (b) "Arbitration panel" means the arbitrators selected to determine a health
26 care malpractice claim in accordance with this subtitle.

27 (c) "Court" means a circuit court for a county.

28 (d) "Director" means the Director of the Health Claims Arbitration Office.

29 (E) "ECONOMIC DAMAGES" RETAINS ITS JUDICIALLY DETERMINED MEANING.

30 [(e)] (F) (1) "Health care provider" means a hospital, a related institution as
31 defined in § 19-301 of the Health - General Article, A MEDICAL DAY CARE CENTER, A
32 HOSPICE CARE PROGRAM, AN ASSISTED LIVING PROGRAM, A FREESTANDING
33 AMBULATORY CARE FACILITY AS DEFINED IN § 19-3B-01 OF THE HEALTH - GENERAL
34 ARTICLE, a physician, an osteopath, an optometrist, a chiropractor, a registered or
35 licensed practical nurse, a dentist, a podiatrist, a psychologist, a licensed certified