
SENATE BILL NO. 122--SENATORS TITUS AND WIENER

FEBRUARY 13, 2003

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes regarding malpractice insurance and actions. (BDR 57-265)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to malpractice; authorizing intervention in certain proceedings regarding rates for certain malpractice insurance; limiting rates and proposed increases in rates for certain malpractice insurance; requiring certain insurers to offer tail coverage; prohibiting confidentiality in certain malpractice settlement agreements; prescribing procedures for withdrawal of certain insurers from the malpractice market in this state; providing for certain defendants in malpractice actions to receive specified information and independent counsel; requiring the reduction of premiums for certain policies of malpractice insurance; providing a penalty; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 686B of NRS is hereby amended by adding
2 thereto a new section to read as follows:
3 *If a filing made with the Commissioner pursuant to subsection*
4 *1 of NRS 686B.070 pertains to insurance covering the liability of a*
5 *practitioner licensed pursuant to chapter 630, 631, 632 or 633 of*
6 *NRS for a breach of his professional duty toward a patient, any*
7 *interested person or entity may intervene as a matter of right in*
8 *any hearing or other proceeding conducted to determine whether*
9 *the applicable rate or proposed increase thereto:*



* S B 1 2 2 *

- 1 **1. *Complies with the standards set forth in NRS 686B.050.***
- 2 **2. *Should be approved or disapproved.***

3 **Sec. 2.** NRS 686B.020 is hereby amended to read as follows:
4 686B.020 As used in NRS 686B.010 to 686B.1799, inclusive,
5 ***and section 1 of this act,*** unless the context otherwise requires:

6 1. "Advisory organization," except as limited by NRS
7 686B.1752, means any person or organization which is controlled
8 by or composed of two or more insurers and which engages in
9 activities related to rate making. For the purposes of this subsection,
10 two or more insurers with common ownership or operating in this
11 state under common ownership constitute a single insurer. An
12 advisory organization does not include:

- 13 (a) A joint underwriting association;
- 14 (b) An actuarial or legal consultant; or
- 15 (c) An employee or manager of an insurer.

16 2. "Market segment" means any line or kind of insurance or, if
17 it is described in general terms, any subdivision thereof or any class
18 of risks or combination of classes.

19 3. "Rate service organization" means any person, other than an
20 employee of an insurer, who assists insurers in rate making or filing
21 by:

- 22 (a) Collecting, compiling and furnishing loss or expense
23 statistics;
- 24 (b) Recommending, making or filing rates or supplementary rate
25 information; or
- 26 (c) Advising about rate questions, except as an attorney giving
27 legal advice.

28 4. "Supplementary rate information" includes any manual or
29 plan of rates, statistical plan, classification, rating schedule,
30 minimum premium, policy fee, rating rule, rule of underwriting
31 relating to rates and any other information prescribed by regulation
32 of the Commissioner.

33 **Sec. 3.** NRS 686B.040 is hereby amended to read as follows:
34 686B.040 ~~The~~

35 ***1. Except as otherwise provided in subsection 2, the***
36 ***Commissioner may by rule exempt any person or class of persons or***
37 ***any market segment from any or all of the provisions of NRS***
38 ***686B.010 to 686B.1799, inclusive, and section 1 of this act,*** if and
39 ***to the extent that he finds their application unnecessary to achieve***
40 ***the purposes of those sections.***

41 ***2. The Commissioner may not, by rule or otherwise, exempt***
42 ***an insurer from the provisions of NRS 686B.010 to 686B.1799,***
43 ***inclusive, and section 1 of this act, with regard to insurance***
44 ***covering the liability of a practitioner licensed pursuant to chapter***



1 *630, 631, 632 or 633 of NRS for a breach of his professional duty*
2 *toward a patient.*

3 **Sec. 4.** NRS 686B.110 is hereby amended to read as follows:
4 686B.110 1. The Commissioner shall consider each proposed
5 increase or decrease in the rate of any kind or line of insurance or
6 subdivision thereof *that is* filed with ~~him~~ *the Commissioner*
7 pursuant to NRS 686B.070. ~~He~~

8 *2. The Commissioner shall disapprove the proposal if* the
9 Commissioner finds that ~~a proposed increase~~ *the proposal* will
10 result in a rate which is not in compliance with NRS 686B.050 . ~~He~~
11 ~~he shall disapprove the proposal.~~

12 *3. In addition to the grounds for disapproval set forth in*
13 *subsection 2, if the proposal will increase the rate of insurance*
14 *covering the liability of a practitioner licensed pursuant to chapter*
15 *630, 631, 632 or 633 of NRS for a breach of his professional duty*
16 *toward a patient, the Commissioner shall disapprove the proposal,*
17 *or any constituent part thereof, if the Commissioner finds that the*
18 *proposal, or the constituent part thereof, has been proposed or is*
19 *necessitated because:*

20 (a) *The insurer has experienced or is reasonably likely to*
21 *experience capital losses, or diminished dividends, returns or*
22 *income or any other financial loss as a result of the imprudent*
23 *investment of money;*

24 (b) *The insurer or any director, partner, officer, employee,*
25 *agent or contactor of the insurer has engaged in:*

26 (1) *Any fraudulent accounting practice;*

27 (2) *Any form of corporate fraud or securities fraud; or*

28 (3) *Any willful misconduct or wrongdoing that violates the*
29 *laws or regulations of the United States, this state or any other*
30 *state; or*

31 (c) *The insurer has experienced or is reasonably likely to*
32 *experience losses or expenses as a result of the insurer or any*
33 *director, partner, officer, employee, agent or contractor of the*
34 *insurer having engaged in litigation unreasonably or vexatiously*
35 *after one or more opposing parties have made a reasonable offer*
36 *of settlement.*

37 **4.** The Commissioner shall approve or disapprove each
38 proposal no later than 60 days after it is determined by him to be
39 complete pursuant to subsection ~~4.~~ 7. If the Commissioner fails to
40 approve or disapprove the proposal within that period, the proposal
41 shall be deemed approved.

42 ~~2.~~ **5.** Whenever an insurer has no legally effective rates as a
43 result of the Commissioner's disapproval of rates or other act, the
44 Commissioner shall , on request , specify interim rates for the
45 insurer that are high enough to protect the interests of all parties and



1 may order that a specified portion of the premiums be placed in an
2 escrow account approved by him. When new rates become legally
3 effective, the Commissioner shall order the escrowed funds or any
4 overcharge in the interim rates to be distributed appropriately,
5 except that refunds to policyholders that are de minimis must not be
6 required.

7 ~~[3.]~~ 6. If the Commissioner disapproves a proposed rate and an
8 insurer requests a hearing to determine the validity of his action, the
9 insurer has the burden of showing compliance with the applicable
10 standards for rates established in NRS 686B.010 to 686B.1799,
11 inclusive ~~[]~~, and *section 1 of this act*. Any such hearing must be
12 held:

13 (a) Within 30 days after the request for a hearing has been
14 submitted to the Commissioner; or

15 (b) Within a period agreed upon by the insurer and the
16 Commissioner.

17 If the hearing is not held within the period specified in paragraph (a)
18 or (b), or if the Commissioner fails to issue an order concerning the
19 proposed rate for which the hearing is held within 45 days after the
20 hearing, the proposed rate shall be deemed approved.

21 ~~[4.]~~ 7. The Commissioner shall ~~[by regulation]~~ specify the
22 documents or any other information which must be included in a
23 proposal to increase or decrease a rate submitted to him pursuant to
24 ~~[subsection 1.]~~ *this section*. Each such proposal shall be deemed
25 complete upon its filing with the Commissioner, unless the
26 Commissioner, within 15 business days after the proposal is filed
27 with him, determines that the proposal is incomplete because the
28 proposal does not comply with the regulations adopted by him
29 pursuant to this ~~[subsection.]~~ *section*.

30 *8. The Commissioner shall adopt any regulations that are*
31 *necessary to carry out the provisions of this section, including,*
32 *without limitation, regulations which define words and terms used*
33 *in this section.*

34 **Sec. 5.** Chapter 690B of NRS is hereby amended by adding
35 thereto the provisions set forth as sections 6 to 13, inclusive, of this
36 act.

37 **Sec. 6.** *As used in NRS 690B.045, 690B.050 and sections 6 to*
38 *13, inclusive, of this act, unless the context otherwise requires, the*
39 *words and terms defined in sections 7, 8 and 9 of this act have the*
40 *meanings ascribed to them in those sections.*

41 **Sec. 7.** *“Claim” means a demand for compensation that is:*

42 *1. Delivered to an insurer; and*

43 *2. Payable pursuant to the terms of a policy of insurance*
44 *issued by the insurer.*



1 **Sec. 8.** *“Claims-made insurance” means insurance that*
2 *provides coverage only for a claim that:*

3 1. *Arises from an incident that occurs while the policy of*
4 *claims-made insurance is in force; and*

5 2. *Is delivered to the insurer who issued the policy of claims-*
6 *made insurance while the policy of claims-made insurance is in*
7 *force.*

8 **Sec. 9.** *“Tail coverage” means a supplement to a policy of*
9 *claims-made insurance that provides coverage for a claim that:*

10 1. *Arises from an incident that occurs while the policy of*
11 *claims-made insurance is in force; and*

12 2. *Is not delivered to the insurer who issued the policy of*
13 *claims-made insurance while the policy of claims-made insurance*
14 *is in force.*

15 **Sec. 10.** *If an insurer offers to issue to a practitioner licensed*
16 *pursuant to chapter 630, 631, 632 or 633 of NRS a policy of*
17 *claims-made insurance covering the liability of the practitioner for*
18 *a breach of his professional duty toward a patient, the insurer*
19 *shall offer to issue the policy with tail coverage. The insurer may*
20 *also offer to issue the policy without tail coverage. If the insurer*
21 *offers to issue the policy without tail coverage, the cost of the*
22 *policy with tail coverage may not exceed twice the cost of the*
23 *policy without tail coverage.*

24 **Sec. 11.** 1. *For a policy of insurance covering the liability*
25 *of a practitioner licensed pursuant to chapter 630, 632 or 633 of*
26 *NRS for a breach of his professional duty toward a patient:*

27 (a) *Except as otherwise provided in this section, the insurer*
28 *who issues the policy shall not set the premium for the policy for a*
29 *practitioner who delivers one or more babies per year at a rate that*
30 *is different from the rate set for a policy of insurance issued by the*
31 *insurer for any other practitioner who delivers one or more babies*
32 *per year if the difference in rates is based in whole or in part upon*
33 *the number of babies delivered per year by the practitioner.*

34 (b) *The insurer who issues the policy may set the premium for*
35 *the policy for a practitioner who delivers one or more babies per*
36 *year at a rate that is different, based in whole or in part upon the*
37 *number of babies delivered per year by the practitioner, from the*
38 *rate set for a policy of insurance issued by the insurer for any*
39 *other practitioner who delivers one or more babies per year if the*
40 *insurer:*

41 (1) *Bases the difference upon actuarial and loss experience*
42 *data available to the insurer; and*

43 (2) *Obtains the approval of the Commissioner for the*
44 *difference in rates.*



1 2. *This section does not prohibit an insurer, for a policy of*
2 *insurance covering the liability of a practitioner licensed pursuant*
3 *to chapter 630, 632 or 633 of NRS for a breach of his professional*
4 *duty toward a patient, from setting the premium for the policy for*
5 *a practitioner who delivers one or more babies per year at a rate*
6 *that is different from the rate set for a policy of insurance issued*
7 *by the insurer for any other practitioner who delivers one or more*
8 *babies per year if the difference in rates is based solely upon*
9 *factors other than the number of babies delivered per year by the*
10 *practitioner.*

11 **Sec. 12.** *1. If an agreement settles a claim or action*
12 *alleging a breach of professional duty toward a patient by a*
13 *practitioner licensed pursuant to chapter 630, 631, 632 or 633 of*
14 *NRS, the agreement must not provide that any of the terms of the*
15 *agreement are confidential.*

16 2. *Any provision of an agreement to settle a claim or action*
17 *that conflicts with this section is void.*

18 **Sec. 13.** *1. The Commissioner shall, on or before April 1 of*
19 *each year:*

20 (a) *Specify for the purposes of this section, by regulation,*
21 *categories of practitioners licensed pursuant to chapter 630, 631,*
22 *632 or 633 of NRS;*

23 (b) *Determine for each category of practitioner specified*
24 *pursuant to paragraph (a), using data applicable to the previous*
25 *calendar year, the relative market share in this state among*
26 *insurers with respect to policies of insurance issued to cover the*
27 *liability of the practitioners within the category for breach of*
28 *professional duty toward a patient; and*

29 (c) *Provide notice of the applicability of this section to each*
30 *insurer who the Commissioner determines, pursuant to paragraph*
31 *(b), possesses more than 40 percent of the market in this state*
32 *within a category of practitioner.*

33 2. *A determination by the Commissioner pursuant to*
34 *subsection 1 that an insurer possesses more than 40 percent of the*
35 *market in this state within a category of practitioner is valid for*
36 *the period beginning on April 1 of the year in which the*
37 *determination is made and ending on March 31 of the following*
38 *year, without regard to any actual change in market share during*
39 *that period.*

40 3. *During any period specified in subsection 2 for which an*
41 *insurer is determined by the Commissioner pursuant to subsection*
42 *1 to possess more than 40 percent of the market in this state within*
43 *a category of practitioner, the insurer shall, before withdrawing*
44 *from that market, comply with the provisions of subsections 4*
45 *and 5.*



1 4. *An insurer described in subsection 3 shall, at least 120*
2 *days before withdrawing:*

3 (a) *Give written notice of its intent to withdraw to the*
4 *Commissioner and to each practitioner within the applicable*
5 *category whom the insurer insures against liability for a breach of*
6 *his professional duty toward a patient; and*

7 (b) *Submit to the Commissioner a written plan providing for*
8 *the insurer's orderly withdrawal from the market so as to*
9 *minimize the effect of the withdrawal on the public generally and*
10 *on the practitioners within the applicable category whom the*
11 *insurer insures against liability for a breach of professional duty*
12 *toward a patient.*

13 5. *After complying with the requirements set forth in*
14 *subsection 4, an insurer described in subsection 3:*

15 (a) *Shall not take any action toward withdrawal until the*
16 *Commissioner determines that the written plan required pursuant*
17 *to paragraph (b) of subsection 4 complies with the regulations*
18 *adopted pursuant to paragraph (a) of subsection 7.*

19 (b) *Shall ensure that any action it takes toward withdrawal is*
20 *in compliance with the written plan required pursuant to*
21 *paragraph (b) of subsection 4.*

22 6. *The Commissioner has the final authority to determine*
23 *whether a particular action taken by an insurer is in compliance*
24 *with the written plan required pursuant to paragraph (b) of*
25 *subsection 4.*

26 7. *The Commissioner shall adopt regulations:*

27 (a) *Prescribing the form, content and method of submission of*
28 *a written plan required pursuant to paragraph (b) of subsection 4.*

29 (b) *For determining, pursuant to subsection 1, the relative*
30 *market share in this state among insurers with respect to policies*
31 *of insurance issued to cover the liability of a practitioner licensed*
32 *pursuant to chapter 630, 631, 632 or 633 of NRS for a breach of*
33 *his professional duty toward a patient.*

34 **Sec. 14.** Chapter 41A of NRS is hereby amended by adding
35 thereto a new section to read as follows:

36 **1.** *In an action for medical malpractice or dental malpractice,*
37 *if the defendant:*

38 (a) *Receives a settlement demand that is equal to the limits of*
39 *the insurance policy of the defendant, the insurer shall, upon*
40 *receipt of a copy of the demand, inform the defendant of any*
41 *applicable rights and obligations possessed by the defendant,*
42 *whether derived from statute or the common law, including,*
43 *without limitation, the right of the defendant to obtain*
44 *independent counsel at the expense of the insurer and the method,*



1 *described in this section, by which the defendant may obtain*
2 *independent counsel.*

3 *(b) Notifies the judge not later than 15 days after receiving a*
4 *settlement demand described in this section that the defendant*
5 *wishes to have independent counsel, the judge shall, not later than*
6 *15 days after receiving such notice, appoint independent counsel*
7 *to represent the defendant. The fees for any independent counsel*
8 *appointed pursuant to this section must be paid by the insurer.*

9 *2. The Commissioner of Insurance shall prescribe a form*
10 *that may be used by an insurer to fulfill the requirements of*
11 *paragraph (a) of subsection 1.*

12 **Sec. 15.** 1. For a policy of insurance covering the liability of
13 a practitioner licensed pursuant to chapter 630, 631, 632 or 633 of
14 NRS for a breach of his professional duty toward a patient that is
15 issued or renewed on or after the effective date of this section the
16 insurer shall reduce the premium for the policy to an amount that is
17 at least 25 percent less than the premium for the same coverage
18 which was in effect on July 1, 2002. If, on or after the effective date
19 of this section, a practitioner licensed pursuant to chapter 630, 631,
20 632 or 633 of NRS applies for the first time for a policy of insurance
21 covering the liability of the practitioner for a breach of his
22 professional duty toward a patient, the premium for the policy must
23 be at least 25 percent less than the premium which was in effect on
24 July 1, 2002, for similarly situated risks.

25 2. Any separate affiliate of an insurer, established after July 1,
26 2002, is subject to the provisions of this section and shall reduce its
27 premiums to amounts which are at least 25 percent less than the
28 insurer's premiums in effect on July 1, 2002.

29 3. During the period beginning on the effective date of this
30 section and ending on June 30, 2004:

31 (a) Premiums reduced pursuant to subsection 1 may be
32 increased only in accordance with the provisions of chapter 686B of
33 NRS or this subsection.

34 (b) An insurer subject to the provisions of this section may
35 apply to the Commissioner of Insurance to increase a premium set
36 pursuant to this section if that premium fails to provide a fair and
37 reasonable return to the insurer or is otherwise confiscatory.

38 (c) An insurer who submits an application pursuant to this
39 subsection may charge the unreduced premium until the
40 Commissioner of Insurance approves or disapproves the application.
41 If the application is disapproved, the insurer shall immediately
42 reduce the premium according to the Commissioner's decision and
43 refund the disallowed portion of the previously paid premiums, with
44 interest, to the person who paid the premiums.



1 4. Notwithstanding any previous notice of cancellation or
2 renewal, an insurer who has issued a policy of insurance covering
3 the liability of a practitioner licensed pursuant to chapter 630, 631,
4 632 or 633 of NRS for a breach of his professional duty toward a
5 patient that is in effect on the effective date of this section and has a
6 scheduled date for termination of the policy before July 1, 2004,
7 shall not terminate or cancel that policy before July 1, 2004, or
8 refuse to renew or extend that policy through June 30, 2004, for the
9 purpose of avoiding the reduction on premiums required by this
10 section.

11 5. An insurer who cancels or fails to renew policies of
12 insurance covering the liability of practitioners licensed pursuant to
13 chapter 630, 631, 632 or 633 of NRS for a breach of their
14 professional duty toward patients at a rate that exceeds the insurer's
15 average monthly rate of cancellation or failure to renew,
16 respectively, for the 24 months preceding the effective date of this
17 section by more than 10 percent during any 30-day period occurring
18 during the period beginning on the effective date of this section and
19 ending on June 30, 2004, is required to show cause immediately to
20 the Commissioner of Insurance why the insurer is not in violation of
21 this section. Any violation of this section is a violation of the
22 Nevada Insurance Code. If the Commissioner of Insurance
23 determines that the reason for the increase in the rate of cancellation
24 of or failure to renew policies is an attempt to circumvent the
25 reduction in premiums required by this section, the Commissioner
26 may take appropriate disciplinary action.

27 6. For the purposes of this section:

28 (a) "Insurer" has the meaning ascribed to it in NRS 679A.100.

29 (b) "Premium" has the meaning ascribed to it in NRS 679A.115.

30 **Sec. 16.** 1. The provisions of section 10 of this act apply
31 only to:

32 (a) A policy of insurance covering the liability of a practitioner
33 licensed pursuant to chapter 630, 631, 632 or 633 of NRS which is
34 issued or renewed on or after October 1, 2003.

35 (b) An offer to issue a policy of insurance covering the liability
36 of a practitioner licensed pursuant to chapter 630, 631, 632 or 633 of
37 NRS communicated to the applicant for the policy on or after
38 October 1, 2003.

39 2. The provisions of section 11 of this act apply only to:

40 (a) A policy of insurance covering the liability of a practitioner
41 licensed pursuant to chapter 630, 632 or 633 of NRS which is issued
42 or renewed on or after October 1, 2003.

43 (b) An offer to issue a policy of insurance covering the liability
44 of a practitioner licensed pursuant to chapter 630, 632 or 633 of



1 NRS communicated to the applicant for the policy on or after
2 October 1, 2003.

3 3. The amendatory provisions of sections 12 and 14 of this act
4 apply only to a cause of action that accrues on or after October 1,
5 2003.

6 **Sec. 17.** 1. This section and section 15 of this act become
7 effective upon passage and approval.

8 2. Sections 1 to 12, inclusive, 14 and 16 of this act become
9 effective:

10 (a) Upon passage and approval for the purposes of adopting
11 regulations and performing any other preparatory administrative
12 tasks that are necessary to carry out the provisions of this act; and

13 (b) On October 1, 2003, for all other purposes.

14 3. Section 13 of this act becomes effective:

15 (a) Upon passage and approval for the purposes of adopting
16 regulations and performing any other preparatory administrative
17 tasks that are necessary to carry out the provisions of this act; and

18 (b) On April 1, 2004, for all other purposes.

