
1975-76
SECOND EXTRAORDINARY SESSION

BILL CHAPTERS

Ch 1 (AB 1) Keene Injury of patients' compensation

(1) Under existing law persons injured by healing arts practitioners, health facilities, or others involved in the rendition of health services, and certain survivors of a person killed by the wrongful or negligent act of such a health care provider, may seek redress through civil actions in the courts. No limitations are imposed upon the damages which may be recovered for such an injury or death or upon attorney fees for attorneys of plaintiffs in such actions.

This bill would permit the defendant to elect, in actions for personal injury against a provider of health care services based upon professional negligence, to introduce evidence of specified benefits to which the plaintiff is entitled by reason of the loss, and would permit the plaintiff, if the defendant has so elected, to introduce evidence of premiums paid for insurance benefits ~~and of the defendant's insurance coverage~~ * The bill would preclude specified subrogation unless expressly provided by statute.

The bill would limit the amount and type of damages which could be recovered in an action based on medical malpractice.

The bill would establish a schedule of maximum contingency fees for attorneys representing persons seeking damages in malpractice actions for injury or damage against providers of health services, as specified, and would require the court to approve the contract for such fee or to fix the fee. The Board of Governors of the State Bar would be required to report to the Legislature, as prescribed, on regulation of fees of defense attorneys in such matters.

The bill provides that any contract for medical services which contains a provision for arbitration of any dispute as to medical malpractice shall contain a specified disclosure statement as the first article of such contract. This requirement would not be applicable to specified prepaid health plans.

(2) Existing law does not permit a superior court to enter a judgment ordering that damages for loss occurring after the entry of the judgment be paid in whole or in part by periodic payment.

This bill would specifically require a superior court in certain actions for personal injury or wrongful death against providers of health care services to provide in the judgment for periodic payment of future damages, as prescribed, rather than by lump-sum payment and would make related provisions establishing a lien on the judgment debtor's real property.

(3) Existing law provides that insurers providing professional liability insurance to certain licentiates of the healing arts shall report judgments over \$3,000 against such licentiates to the agency or board within the Department of Consumer Affairs which issued the license. Existing law requires such agencies or boards to keep statistical records on such judgments and to report thereon to the Legislature.

This bill deletes the above provisions and requires instead that specified boards keep certain records regarding convictions and judgments against their licentiates. It also provides for forms for public complaints against such licentiates and reports from courts wherein certain judgments were taken against licentiates.

This bill would provide for additional reports from hospital administrators or administrators of health care service plans or medical care foundations to licensing boards regarding the removal of staff privileges of such licentiates.

This bill would require certain reports to be made to the Legislature based upon the above records.

(4) Existing law provides for regulation of the practice of medicine by the Board of Medical Examiners, comprised of 11 members.

This bill would rename the board as the Board of Medical Quality Assurance, would increase the membership thereof to 19, and divide the work thereof into 3 divisions, as prescribed. The Division of Licensing, which the bill would create, would be required to adopt and administer continuing education standards for physicians and surgeons.

(4.5) Existing law provides that the Board of Medical Examiners shall use investigators from the Division of Investigation within the Department of Consumer Affairs for investigation of any matter and that the board shall use the Attorney General for legal counsel.

This bill would authorize the board to employ its own investigators and legal counsel.

The Attorney General would be the prosecuting legal counsel for the board

(5) Existing law provides for district review committees within the jurisdiction of the Board of Medical Examiners whose duties are to hear all matters assigned by the board

This bill would delete such existing law, and would provide instead for the establishment of medical quality review committees under the jurisdiction of the board whose duties are to review the quality of medical practice by persons holding certificates under the authority of the board, to investigate complaints, and to undertake disciplinary actions This bill would further provide that the communications of any physician and surgeon to the committee regarding any other physician and surgeon shall remain confidential and shall not be admissible before any hearing or court proceeding other than a defamation action, as specified This bill also makes technical changes related to the above

(6) The bill would create a Bureau of Medical Statistics under the Board of Medical Quality Assurance, to which any state agency or health care provider would be required to submit nonprivileged statistical information pertaining to health care services, if other sources of pooled health data are inadequate No health care provider would be required to incur unreasonable expenses in providing such information Insurers terminating malpractice insurance would be required to furnish the name of the health care provider so terminated to the bureau, and any health facility denying a health care provider specified privileges would be required to report such information to the bureau The bureau would be required to transmit a copy of this information to the named health care provider and the appropriate committee

(7) Under existing law the renewal fee for physicians' and surgeons' certificates, certificates to practice podiatry or midwifery, and certificates of drugless practitioners is fixed by the Board of Medical Examiners at not less than \$4 and not more than \$40

This bill would provide for a renewal fee fixed by the board at not more than \$100 for such certificates

(8) Under provisions of existing law actions against physicians and surgeons, dentists, registered nurses, dispensing opticians, optometrists, registered physical therapists, podiatrists, licensed psychologists, osteopaths, chiropractors, clinical laboratory biologists, clinical laboratory technologists, veterinarians, or against a licensed hospital as the employer of any such persons, based upon such persons' alleged professional negligence, battery or errors or omissions in such persons' practice, must be commenced within four years after the date of injury, or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered the injury, whichever occurs first The time limitation is extended for any period during which such persons have failed to disclose any act, error, or omission upon which the action is based

This bill would provide instead that such an action against such health care providers based upon professional negligence, as defined, must be commenced within three years from the date of the alleged wrongful act or within one year from the date the plaintiff discovers or should have discovered the injury, whichever occurs first upon proof of fraud, intentional concealment, or if a foreign body is present in the injured person The bill would provide that actions by a minor must be commenced within three years, except that, if the minor is under six at the time of injury, such actions may be commenced prior to his eighth birthday

(9) Under existing law there is no notice required as a condition precedent to the commencement of a civil action based upon the defendant's professional negligence

This bill would require at least 90 days' notice to the defendant of an intention to commence such an action and would prohibit the commencement of the action unless the notice was given Failure to provide such notice would be grounds for disciplinary action against the attorney The notice would be required to state the legal basis of the claim and the type of loss sustained, including with specificity the nature of the injuries suffered Notice could be served in the manner prescribed by law for the service of notices generally If the notice were served within 90 days of the expiration of the period during which the action was required to be commenced, the period would be extended 90 days from the service of the notice The bill would provide that failure to give such notice shall not affect the jurisdiction of the court to render a judgment or invalidate its proceedings However, such failure would be a ground for the State Bar to discipline an attorney

(10) Existing law provides that a court may not stay the operation of an administrative

order or decision if the court is satisfied that it is against the public interest

This bill provides, with respect to administrative orders or decisions of medical licensing boards regarding licensees, that no stay shall be imposed or continued unless the court is satisfied that the public interest will not suffer and the licensing board is unlikely to prevail ultimately on the merits

(11) Under present law, the Insurance Commissioner is required to review complaints concerning premium rates of liability insurers, as prescribed, and to order a rate reduction in the case of unlawful rates. For violation of such order, the commissioner is empowered to suspend or revoke the certificate of authority of the insurer with respect to the class or classes of insurance specified in the order. Nothing in existing law prohibits insurers from refusing to issue professional liability insurance to providers of health care on the basis that such providers have entered or will enter into arbitration agreements with their patients.

This bill would provide that until December 31, 1977, and from year to year thereafter if the insurance commissioner determines that a malpractice crisis still exists, any health care provider, as defined, who is aggrieved by any medical malpractice rate adopted by an insurer may request an explanation of the composition of the rate. If the explanation is inadequate, insufficient, or not provided within 30 days, the health care provider may petition the insurance commissioner for a hearing. If the rate is 10% or more above the previous annual rate, the commissioner must hold a hearing within 15 days and if the commissioner finds that the rate is not justified, the commissioner must order the insurer to reduce the rate, or cancel the policy, as specified, upon 60 days' notice. Two or more petitions concerning the same rate would be heard simultaneously. If a petition regarding a rate is received after a determination has been made for a substantially similar grievance, the petition would automatically be subject to the prior determination.

This bill would prohibit insurers from refusing to issue or renew professional liability insurance to qualified health care providers solely on the basis that such providers have entered into prescribed arbitration agreements with their patients.

(12) The bill would provide that neither appropriation is made nor obligation created for the reimbursement of any local agency for any costs incurred by it pursuant to the act.

Ch 2 (SB 24) Behr Insurance medical malpractice

Existing law permits a mutual insurer to borrow money for specified purposes, upon a written agreement, but prohibits written agreements evidencing such borrowed money to be issued in units of less than \$10,000.

This bill would allow written agreements being issued in units of less than \$10,000 to issuees who are eligible to purchase medical malpractice insurance from the insurer.

Existing law defines medical malpractice insurance as insurance coverage against the legal liability of the insured 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 professional service by any licensed physician.

This bill would change "licensed physician" to licensee in the above definition. The bill defines medical malpractice insurance for general purposes to mean insurance coverage against legal liability, as specified, in rendering professional service by a person licensed pursuant to the Medical Practice Act, the Osteopathic Act or a licensed health facility.

Existing law provides that the Joint Underwriting Association shall be the exclusive agency through which medical malpractice insurance may be written on a primary basis for licensees in any county in this state.

This bill would specify that an approved insurer is not prohibited from issuing such policies if it insures so that no substantial adverse selection against the association shall or will likely result in any geographical region, and submits specified information to the commissioner on a quarterly basis. If the Insurance Commissioner determining that an adverse selection will or will likely result, he may order that no original policies be issued in that region or that renewal policies be issued only as specified.

The bill would also specify that an insurer is not prohibited from issuing or renewing policies to any physician and surgeon who specializes in psychiatric medicine.

Existing law states that the purpose of the association shall be to provide a market for medical malpractice insurance on a self-supporting basis for a period not exceeding two years.

This bill would state the purpose of the association shall be to provide a market for such insurance for a period ending on March 1, 1978

The existing law specifies the limits of coverage and maximum allowable charge for premiums for medical malpractice insurance issued by the association

This bill would lower the permissible limits of coverage and revise the maximum allowable charge for premiums and finance charge for medical malpractice insurance issued by the association

This bill would provide that premium rates shall be established by the association with consideration given to recommendation made by a panel of three actuaries, with one appointed by the Insurance Commissioner, one appointed by the Governor, and one appointed by the board of directors of the association

This bill would appropriate \$15,000 to the Insurance Commissioner for costs incurred by the Department of Insurance pursuant to certain provisions of this act, such sum to be returned to the General Fund when the department is reimbursed pursuant to the bill

In addition, this bill would amend various provisions of AB No 1 of the 1975-76 Second Extraordinary Session These amendments would make numerous technical changes in that bill They would amend provisions relating to the powers of the Attorney General, hearing officers, medical quality review committees, and boards They would also increase fees for renewal of certain licenses to \$150 They also revise the definition of professional negligence They also would revise the subrogation rights of collateral sources so that there would be no subrogation to the rights of the plaintiff when evidence of collateral sources of indemnity has been introduced in certain cases, as specified They would also add a legislative finding to AB No 1 They would also provide that investigators of the Medical Quality Review Board are peace officers and thus would have the authority of peace officers with the primary duty to enforce provisions related to that board These amendments that relate to provisions of AB No 1 would become operative only if and when AB No 1 becomes effective

This bill would also take effect immediately as an urgency statute with provisions affecting AB No 1 to become operative on the effective date of AB No 1

RESOLUTION CHAPTERS

Res Ch 1 (SCR 1) Stevens Joint Rules

This measure adopts the Temporary Joint Rules of the Senate and Assembly for the 1975-76 Regular Session, except Joint Rules 55 and 61, as the Joint Rules of the Senate and Assembly for the 1975-76 Second Extraordinary Session

Res Ch 2 (SCR 2) Mills Recess of the Legislature

This measure provides that the Legislature shall be in recess from the 1975-76 Second Extraordinary Session from adjournment on a specified date until August 4, 1975

Res. Ch 3 (SCR 4) Mills 1975-76 Second Extraordinary Session adjournment

This measure would provide that the 1975-76 Second Extraordinary Session of the Legislature shall adjourn sine die on adjournment on September 12, 1975

CROSS REFERENCE TABLES**ASSEMBLY BILLS**

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SENATE BILLS

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STATUTORY RECORD

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