

109TH CONGRESS  
1ST SESSION

# H. R. 2400

To establish an Emergency Malpractice Liability Insurance Commission.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 17, 2005

Mr. DEFAZIO (for himself, Mrs. CHRISTENSEN, Mr. CROWLEY, Mr. HINCHEY, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To establish an Emergency Malpractice Liability Insurance Commission.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Emergency Malpractice Liability Insurance Commission  
6       (EMLIC) Act”.

7       (b) TABLE OF CONTENTS.—The table of contents of  
8       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Establishment of Commission.
- Sec. 3. Duties of the Commission.
- Sec. 4. Final report; Congressional hearings.
- Sec. 5. Powers of Commission.

Sec. 6. Commission personnel matters.

Sec. 7. Authorization of appropriations; GAO audit.

Sec. 8. Termination of Commission.

1 **SEC. 2. ESTABLISHMENT OF COMMISSION.**

2 (a) ESTABLISHMENT.—There is established a com-  
 3 mission to be known as Emergency Malpractice Liability  
 4 Insurance Commission (in this Act referred to as the  
 5 “Commission”).

6 (b) PURPOSE.—The Commission shall examine the  
 7 causes of soaring medical malpractice premiums and pro-  
 8 pose a comprehensive strategy to alleviate the impact of  
 9 the crisis in medical malpractice liability insurance.

10 (c) MEMBERSHIP OF COMMISSION.—

11 (1) COMPOSITION.—The commission shall be  
 12 composed of 12 members of whom—

13 (A) 4 shall be appointed by the President,  
 14 1 of whom shall be appointed to represent phy-  
 15 sicians’ interests, 1 of whom shall be appointed  
 16 to represent malpractice liability insurers, 1 of  
 17 whom shall be appointed to represent lawyers’  
 18 interests, and 1 of whom shall be appointed to  
 19 represent consumer protection interests;

20 (B) 1 Senator and 1 other individual shall  
 21 be appointed by the President pro tempore of  
 22 the Senate upon the recommendation of the  
 23 Majority Leader of the Senate;

1 (C) 1 Senator and 1 other individual shall  
2 be appointed by the President pro tempore of  
3 the Senate upon the recommendation of the Mi-  
4 nority Leader of the Senate;

5 (D) 1 Member of the House of Representa-  
6 tives and 1 other individual shall be appointed  
7 by the Speaker of the House of Representatives;  
8 and

9 (E) 1 Member of the House of Representa-  
10 tives and 1 other individual shall be appointed  
11 by the Minority Leader of the House of Rep-  
12 resentatives.

13 (2) QUALIFICATIONS OF MEMBERS.—

14 (A) PRESIDENTIAL APPOINTMENTS.—Of  
15 the individuals appointed under paragraph  
16 (1)(A), not more than 1 may be an officer, em-  
17 ployee, or paid consultant of the Executive  
18 Branch.

19 (B) OTHER APPOINTMENTS.—Individuals  
20 who are not Members of Congress, appointed  
21 under subparagraph (B), (C), (D), or (E) of  
22 paragraph (1), shall be individuals who—

23 (i) have expertise in medicine, insur-  
24 ance, law, consumers affairs, or have other  
25 pertinent qualifications or experience; and

1 (ii) are not officers or employees of  
2 the United States.

3 (C) OTHER CONSIDERATIONS.—In appoint-  
4 ing Commission members, every effort shall be  
5 made to ensure that the members—

6 (i) represent a broad cross section of  
7 regional and political perspectives in the  
8 United States; and

9 (ii) provide fresh insights to analyzing  
10 the medical malpractice insurance crisis.

11 (d) PERIOD OF APPOINTMENT; VACANCIES.—

12 (1) IN GENERAL.—Members shall be appointed  
13 not later than 60 days after the date of enactment  
14 of this Act and the appointment shall be for the life  
15 of the Commission.

16 (2) VACANCIES.—Any vacancy in the Commis-  
17 sion shall not affect its powers, but shall be filled in  
18 the same manner as the original appointment.

19 (e) INITIAL MEETING.—Not later than 30 days after  
20 the date on which all members of the Commission have  
21 been appointed, the Commission shall hold its first meet-  
22 ing.

23 (f) MEETINGS.—The Commission shall meet at the  
24 call of the Chairperson.

1 (g) CHAIRPERSON AND VICE CHAIRPERSON.—The  
2 members of the Commission shall elect a chairperson and  
3 vice chairperson from among the members of the Commis-  
4 sion.

5 (h) QUORUM.—A majority of the members of the  
6 Commission shall constitute a quorum for the transaction  
7 of business.

8 (i) VOTING.—Each member of the Commission shall  
9 be entitled to 1 vote.

10 **SEC. 3. DUTIES OF THE COMMISSION.**

11 (a) IN GENERAL.—The Commission shall investigate  
12 and determine whether a causal relationship exists be-  
13 tween skyrocketing malpractice insurance premiums, jury  
14 awards, decreased accessibility and affordability of health  
15 care, and the increase in the number of physicians moving,  
16 quitting or retiring from the practices in the field of medi-  
17 cine. The Commission will make recommendations based  
18 on a study of statistical trends and testimony that can  
19 be taken by Congress to alleviate the impact of the crisis  
20 in medical malpractice liability insurance.

21 (b) SPECIFIC ISSUES TO BE ADDRESSED.—The  
22 Commission shall examine and report to the President and  
23 the Congress on at least the following:

24 (1) Nature and patterns of the medical mal-  
25 practice insurance market.

1           (2) Similarities and differences of the medical  
2           malpractice insurance market to other lines of insur-  
3           ance.

4           (3) Impact of the McCarran-Ferguson Act on  
5           medical malpractice insurance market.

6           (4) Federal role as it is and recommendations  
7           on how it should be with respect to medical mal-  
8           practice.

9           (5) Survey and assessment of the efficacy of  
10          State-level legislation in insurance, in general, and  
11          medical malpractice insurance, in particular.

12          (6) Survey of insurer's investments and strate-  
13          gies and its role in premium rate setting for medical  
14          malpractice insurance.

15          (7) Role of jury awards in premium rate setting  
16          for medical malpractice insurance.

17          (8) Relationship of medical malpractice pre-  
18          mium rates and overall medical practice costs.

19          (9) The extent to which malpractice claims are  
20          widely dispersed across the medical community or  
21          concentrated among a handful of repeat offenders,  
22          and the effectiveness of state and professional regu-  
23          latory bodies in disciplining poor performing doctors  
24          and medical professionals.

1 **SEC. 4. FINAL REPORT; CONGRESSIONAL HEARINGS.**

2 (a) FINAL REPORT.—

3 (1) IN GENERAL.—Not later than 16 months  
4 after the date of enactment of this Act, the Commis-  
5 sion shall submit to the President and Congress a  
6 final report which contains—

7 (A) the findings and conclusions of the  
8 Commission described in section 3;

9 (B) a detailed plan for comprehensive  
10 strategy to combat the consequences of sky-  
11 rocketing medical malpractice liability insurance  
12 rates; and

13 (C) any recommendations for administra-  
14 tive and legislative actions necessary to achieve  
15 such reductions.

16 (2) SEPARATE VIEWS.—Any member of the  
17 Commission may submit additional findings and rec-  
18 ommendations as part of the final report.

19 (b) CONGRESSIONAL HEARINGS.—Not later than 6  
20 months after the final report described in subsection (a)  
21 is submitted, the Committee on Energy and Commerce of  
22 the House of Representatives and the Committee on  
23 Health, Education, Labor and Pensions of the Senate  
24 shall hold hearings on the report.

1 **SEC. 5. POWERS OF COMMISSION.**

2 (a) HEARINGS.—The Commission may hold such  
3 hearings, sit and act at such times and places, take such  
4 testimony, and receive such evidence as the Commission  
5 may find advisable to fulfill the requirements of this Act.  
6 The Commission shall hold at least 7 public hearings, 1  
7 or more in Washington, D.C. and 4 in different regions  
8 of the United States.

9 (b) INFORMATION FROM FEDERAL AGENCIES.—The  
10 Commission may secure directly from any Federal depart-  
11 ment or agency such information as the Commission con-  
12 sider necessary to carry out the provisions of this Act.  
13 Upon request of the Chairperson of the Commission, the  
14 head of such department or agency shall furnish such in-  
15 formation to the Commission.

16 (c) POSTAL SERVICES.—The Commission may use  
17 the United States mails in the same manner and under  
18 the same conditions as other departments and agencies of  
19 the Federal Government.

20 **SEC. 6. COMMISSION PERSONNEL MATTERS.**

21 (a) COMPENSATION OF MEMBERS.—Each member of  
22 the Commission who is not an officer or employee of the  
23 Federal Government shall be compensated at a rate equal  
24 to the daily equivalent of the annual rate of basic pay pre-  
25 scribed for level IV of the Executive Schedule under sec-  
26 tion 5315 of title 5, United States Code, for each day (in-



cluding travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to

1 the provisions of chapter 51 and subchapter III of  
2 chapter 53 of title 5, United States Code, relating  
3 to classification of positions and General Schedule  
4 pay rates, except that the rate of pay for the execu-  
5 tive director and other personnel may not exceed the  
6 rate payable for level V of the Executive Schedule  
7 under section 5316 of such title.

8 (d) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
9 Federal Government employee may be detailed to the  
10 Commission without reimbursement, and such detail shall  
11 be without interruption or loss of civil service status or  
12 privilege.

13 (e) PROCUREMENT OF TEMPORARY AND INTERMIT-  
14 TENT SERVICES.—The Chairperson of the Commission  
15 may procure temporary and intermittent services under  
16 section 3109(b) of title 5, United States Code, at rates  
17 for individuals which do not exceed the daily equivalent  
18 of the annual rate of basic pay prescribed for level V of  
19 the Executive Schedule under section 5316 of such title.

20 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS; GAO AUDIT.**

21 (a) IN GENERAL.—There are authorized to be appro-  
22 priated \$2,000,000 to the Commission to carry out the  
23 provisions of this Act.

24 (b) GAO AUDIT.—Not later than 6 months after ter-  
25 mination of the Commission, the Comptroller General of

1 the United States shall complete an audit of the financial  
2 books and records of the Commission to determine that  
3 the limitation on expenses has been met, and shall submit  
4 a report on the audit to the President and Congress.

5 **SEC. 8. TERMINATION OF COMMISSION.**

6 The Commission shall cease to exist 30 days after  
7 the date on which the Commission submits the final report  
8 under section 4.

