

108TH CONGRESS  
1ST SESSION

# H. R. 446

To establish an Emergency Malpractice Liability Insurance Commission.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2003

Mr. DEFAZIO 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 combat the con-  
9 sequences.

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, ris-  
14 ing jury awards, decreased accessibility and affordability  
15 of health care, and the increase in the number of physi-  
16 cians moving, quitting or retiring from the practices in  
17 the field of medicine. The Commission will make rec-  
18 ommendations based on a study of statistical trends and  
19 testimony that can be taken by Congress to alleviate the  
20 impact of the crisis in medical malpractice liability insur-  
21 ance.

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

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

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

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

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

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

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

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

19          (8) Relationship of medical malpractice pre-  
20          mium rates and overall medical practice costs

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

22          (a) FINAL REPORT.—

23               (1) IN GENERAL.—Not later than 16 months  
24               after the date of enactment of this Act, the Commis-

1 sion shall submit to the President and Congress a  
2 final report which contains—

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

5 (B) a detailed plan for comprehensive  
6 strategy to combat the consequences of sky-  
7 rocketing medical malpractice liability insurance  
8 rates; and

9 (C) any recommendations for administra-  
10 tive and legislative actions necessary to achieve  
11 such reductions.

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

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

21 **SEC. 5. POWERS OF COMMISSION.**

22 (a) HEARINGS.—The Commission may hold such  
23 hearings, sit and act at such times and places, take such  
24 testimony, and receive such evidence as the Commission  
25 may find advisable to fulfill the requirements of this Act.

1 The Commission shall hold at least 7 public hearings, 1  
2 or more in Washington, D.C. and 4 in different regions  
3 of the United States.

4 (b) INFORMATION FROM FEDERAL AGENCIES.—The  
5 Commission may secure directly from any Federal depart-  
6 ment or agency such information as the Commission con-  
7 siders necessary to carry out the provisions of this Act.  
8 Upon request of the Chairperson of the Commission, the  
9 head of such department or agency shall furnish such in-  
10 formation to the Commission.

11 (c) POSTAL SERVICES.—The Commission may use  
12 the United States mails in the same manner and under  
13 the same conditions as other departments and agencies of  
14 the Federal Government.

15 **SEC. 6. COMMISSION PERSONNEL MATTERS.**

16 (a) COMPENSATION OF MEMBERS.— Each member  
17 of the Commission who is not an officer or employee of  
18 the Federal Government shall be compensated at a rate  
19 equal to the daily equivalent of the annual rate of basic  
20 pay prescribed for level IV of the Executive Schedule  
21 under section 5315 of title 5, United States Code, for each  
22 day (including travel time) during which such member is  
23 engaged in the performance of the duties of the Commis-  
24 sion. All members of the Commission who are officers or  
25 employees of the United States shall serve without com-

1 pension in addition to that received for their services as  
2 officers or employees of the United States.

3 (b) TRAVEL EXPENSES.—The members of the Com-  
4 mission shall be allowed travel expenses, including per  
5 diem in lieu of subsistence, at rates authorized for employ-  
6 ees of agencies under subchapter I of chapter 57 of title  
7 5, United States Code, while away from their homes or  
8 regular places of business in the performance of services  
9 for the Commission.

10 (c) STAFF.—

11 (1) IN GENERAL.—The Chairperson of the  
12 Commission may, without regard to the civil service  
13 laws and regulations, appoint and terminate an execu-  
14 tive director and such other additional personnel as  
15 may be necessary to enable the Commission to per-  
16 form its duties. The employment of an executive di-  
17 rector shall be subject to confirmation by the Com-  
18 mission.

19 (2) COMPENSATION.—The Chairperson of the  
20 Commission may fix the compensation of the execu-  
21 tive director and other personnel without regard to  
22 the provisions of chapter 51 and subchapter III of  
23 chapter 53 of title 5, United States Code, relating  
24 to classification of positions and General Schedule  
25 pay rates, except that the rate of pay for the execu-

1        tive director and other personnel may not exceed the  
2        rate payable for level V of the Executive Schedule  
3        under section 5316 of such title.

4        (d) **DETAIL OF GOVERNMENT EMPLOYEES.**—Any  
5        Federal Government employee may be detailed to the  
6        Commission without reimbursement, and such detail shall  
7        be without interruption or loss of civil service status or  
8        privilege.

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

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

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

20       (b) **GAO AUDIT.**—Not later than 6 months after ter-  
21       mination of the Commission, the Comptroller General of  
22       the United States shall complete an audit of the financial  
23       books and records of the Commission to determine that  
24       the limitation on expenses has been met, and shall submit  
25       a report on the audit to the President and Congress.

1 **SEC. 8. TERMINATION OF COMMISSION.**

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

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