

HOUSE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1304

AN ACT

2 To repeal sections 379.316, 383.150, 538.210
3 and 538.225, RSMo, and to enact in lieu
4 thereof twenty-nine new sections relating to
5 medical malpractice liability insurance, with
6 an emergency clause.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 379.316, 383.150, 538.210 and 538.225,
10 RSMo, are repealed and twenty-nine new sections enacted in lieu
11 thereof, to be known as sections 135.163, 379.316, 383.112,
12 383.150, 383.151, 383.200, 383.205, 383.210, 383.215, 383.220,
13 383.225, 383.230, 383.600, 383.610, 383.615, 383.620, 383.625,
14 383.630, 383.635, 383.640, 383.645, 383.650, 383.655, 537.072,
15 538.210, 538.211, 538.225, 538.226, and 1, to read as follows:

16 135.163. 1. For all tax years beginning on or after
17 January 1, 2005, in order to encourage the retention of
18 physicians and other health care providers in this state, an
19 eligible taxpayer shall be allowed a credit not to exceed fifteen
20 thousand dollars per eligible taxpayer against the tax otherwise

1 due pursuant to chapter 143, RSMo, not including sections 143.191
2 to 143.265, RSMo, in an amount equal to fifteen percent of the
3 increase in amount paid by an eligible taxpayer for medical
4 malpractice insurance premiums in the aggregate from one policy
5 period to the next immediate policy period. For purposes of this
6 section, the base policy period for calculation of the credit
7 shall be the medical malpractice insurance policy in effect on
8 August 28, 2004.

9 2. The tax credit allowed by this section shall be claimed
10 by the taxpayer at the time such taxpayer files a return. Any
11 amount of tax credit which exceeds the tax due shall be carried
12 over to any of the next five subsequent taxable years, but shall
13 not be refunded and shall not be transferable.

14 3. The director of the department of insurance and the
15 director of the department of revenue shall jointly administer
16 the tax credit authorized by this section. The director of the
17 department of insurance shall enact procedures to verify the
18 amount of the allowable credit and shall issue a certificate to
19 each eligible taxpayer that certifies the amount of the allowable
20 credit. Both the director of the department of insurance and the
21 director of the department of revenue are authorized to
22 promulgate rules and regulations necessary to administer the
23 provisions of this section. Any rule or portion of a rule, as
24 that term is defined in section 536.010, RSMo, that is created
25 under the authority delegated in this section shall become

1 effective only if it complies with and is subject to all of the
2 provisions of chapter 536, RSMo, and, if applicable, section
3 536.028, RSMo. This section and chapter 536, RSMo, are
4 nonseverable and if any of the powers vested with the general
5 assembly pursuant to chapter 536, RSMo, to review, to delay the
6 effective date or to disapprove and annul a rule are subsequently
7 held unconstitutional, then the grant of rulemaking authority and
8 any rule proposed or adopted after August 28, 2004, shall be
9 invalid and void.

10 4. The tax credits issued pursuant to this section shall
11 not exceed a total for all tax credits issued of fifteen million
12 dollars per fiscal year.

13 379.316. 1. Section 379.017 and sections 379.316 to
14 379.361 apply to insurance companies incorporated pursuant to
15 sections 379.035 to 379.355, section 379.080, sections 379.060 to
16 379.075, sections 379.085 to 379.095, sections 379.205 to
17 379.310, and to insurance companies of a similar type
18 incorporated pursuant to the laws of any other state of the
19 United States, and alien insurers licensed to do business in this
20 state, which transact fire and allied lines, marine and inland
21 marine insurance, to any and all combinations of the foregoing or
22 parts thereof, and to the combination of fire insurance with
23 other types of insurance within one policy form at a single
24 premium, on risks or operations in this state, except:

25 (1) Reinsurance, other than joint reinsurance to the extent

1 stated in section 379.331;

2 (2) Insurance of vessels or craft, their cargoes, marine
3 builders' risks, marine protection and indemnity, or other risks
4 commonly insured pursuant to marine, as distinguished from inland
5 marine, insurance policies;

6 (3) Insurance against loss or damage to aircraft;

7 (4) All forms of motor vehicle insurance; and

8 (5) All forms of life, accident and health, [and] workers'
9 compensation insurance, and medical malpractice liability
10 insurance.

11 2. Inland marine insurance shall be deemed to include
12 insurance now or hereafter defined by statute, or by
13 interpretation thereof, or if not so defined or interpreted, by
14 ruling of the director, or as established by general custom of
15 the business, as inland marine insurance.

16 3. Commercial property and commercial casualty insurance
17 policies are subject to rate and form filing requirements as
18 provided in section 379.321.

19 383.112. Any insurer or self-insured health care provider
20 that fails to timely report claims information as required by
21 sections 383.100 to 383.125 shall be subject to the provisions of
22 section 374.215, RSMo.

23 383.150. As used in sections 383.150 to 383.195, the
24 following terms shall mean:

25 (1) "Association" [means], the joint underwriting

1 association established pursuant to the provisions of sections
2 383.150 to 383.195;

3 (2) "Competitive bidding process", a process under which
4 the director seeks, and insurers may submit, rates at which
5 insurers guarantee to provide medical malpractice liability
6 insurance to any health care provider unable to obtain such
7 insurance in the voluntary market;

8 (3) "Director" [means], the director of the department of
9 insurance;

10 [(3)] (4) "Health care provider" includes physicians,
11 dentists, clinical psychologists, pharmacists, optometrists,
12 podiatrists, registered nurses, physicians' assistants,
13 chiropractors, physical therapists, nurse anesthetists,
14 anesthetists, emergency medical technicians, hospitals, nursing
15 homes and extended care facilities; but shall not include any
16 nursing service or nursing facility conducted by and for those
17 who rely upon treatment by spiritual means alone in accordance
18 with the creed or tenets of any well-recognized church or
19 religious denomination;

20 [(4)] (5) "Medical malpractice insurance" [means],
21 insurance coverage against the legal liability of the insured and
22 against loss, damage, or expense incident to a claim arising out
23 of the death or injury of any person as a result of the
24 negligence or malpractice in rendering professional service by
25 any health care provider;

1 [(5)] (6) "Net direct premiums" [means], gross direct
2 premiums written on casualty insurance in the state of Missouri
3 by companies authorized to write casualty insurance under chapter
4 379, RSMo 1969, in the state of Missouri, less return premiums
5 thereon and dividends paid or credited to policyholders on such
6 direct business.

7 383.151. When the department determines after a public
8 hearing that medical malpractice liability insurance is not
9 reasonably available for health care providers in the voluntary
10 market, the director shall establish a method for providing such
11 insurance to such health care providers. The director may:

12 (1) Establish a competitive bidding process under which
13 insurers may submit rates at which they agree to insure such
14 health care providers; or

15 (2) Establish any other method reasonably designed to
16 provide insurance to such health care providers.

17 383.200. 1. As used in sections 383.200 to 383.225, the
18 following terms mean:

19 (1) "Director", the same meaning as such term is defined in
20 section 383.100;

21 (2) "Health care provider", the same meaning as such term
22 is defined in section 383.100;

23 (3) "Insurer", an insurance company licensed in this state
24 to write liability insurance, as described in section 379.010,
25 RSMo;

1 (4) "Medical malpractice insurance", the same meaning as
2 such term is defined in section 383.200.

3 2. The following standards and procedures shall apply to
4 the making and use of rates pertaining to all classes of medical
5 malpractice insurance:

6 (1) Rates shall not be excessive, inadequate, or unfairly
7 discriminatory. A rate is excessive if it is unreasonably high
8 for the insurance provided. A rate is inadequate if it is
9 unreasonably low for the insurance provided and continued use of
10 it would endanger the solvency of the company. A rate is
11 unfairly discriminatory if it does not reflect equitably
12 differences in reasonably expected losses and expenses;

13 (2) (a) Every insurer that desires to increase a rate by
14 less than fifteen percent shall file such rate, along with data
15 supporting the rate change as prescribed by the director, no
16 later than thirty days after such rate becomes effective.
17 Filings under this paragraph shall not be subject to approval or
18 disapproval by the director.

19 (b) Every insurer that desires to increase a rate by
20 fifteen percent or more shall submit a complete rate application
21 to the director. A complete rate application shall include all
22 data supporting the proposed rate and such other information as
23 the director may require. The applicant shall have the burden of
24 proving that the requested rate change is justified and meets the
25 requirements of this act.

1 (c) Every insurer that has filed a rate increase under
2 paragraph (a) of this subdivision for two consecutive years and
3 in the third year desires to file a rate increase which in the
4 aggregate over the three-year period will equal or exceed a total
5 rate increase of forty percent or more shall be required to
6 submit a complete rate application under paragraph (b) of this
7 subdivision.

8 (d) Every insurer that has not filed or had a rate increase
9 approved for three consecutive years may file a rate increase in
10 the fourth year in an amount not to exceed a twenty-five percent
11 increase without being required to submit a complete rate
12 application under paragraph (b) of this subdivision;

13 (3) The director of insurance shall promulgate rules
14 setting forth standards that insurers shall adhere to in
15 calculating their rates. Such rules shall:

16 (a) Establish a range within which an expected rate of
17 return shall be presumed reasonable;

18 (b) Establish a range within which categories of expenses
19 shall be presumed reasonable;

20 (c) Establish a range for the number of years of experience
21 an insurer may consider in determining an appropriate loss
22 development factor;

23 (d) Establish a range for the number of years of experience
24 an insurer may consider in determining an appropriate trend
25 factor;

1 (e) Establish a range for the number of years of experience
2 an insurer may consider in determining an appropriate increased
3 limits factor;

4 (f) Establish the proper weights to be given to different
5 years of experience;

6 (g) Establish the extent to which an insurer may apply its
7 subjective judgment in projecting past cost data into the future;

8 (h) Establish any other standard deemed reasonable and
9 appropriate by the director;

10 (4) The director shall require an insurer to submit with
11 any rate change application:

12 (a) A comparison, in a form prescribed by the director,
13 between the insurer's initial projected incurred losses and its
14 ultimate incurred losses for the eight most recent policy years
15 for which such data is available;

16 (b) A memorandum explaining the methodology the insurer has
17 used to reflect the total investment income it reasonably expects
18 to earn on all its assets during the period the proposed rate is
19 to be in effect. The director shall disapprove any rate
20 application that does not fully reflect all such income;

21 (5) The director shall notify the public of any application
22 from an insurer seeking a rate increase of fifteen percent or
23 more, and shall hold a hearing on such application within forty-
24 five days of such notice. The application shall be deemed
25 approved ninety days after such notice unless it is disapproved

1 by the director after the hearing;

2 (6) If after a hearing the director finds any rate of an
3 insurer to be excessive, the director may order that the insurer
4 discontinue the use of the rate and that the insurer refund the
5 excessive portion of the rate to any policyholder who has paid
6 such rate. The director shall not be required to find that a
7 reasonable degree of competition does not exist to find a rate
8 excessive.

9 3. For insurers required to file pursuant to paragraph (b)
10 of subdivision (2) of subsection 2 of this section, if there is
11 insufficient experience within the state of Missouri upon which a
12 rate can be based with respect to the classification to which
13 such rate is applicable, the director may approve a rate increase
14 that considers experiences within any other state or states which
15 have a similar cost of claim and frequency of claim experience as
16 this state. If there is insufficient experience within Missouri
17 or any other states which have similar cost of claim and
18 frequency of claim experience as Missouri, nationwide experience
19 may be considered. The insurer in its rate increase filing shall
20 expressly show the rate experience it is using.

21 4. All information provided to the director under this
22 section shall be available for public inspection.

23 5. The remedies set forth in this chapter shall be in
24 addition to any other remedies available under statutory or
25 common law.

1 6. Any rule or portion of a rule, as that term is defined
2 in section 536.010, RSMo, that is created under the authority
3 delegated in this section shall become effective only if it
4 complies with and is subject to all of the provisions of chapter
5 536, RSMo, and, if applicable, section 536.028, RSMo. This
6 section and chapter 536, RSMo, are nonseverable and if any of the
7 powers vested with the general assembly pursuant to chapter 536,
8 RSMo, to review, to delay the effective date, or to disapprove
9 and annul a rule are subsequently held unconstitutional, then the
10 grant of rulemaking authority and any rule proposed or adopted
11 after August 28, 2004, shall be invalid and void.

12 383.205. For all medical malpractice insurance policies
13 written for insureds in the state of Missouri, the ratio between
14 the base rate of the highest-rated specialty and the base rate of
15 the lowest-rated specialty shall be no more than a ratio of six-
16 to-one.

17 383.210. In determining the premium paid by any health care
18 provider, a medical malpractice insurer shall apply a credit or
19 debit based on the provider's loss experience, or shall establish
20 an alternative method giving due consideration to the provider's
21 loss experience. The insurer shall include a schedule of all
22 such credits and debits, or a description of such alternative
23 method in all filings it makes with the director of insurance.
24 No medical malpractice insurer may use any rate or charge any
25 premiums unless it has filed such schedule or alternative method

1 with the director of insurance and the director has approved such
2 schedule or alternative method. A debit shall be based only on
3 those claims that have been paid on behalf of the provider.

4 383.215. On or before March first of each year, every
5 insurer providing medical malpractice insurance to a health care
6 provider shall file the following information with the director
7 of insurance:

8 (1) Information on closed claims:

9 (a) The number of new claims reported during the preceding
10 calendar year, and the total amounts of reserve for such claims
11 and for allocated loss adjustment expenses in connection with
12 such claims;

13 (b) The number of claims closed during the preceding year,
14 and the amount paid on such claims, detailed as follows:

15 a. The number of claims closed each year with payment, and
16 the amount paid on such claims and on allocated loss adjustment
17 expenses in connection with such claims;

18 b. The number of claims closed each year without payment,
19 and the amount of allocated loss adjustment expenses in
20 connection with such claims;

21 (2) Information regarding judgments, payment, and severity
22 of injury in connection with judgements:

23 (a) For each judgment rendered against an insurer for more
24 than one hundred thousand:

25 a. The amount of the judgment and the amount actually paid

1 to the plaintiff;

2 b. The category of injury suffered by the plaintiff.
3 Injuries shall be categorized as follows:

4 Category 1: Temporary injury, emotional only.

5 Category 2: Temporary insignificant injury, including
6 lacerations, contusions, minor scars, and rash.

7 Category 3: Temporary minor injury, including infections,
8 missed fractures, and falls in hospitals.

9 Category 4: Temporary major injury, including burns, left
10 surgical material, drug side effects, and temporary brain damage.

11 Category 5: Permanent minor injury, including loss of
12 fingers, and loss or damage to organs.

13 Category 6: Permanent significant injury, including
14 deafness, loss of limb, loss of eye, and loss of one kidney or
15 lung.

16 Category 7: Permanent major injury, including paraplegia,
17 blindness, loss of two limbs, and brain damage.

18 Category 8: Permanent grave injury, including quadriplegia,
19 severe brain damage, and any injury requiring lifelong care or
20 having a fatal prognosis.

21 Category 9: Death;

22 (3) Information on each rate change implemented during the
23 preceding five-year period by state and medical specialty;

24 (4) Information on premiums and losses by medical
25 specialty:

1 (a) Written premiums and paid losses for the preceding
2 year, and earned premiums and incurred losses for the preceding
3 year, with specifics by medical specialty;

4 (b) Number of providers insured in each medical specialty;

5 (5) Information on premiums and losses by experience of the
6 insured:

7 (a) Written premiums and paid losses for the preceding
8 year, and earned premiums and incurred losses for the preceding
9 year, with specifics as follows:

10 a. As to all insureds with no incidents within the
11 preceding five-year period;

12 b. As to all insureds with one incident within the
13 preceding five-year period;

14 c. As to all insureds with two incidents within the
15 preceding five-year period;

16 d. As to all insureds with three or more incidents within
17 the preceding five-year period;

18 (b) Number of providers insured:

19 a. With no incidents within the preceding five-year period;

20 b. With one incident within the preceding five-year period;

21 c. With two incidents within the preceding five-year
22 period;

23 d. With three or more incidents within the preceding five-
24 year period;

25 (6) Information on the performance of the investments of

1 the insurer, including the value of the investments held in the
2 portfolio of the insurer as of December thirty-first of the
3 preceding calendar year, and the rate of return on such
4 investments, detailed by category of investment as follows:

5 (a) United States government bonds;

6 (b) Bonds exempt from federal taxation;

7 (c) Other unaffiliated bonds;

8 (d) Bonds of affiliates;

9 (e) Unaffiliated preferred stock;

10 (f) Preferred stock of affiliates;

11 (g) Unaffiliated common stock;

12 (h) Common stock of affiliates;

13 (i) Mortgage loans;

14 (j) Real estate; and

15 (k) Any additional categories of investments specified by
16 the director of insurance.

17 383.220. 1. On or before July 1, 2005, and after
18 consultation with the medical malpractice insurance industry, the
19 director shall establish an interactive Internet site which will
20 enable any health care provider licensed in this state to obtain
21 a quote from each medical malpractice insurer licensed to write
22 the type of coverage sought by the provider.

23 2. The Internet site shall enable health care providers to
24 complete an online form that captures a comprehensive set of
25 information sufficient to generate a quote for each insurer. The

1 director shall develop transmission software components which
2 allow such information to be formatted for delivery to each
3 medical malpractice insurer based on the requirements of the
4 computer system of the insurer.

5 3. The director shall integrate the rating criteria of each
6 insurer into its online form after consultation with each insurer
7 using one of the following methods:

8 (1) Developing a customized interface with the insurer's
9 own rating engine;

10 (2) Accessing a third-party rating engine of the insurer's
11 choice;

12 (3) Loading the insurer's rating information into a rating
13 engine operated by the director;

14 (4) Any other method agreed on between the director and the
15 insurer.

16 4. After a health care provider completes the online form,
17 the provider will be presented with quotes from each medical
18 malpractice insurer licensed to write the coverage requested by
19 the provider.

20 5. Quotes provided on the Internet site shall at all times
21 be accurate. When an insurer changes its rates, such rate
22 changes shall be implemented at the Internet site by the
23 director, in consultation with the insurer, as soon as
24 practicable but in no event later than ten days after such
25 changes take effect. During any period in which an insurer has

1 changed its rates but the director has not yet implemented such
2 changed rates on the Internet site, quotes for that insurer shall
3 not be obtainable at the Internet site.

4 6. The director shall design the Internet site to
5 incorporate user-friendly formats and self-help guideline
6 materials, and shall develop a user-friendly Internet user-
7 interface.

8 7. The Internet site shall also provide contact
9 information, including address and telephone number, for each
10 medical malpractice insurer for which a provider obtains a quote
11 at the Internet site.

12 8. By December 31, 2005, the director shall submit a report
13 to the general assembly on the development, implementation, and
14 affects of the Internet site established by this section. The
15 report shall be based on:

16 (1) The director's consultation with health care providers,
17 medical malpractice insurers, and other interested parties; and

18 (2) The director's analysis of other information available
19 to the director, including a description of the director's views
20 concerning the extent to which the information provided through
21 the Internet site has contributed to increasing the availability
22 of medical malpractice insurance and the effect the Internet site
23 has had on the cost of medical malpractice insurance.

24 383.225. Each insurer shall file with the director of
25 insurance new manuals of classifications, rules, underwriting

1 rules, rates, rate plans and modifications, policy forms and
2 other forms to which such rates are applied, that reflect the
3 savings, if any, attributable to each provision of this act.

4 383.230. Insurers writing medical malpractice insurance
5 shall provide insured health care providers with written notice
6 of any increase in renewal premium rates at least ninety days
7 prior to the date of the renewal. At a minimum, the notice shall
8 be sent by first class mail at least ninety days prior to the
9 date of renewal and shall contain the insured's name, the policy
10 number for the coverage being renewed, the total premium amount
11 being charged for the current policy term, and the total premium
12 amount being charged to renew the coverage.

13 383.600. 1. Sections 383.600 to 383.655 shall be known as
14 the "Missouri Physicians Mutual Insurance Company Act".

15 2. As used in sections 383.600 to 383.655 the following
16 words mean:

17 (1) "Administrator", the chief executive officer of the
18 Missouri physicians mutual insurance company;

19 (2) "Board", the board of directors of the Missouri
20 physicians mutual insurance company;

21 (3) "Company", the Missouri physicians mutual insurance
22 company.

23 383.610. The "Missouri Physicians Mutual Insurance Company"
24 is created as an independent public corporation for the purpose
25 of insuring Missouri physicians and their employees and their

1 business against liability for professional negligence and other
2 casualty losses. The company shall be organized and operated as
3 a domestic mutual insurance company and it shall not be a state
4 agency. The company shall have the powers granted a general not-
5 for-profit corporation pursuant to section 355.131, RSMo. The
6 company shall be a member of the Missouri property and casualty
7 guaranty association, sections 375.771 to 375.799, RSMo, and as
8 such will be subject to assessments therefrom, and the members of
9 such association shall bear responsibility in the event of the
10 insolvency of the company. The company shall be established
11 pursuant to the provisions of sections 383.600 to 383.655. The
12 company shall use flexibility and experimentation in the
13 development of types of policies and coverages offered to
14 physicians and their employees, subject to the approval of the
15 director of the department of insurance.

16 383.615. 1. There is hereby created a board of directors
17 for the company. The board shall be appointed by January 1,
18 2005, and shall consist of nine members appointed or selected as
19 provided in this section. The governor shall appoint the initial
20 nine members of the board with the advice and consent of the
21 senate. Each director shall serve a seven-year term. Terms
22 shall be staggered so that no more than one director's term
23 expires each year on the first day of July. The nine directors
24 initially appointed by the governor shall determine their initial
25 terms by lot. At the expiration of the term of any member of the

1 board, the company's policy holders shall elect a new director in
2 accordance with provisions determined by the board.

3 2. Any person may be a director who:

4 (1) Does not have any interest as a stockholder, employee,
5 attorney, agent, broker, or contractor of an insurance entity who
6 writes medical liability insurance, or whose affiliates write
7 medical liability insurance;

8 (2) Is of good moral character and who has never pleaded
9 guilty to, or been found guilty of a felony;

10 (3) Is not employed by or affiliated with, the state of
11 Missouri, any hospital, health maintenance organization, or other
12 entity providing any type of insurance in this state.

13 3. There shall be one member from each congressional
14 district of the state. Further, two members shall be doctors of
15 osteopathic medicine duly licensed to practice in the state of
16 Missouri, three members shall be medical doctors licensed to
17 practice in this state, one member shall be a nurse licensed to
18 practice in this state, one member shall be an attorney licensed
19 to practice by the Missouri supreme court, and one member shall
20 have insurance experience.

21 4. The board shall annually elect a chairman and any other
22 officers it deems necessary for the performance of its duties.
23 Board committees and subcommittees may also be formed.

24 5. The company shall pay to the board members their
25 expenses incurred in the business of the company or the board and

1 a stipend in a sum set by the board, but not more than one
2 thousand dollars per meeting or the board or committee or
3 subcommittee thereof attended by the member.

4 383.620. 1. By January 1, 2005, the board shall hire an
5 administrator who shall serve at the pleasure of the board and
6 the company shall be fully prepared to be in operation by January
7 1, 2005, and assume its responsibilities by that date. The
8 administrator shall receive compensation as established by the
9 board and must have such qualifications as the board deems
10 necessary. The administrator shall not be a physician.

11 2. The board is vested with full power, authority, and
12 jurisdiction over the company. The board may perform all acts
13 necessary or convenient in the administration of the company or
14 in connection with the insurance business to be carried on by the
15 company. In this regard, the board is empowered to function in
16 all aspects as a governing body of a private insurance carrier.

17 383.625. 1. The administrator of the company shall act as
18 the company's chief executive officer. The administrator shall
19 be in charge of the day-to-day operations and management of the
20 company.

21 2. Before entering the duties of office, the administrator
22 shall give an official bond in an amount and with sureties
23 approved by the board. The premium for the bond shall be paid by
24 the company.

25 3. The administrator or the administrator's designee shall

1 be the custodian of the moneys of the company and all premiums,
2 deposits, or other moneys paid thereto shall be deposited with a
3 financial institution as designated by the administrator.

4 4. No board member, officer, or employee of the company is
5 liable in a private capacity for any act performed or obligation
6 entered into when done in good faith, without intent to defraud,
7 and in an official capacity in connection with the
8 administration, management, or conduct of the company or affairs
9 relating to it.

10 383.630. The board shall have full power and authority to
11 establish rates to be charged by the company for insurance. The
12 board shall contract for the services of or hire an independent
13 actuary, a member in good standing with the American Academy of
14 Actuaries, to develop and recommend actuarially sound rates.
15 Rates shall be set at amounts sufficient, when invested, to carry
16 all claims to maturity, meet the reasonable expenses of
17 conducting the business of the company and maintain a reasonable
18 surplus. The company shall conduct a program that shall be
19 neither more nor less than self-supporting.

20 383.635. The board shall formulate and adopt an investment
21 policy and supervise the investment activities of the company.
22 The administrator may invest and reinvest the surplus or reserves
23 of the company subject to the limitations imposed on domestic
24 insurance companies by state law. The company may retain an
25 independent investment counsel. The board shall periodically

1 review and appraise the investment strategy being followed and
2 the effectiveness of such services. Any investment counsel
3 retained or hired shall periodically report to the board on
4 investment results and related matters.

5 383.640. Any insurance producer licensed to sell
6 professional negligence insurance in this state shall be
7 authorized to sell insurance policies for the company in
8 compliance with the bylaws adopted by the company and upon the
9 approval of the board. The board shall establish a schedule of
10 commissions to pay for the services of the producer.

11 383.645. 1. The administrator shall formulate, implement,
12 and monitor a program to decrease medical negligence by
13 physicians and their staff for all policyholders.

14 2. The company shall have representatives whose sole
15 purpose is to develop, with policyholders and the professional
16 organizations related to the medical field, education and
17 training seminars and other programs that provide training to
18 physicians and their staffs.

19 3. The administrator or board may refuse to insure, or may
20 terminate the insurance of any subscriber who refuses to attend
21 such seminars or training or refuses to require their staff to
22 attend such seminars or training as required by the board for its
23 policyholders. The cost of said training seminars or a part
24 thereof may be paid by the company.

25 383.650. 1. The company shall not receive any state

1 appropriations, directly or indirectly, except as provided in
2 this section.

3 2. After October 1, 2004, ten million dollars of the moneys
4 received from the master settlement agreement, as defined in
5 section 196.1000, RSMo, shall be used to make loans for start-up
6 funding and initial capitalization of the company. The state
7 legislature shall place such moneys in a special fund under the
8 supervision of the Missouri state treasurer called the
9 "Physicians Mutual Insurance Company Loan Fund" in the
10 appropriations for the appropriate fiscal year. The board of the
11 company shall make application to the treasurer for the loans,
12 stating the amount to be loaned to the company. The loans shall
13 be for a term of ten years and, at the time the application for
14 such loans is approved by the director, shall bear interest at
15 the annual rate based on the rate for linked deposit loans as
16 calculated by the state treasurer pursuant to section 30.758,
17 RSMo.

18 3. In order to provide funds for the creation, continued
19 development, and operation of the company, the board is
20 authorized to issue revenue bonds from time to time, in a
21 principal amount outstanding not to exceed fifty million dollars
22 at any given time, payable solely from premiums received from
23 insurance policies and other revenues generated by the company.

24 4. The board may issue bonds to refund other bonds issued
25 pursuant to this section.

1 5. The bonds shall have a maturity of no more than ten
2 years from the date of issuance. The board shall determine all
3 other terms, covenants, and conditions of the bonds, except that
4 no bonds may be redeemed prior to maturity unless the company has
5 established adequate reserves for the risks it has insured.

6 6. The bonds shall be executed with the manual or facsimile
7 signature of the administrator or the chairman of the board and
8 attested by another member of the board. The bonds may bear the
9 seal, if any, of the company.

10 7. The proceeds of the bonds and the earnings of those
11 proceeds shall be used by the board for the development and
12 operation of the Missouri Physicians Mutual Insurance Company, to
13 pay expenses incurred in the preparation, issuance, and sale of
14 the bonds and to pay any obligations relating to the bonds and
15 the proceeds of the bonds under the United States Internal
16 Revenue Code of 1986, as amended.

17 8. The bonds may be sold at a public sale or a private
18 sale. If the bonds are sold at a public sale, the notice of sale
19 and other procedures for the sale shall be determined by the
20 administrator or the company.

21 9. This section is full authority for the issuance and sale
22 of the bonds and the bonds shall not be invalid for any
23 irregularity or defect in the proceedings for their issuance and
24 sale and shall be incontestable in the hands of bona fide
25 purchasers or holders of the bonds for value.

1 10. An amount of money from the sources specified in
2 subsection 3 of this section sufficient to pay the principal of
3 and any interest on the bonds as they become due each year shall
4 be set aside and is hereby pledged for the payment of the
5 principal and interest on the bonds.

6 11. The bonds shall be legal investment for any person or
7 board charged with the investment of public funds and may be
8 accepted as security for any deposit of public money, and the
9 bonds and interest thereon are exempt from taxation by the state
10 and any political subdivision or agency of the state.

11 12. The bonds shall be payable by the company, which shall
12 keep a complete record relating to the payment of the bonds.

13 13. Not more than fifty percent of the bonds sold shall be
14 sold to public entities.

15 383.655. 1. The board shall cause an annual audit of the
16 books of accounts, funds, and securities of the company to be
17 made by a competent and independent firm of certified public
18 accountants, the cost of the audit to be charged against the
19 company. A copy of the audit report shall be filed with the
20 director of the department of insurance and the administrator.
21 The audit shall be open to the public for inspection.

22 2. The board shall submit an annual independently audited
23 report in accordance with the procedures governing annual reports
24 adopted by the National Association of Insurance Commissioners by
25 March first of each year and the report shall be delivered to the

1 governor and the general assembly and shall indicate the business
2 done by the company during the previous year and contain a
3 statement of the resources and liabilities of the company.

4 3. The administrator shall annually submit to the board for
5 its approval an estimated budget of the entire expense of
6 administering the company for the succeeding calendar year having
7 due regard to the business interests and contract obligations of
8 the company.

9 4. The incurred loss experience and expense of the company
10 shall be ascertained each year to include, but not be limited to,
11 estimates of outstanding liabilities for claims reported to the
12 company but not yet paid and liabilities for claims arising from
13 injuries which have occurred but have not yet been reported to
14 the company. If there is an excess of assets over liabilities,
15 necessary reserves and a reasonable surplus for the catastrophe
16 hazard, then a cash dividend may be declared or a credit allowed
17 to an insured policyholder, who has been insured with the company
18 in accordance with criteria approved by the board, which may
19 account for insured's record and claims history.

20 5. The department of insurance shall conduct an examination
21 for the company in the manner and under the conditions provided
22 by the statutes of the insurance code for the examination of
23 insurance carriers. The board shall pay the cost of the
24 examination as an expense of the company. The company is subject
25 to all provisions of the statutes which relate to private

1 insurance carriers and to the jurisdiction of the department of
2 insurance in the same manner as private insurance carriers,
3 except as provided by the director.

4 6. For the purpose of ascertaining such information as the
5 administrator may require in the proper administration of the
6 company, the records of each policyholder and insured of the
7 company shall be always open to inspection by the administrator
8 or the administrator's duly authorized agent or representative.

9 7. Every person provided insurance coverage by the company,
10 upon complying with the underwriting standards adopted by the
11 company, and upon completing the application form prescribed by
12 the company, shall be furnished with a policy showing the date on
13 which the insurance becomes effective.

14 537.072. In all tort actions based upon improper health
15 care, the parties shall make a good faith effort to engage in
16 mediation, which shall be conducted by a trained mediator
17 selected from a list approved by the circuit court. The parties
18 shall advise the circuit court in writing that mediation take
19 place. If mediation does not occur, the parties shall set forth
20 in writing to the circuit court their good faith effort to
21 conduct mediation.

22 538.210. 1. In any action against a health care provider
23 for damages for personal injury or death arising out of the
24 rendering of or the failure to render health care services, no
25 plaintiff shall recover more than three hundred fifty thousand

1 dollars [per occurrence] for noneconomic damages from any one
2 defendant as defendant is defined in subsection 2 of this
3 section.

4 2. "Defendant" for purposes of sections 538.205 to 538.230
5 shall be defined as:

6 (1) A hospital as defined in chapter 197, RSMo, and its
7 employees and physician employees who are insured under the
8 hospital's professional liability insurance policy or the
9 hospital's self-insurance maintained for professional liability
10 purposes;

11 (2) A physician, including his or her nonphysician
12 employees who are insured under the physician's professional
13 liability insurance or under the physician's self-insurance
14 maintained for professional liability purposes;

15 (3) Any other health care provider having the legal
16 capacity to sue and be sued and who is not included in
17 subdivisions (1) and (2) of this subsection, including employees
18 of any health care providers who are insured under the health
19 care provider's professional liability insurance policy or
20 self-insurance maintained for professional liability purposes.

21 3. In any action against a health care provider for damages
22 for personal injury or death arising out of the rendering of or
23 the failure to render health care services, where the trier of
24 fact is a jury, such jury shall not be instructed by the court
25 with respect to the limitation on an award of noneconomic

1 damages, nor shall counsel for any party or any person providing
2 testimony during such proceeding in any way inform the jury or
3 potential jurors of such limitation.

4 4. The limitation on awards for noneconomic damages
5 provided for in this section shall be increased or decreased on
6 an annual basis effective January first of each year in
7 accordance with the Implicit Price Deflator for Personal
8 Consumption Expenditures as published by the Bureau of Economic
9 Analysis of the United States Department of Commerce. The
10 current value of the limitation shall be calculated by the
11 director of the department of insurance, who shall furnish that
12 value to the secretary of state, who shall publish such value in
13 the Missouri Register as soon after each January first as
14 practicable, but it shall otherwise be exempt from the provisions
15 of section 536.021, RSMo.

16 5. Any provision of law or court rule to the contrary
17 notwithstanding, an award of punitive damages against a health
18 care provider governed by the provisions of sections 538.205 to
19 538.230 shall be made only upon a showing by a plaintiff that the
20 health care provider demonstrated willful, wanton or malicious
21 misconduct with respect to his or her actions which are found to
22 have injured or caused or contributed to cause the damages
23 claimed in the petition.

24 538.211. 1. In all actions against a health care provider
25 pursuant to this chapter, any health care defendant who has filed

1 a timely motion to transfer venue may move for a hearing on the
2 propriety of venue. All discovery shall be stayed except for
3 discovery on the issue of venue raised in the motion. Within
4 ninety days of the filing of the motion, the court shall set a
5 hearing on the motion.

6 2. If after hearing the court determines that venue is
7 improper, the court shall transfer venue to a county where venue
8 is proper.

9 3. The court may award reasonable costs, expenses, and
10 attorneys' fees associated with said motion to the prevailing
11 party.

12 538.225. 1. In any action against a health care provider
13 for damages for personal injury or death on account of the
14 rendering of or failure to render health care services, the
15 plaintiff or [his] the plaintiff's attorney shall file an
16 affidavit with the court stating that he or she has obtained the
17 written opinion of a legally qualified health care provider which
18 states that the defendant health care provider failed to use such
19 care as a reasonably prudent and careful health care provider
20 would have under similar circumstances and that such failure to
21 use such reasonable care directly caused or directly contributed
22 to cause the damages claimed in the petition.

23 2. [The affidavit shall state the qualifications of such
24 health care providers to offer such opinion.] The health care
25 provider who offers such opinion shall have education, training,

1 and experience in a like area of expertise, or logical extension
2 of the field of expertise, as the defendant health care provider.
3 In addition, the health care provider must be actively engaged in
4 the practice of medicine or have retired from actively practicing
5 within five years of the date of the written opinion. The
6 written opinion is, upon motion of a party, subject to in-camera
7 review by the court without counsel or the parties present to
8 assure its compliance with this section.

9 3. A separate affidavit shall be filed for each defendant
10 named in the petition.

11 4. Such affidavit shall be filed no later than ninety days
12 after the filing of the petition unless the court, for good cause
13 shown, orders that such time be extended.

14 5. If the plaintiff or [his] the plaintiff's attorney fails
15 to file such affidavit [the court may] within the time required
16 under subsection 4 of this section, the action as to that
17 defendant shall be stayed and the court shall, upon motion of any
18 party, dismiss the action against [such moving party] that
19 defendant without prejudice.

20 538.226. 1. The portion of statements, writings, or
21 benevolent gestures expressing sympathy or a general sense of
22 benevolence relating to the pain, suffering, or death of a person
23 shall be inadmissible as evidence of an admission of liability in
24 a civil action. A statement of fault, however, which is part of
25 or in addition to any of the above shall be admissible under this

1 section.

2 2. As used in this section, "benevolent gestures" means
3 actions which convey a sense of compassion or commiseration
4 emanating from humane impulses.

5 Section 1. 1. Any person may file a miscellaneous case for
6 the purpose of securing copies of such person's health care
7 records or the health care records of any other individual for
8 whom such person is the guardian or attorney-in-fact, or is a
9 potential claimant for a wrongful death.

10 2. A miscellaneous case shall be filed in the circuit in
11 which any of the health care records sought to be obtained are
12 located.

13 3. The petition shall be filed according to the following
14 guidelines:

15 (1) The petition shall contain the following:

16 (a) The name of the individual who received the health care
17 services or medical treatment;

18 (b) A brief summary of the health care services or medical
19 treatment received;

20 (c) A brief summary of the outcome of the health care
21 services or medical treatment; and

22 (d) The names of the health care providers from whom health
23 care records are being sought;

24 (2) The petition shall not contain allegations of
25 negligence or demands, other than a general demand for access to

1 health care records.

2 4. Within five business days of filing the miscellaneous
3 case, the petitioner shall mail a copy of the petition by regular
4 and certified mail to each health care provider listed in the
5 petition. The petitioner shall certify to the court that the
6 petition has been mailed as required.

7 5. After filing a miscellaneous case, the petitioner may
8 request the health care records described in subsection 1 of this
9 section by subpoena and, if necessary, subpoena the health care
10 records custodian for a deposition for the sole purpose of
11 securing copies of the health care records and verifying their
12 authenticity. Refusal to provide the requested records may be
13 the basis for the court to impose sanctions or orders of
14 contempt.

15 6. Filing of a miscellaneous case petition shall toll the
16 applicable statute of limitations for one hundred twenty days on
17 any claim for injuries or death caused by professional negligence
18 of a health care provider, but in no event shall the applicable
19 statute of limitations be tolled under this section for more than
20 one hundred twenty days.

21 7. The naming or listing of a health care provider as a
22 person from whom records are requested shall not be considered
23 for any reporting purposes as a claim made against the health
24 care provider.

25 8. A health care provider or any person or entity acting on

1 behalf of a health care provider shall not charge more than is
2 allowable under section 197.227, RSMo, for providing copies of
3 health care records.

4 Section B. Because immediate action is necessary to take
5 action regarding the circumstances facing the medical malpractice
6 liability insurance market in this state section A of this act is
7 deemed necessary for the immediate preservation of the public
8 health, welfare, peace, and safety, and is hereby declared to be
9 an emergency act within the meaning of the constitution, and
10 section A of this act shall be in full force and effect upon its
11 passage and approval.