

**WORKING DRAFT**

HOUSE BILL NO. \_\_\_\_\_

Medical malpractice tail coverage.

Sponsored by: Joint Appropriations Interim Committee

A BILL

for

1 AN ACT relating to medical malpractice premiums; creating  
 2 the medical malpractice insurance assistance account;  
 3 authorizing assistance for payment of physicians' medical  
 4 malpractice insurance premiums as specified; providing  
 5 requirements; specifying duties; providing an  
 6 appropriation; and providing for an effective date.

7

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

9

10 **Section 1.**

11 **\*\*\* STAFF COMMENTS \*\*\***  
 12 **The legislative findings in any of the other**  
 13 **three subsidy bills would help support this bill.**  
 14 **The following does not repeat those, but is**  
 15 **written as an addition to whichever is adopted by**  
 16 **the Committee if a separate bill is sponsored.**  
 17 **If this is the sole bill sponsored additional**  
 18 **findings should be included.**

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1           (a) The legislature finds that there Wyoming  
2 physicians have very limited availability of medical  
3 malpractice insurance. The limited availability has been  
4 exacerbated by the withdrawal from the state of one of the  
5 two major medical malpractice insurers. That action will  
6 require some physicians to acquire coverage for prior acts  
7 from other insurers. That coverage could be unaffordable  
8 for some physicians, prompting them to close or limit their  
9 practices in the state.

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11           **Section 1.** W.S. 35-1-901 and 35-1-902 are created to  
12 read:

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**\*\*\* STAFF COMMENTS \*\*\***

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**For simplicity - this bill is patterned after the  
15 Mockler draft. It could fit within either of the  
16 other two subsidy bills as easily.**

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**The additions to implement this tails subsidy  
19 concept is found in the bold language below.**

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ARTICLE 9

22

MEDICAL MALPRACTICE INSURANCE ASSISTANCE ACCOUNT

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**35-1-901. Definitions.**

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(a) As used in this article:

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1           (i) "Account" means the medical malpractice  
2 insurance assistance account;

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4           (ii) "Claims made" when describing an insurance  
5 policy or coverage means insuring against liability on  
6 those claims brought against the insured only during the  
7 term of the policy or coverage;

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9           (iii) "Department" means the department of  
10 health;

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12           (iv) "Director" means the director of the  
13 department of health;

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15           (v) "Physician" means a person licensed under  
16 W.S. 33-26-303.

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18           **35-1-902. Medical malpractice insurance assistance**  
19 **account; creation; duties of the department; requirements**  
20 **for assistance; breach.**

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22           (a) There is created a medical malpractice insurance  
23 assistance account. Funds within the account shall be used  
24 by the department for purposes of this article.

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2 (b) The department shall:

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4 (i) Develop and make available application forms  
5 for assistance under this section;

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7 (ii) Develop and enter into contracts with  
8 physicians as provided in this section;

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10 (iii) Administer the account; and

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12 (iv) Exercise all powers necessary to implement  
13 this article, including adopting rules.

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15 (c) Any physician who is licensed and practicing  
16 in the state may apply to the department for assistance in  
17 paying a portion of the physician's medical malpractice  
18 insurance premiums as provided in this section. **The**  
19 **physician shall establish:**

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21 (i) **That he previously was insured for medical**  
22 **malpractice for prior events and those events are not**  
23 **eligible for coverage under the prior claims made coverage**  
24 **due to lack of receipt of a timely claim;**

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(ii) Current coverage by the insurer providing the coverage referenced in paragraph (i) is no longer available due to either the insolvency of the insurer or the withdrawal of the insurer from medical malpractice insurance market in the state;

(iii) A subsequent medical malpractice policy has been, or upon a determination of eligibility under this subsection will be, procured by the physician.

(d) Upon approval of the application for assistance, the physician shall enter into a contract with the state, wherein the physician shall agree:

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

(ii) To provide medical care for the entire period of the contract to Wyoming residents qualified under the Wyoming Medical Assistance and Services Act or the Child Health Insurance Program established under W.S. 35-

1 25-101 who are seeking medical care which the physician is  
2 qualified to provide;

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4 (iii) To submit documentation to establish that  
5 the physician has complied with the terms of the contract  
6 and to determine the amount of assistance that should be  
7 provided; and

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9 (iv) To repay all funds distributed to the  
10 physician pursuant to this article, together with attorney  
11 fees and costs incurred in collection, for any contract  
12 period in which the physician is in breach of the contract.

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14 (e) At the times specified in the contract but in no  
15 event less than once per year, the physician shall submit  
16 documentation to the department showing compliance with the  
17 terms of the contract. The department shall examine the  
18 documentation provided by the physician and calculate the  
19 amount of assistance if any to be provided. The amount of  
20 assistance to be provided shall be **that amount of the**  
21 **premium for subsequent coverage referenced in paragraph**  
22 **(c)(iii) which exceeds two hundred percent (200%) of the**  
23 **prior coverage referenced in paragraph (c)(i).**

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1           (f) If funding available from the account is  
2 insufficient to pay assistance for all physicians who apply  
3 for assistance under this section, the department may at  
4 its discretion reduce the payments to pay each eligible  
5 physician a pro rata amount, in a manner to maximize the  
6 number of physicians who may receive assistance under this  
7 section.

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9           (g) In addition to any other civil or criminal  
10 penalties that may be imposed by law, any physician who  
11 fails or refuses to fulfill the terms of the contract  
12 required under subsection (c) of this section shall be in  
13 breach of the contract. The department may obtain the  
14 assistance of the attorney general to recoup the amount of  
15 assistance provided under the contract together with  
16 attorney fees and other costs of collection.

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18           (g) The payment amounts and the name of a physician  
19 receiving payments under this section shall be a public  
20 record. Any other information used by the department in  
21 determining the amount of payment to physicians, including  
22 all information submitted to the department by a physician  
23 under this article, which is not already matters of public

1 record are confidential and are not public records under  
2 W.S. 16-4-201 through 16-4-205.

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4       **Section 3.** There is appropriated from the budget  
5 reserve account to the medical malpractice insurance  
6 assistance account created by this act, xxxx dollars  
7 (\$xxxxxx) to implement the purposes of this act, including  
8 payment of assistance for physicians' qualified medical  
9 malpractice insurance premiums and administrative costs  
10 incurred by the department of health in the implementation  
11 of the act.

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13       **Section 4.** This act is effective immediately upon  
14 completion of all acts necessary for a bill to become law  
15 as provided by Article 4, Section 8 of the Wyoming  
16 Constitution.

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