

SECOND REGULAR SESSION

HOUSE BILL NO. 1196

92ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BEHNEN.

Read 1st time January 21, 2004, and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4083L.011

AN ACT

To amend chapter 383, RSMo, by adding thereto eleven new sections relating to the Missouri medical malpractice mutual insurance company.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 383, RSMo, is amended by adding thereto eleven new sections, to
2 be known as sections 383.600, 383.610, 383.615, 383.620, 383.625, 383.630, 383.635, 383.640,
3 383.645, 383.650, and 383.655, to read as follows:

**383.600. 1. Sections 383.600 to 383.655 shall be known as the "Missouri Medical
2 Malpractice Mutual Insurance Company Act".**

3 2. As used in sections 383.600 to 383.655 the following terms mean:

**4 (1) "Administrator", the chief executive officer of the Missouri medical malpractice
5 mutual insurance company;**

**6 (2) "Board", the board of directors of the Missouri medical malpractice mutual
7 insurance company;**

8 (3) "Company", the Missouri medical malpractice mutual insurance company.

**383.610. The "Missouri Medical Malpractice Mutual Insurance Company" is
2 created as an independent public corporation for the purpose of insuring Missouri
3 physicians and their employees and their medical practice against liability for professional
4 malpractice. The company shall be organized and operated as a domestic mutual
5 insurance company and it shall not be a state agency. The company shall have the powers
6 granted a general not-for-profit corporation pursuant to section 355.131, RSMo. The
7 company shall be a member of the Missouri property and casualty guaranty association
8 under sections 375.771 to 375.799, RSMo, and as such will be subject to assessments
9 therefrom, and the members of such association shall bear responsibility in the event of the**

10 insolvency of the company. The company shall be established pursuant to the provisions
11 of sections 383.600 to 383.655.

383.615. 1. There is hereby created a board of directors for the company. The
2 board shall be appointed by January 1, 2005, and shall consist of seven members appointed
3 or selected as provided in this section. The governor shall appoint the initial seven
4 members of the board with the advice and consent of the senate. Each director shall serve
5 a seven-year term. Terms shall be staggered so that no more than one director's term
6 expires each year on the first day of July. The seven directors initially appointed by the
7 governor shall determine their initial terms by lot. At the expiration of the term of any
8 member of the board, the company's policy holders shall elect a new director in accordance
9 with provisions determined by the board; provided, however, three directors of the board
10 shall be appointed by the governor.

11 2. Any person may be a director who:

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

15 (2) Is of good moral character and who has never pleaded guilty or nolo contendere
16 to, or been found guilty of a felony;

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

19 3. One member of the board of directors shall be from any city not within a county
20 or any county with a charter form of government and with more than one million
21 inhabitants, one member of the board of directors shall be from any county with a charter
22 form of government and with more than six hundred thousand but less than seven hundred
23 thousand inhabitants or any county of the first classification with more than one hundred
24 eighty-four thousand but less than one hundred eighty-eight thousand inhabitants, and one
25 member of the board of directors shall be from any county of the first classification with
26 more than two hundred forty thousand three hundred but less than two hundred forty
27 thousand four hundred inhabitants, with the remaining members of the board from the
28 other counties in this state. Further, one member shall be a doctor of osteopathic medicine
29 licensed to practice in the state of Missouri, one member shall be a medical doctor licensed
30 to practice in this state, one member shall be an attorney licensed to practice by the
31 Missouri supreme court, and one member shall have management experience in the
32 operation of an insurance company.

33 4. The board shall annually elect a chairperson and any other officers it deems
34 necessary for the performance of its duties. Board committees and subcommittees may also
35 be formed.

36 5. The company shall pay to the board members their expenses incurred in the
37 business of the company or the board and a stipend in a sum set by the board, but not more
38 than one thousand dollars per meeting or the board or committee or subcommittee thereof
39 attended by the member.

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

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

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

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

7 3. The administrator or the administrator's designee shall be the custodian of the
8 moneys of the company and all premiums, deposits, or other moneys paid thereto shall be
9 deposited with a financial institution as designated by the administrator.

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

 383.630. The board shall have full power and authority to establish rates to be
2 charged by the company for insurance. The board shall contract for the services of or hire
3 an independent actuary, a member in good standing with the American Academy of
4 Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at
5 amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable
6 expenses of conducting the business of the company and maintain a reasonable surplus.

7 The company shall conduct a program that shall be neither more nor less than self-
8 supporting.

383.635. The board shall formulate and adopt an investment policy and supervise
2 the investment activities of the company. The administrator may invest and reinvest the
3 surplus or reserves of the company subject to the limitations imposed on domestic
4 insurance companies by state law. The company may retain an independent investment
5 counsel. The board shall periodically review and appraise the investment strategy being
6 followed and the effectiveness of such services. Any investment counsel retained or hired
7 shall periodically report to the board on investment results and related matters.

383.640. Any insurance producer licensed to sell professional negligence insurance
2 in this state is authorized to sell insurance policies for the company in compliance with the
3 bylaws adopted by the company and upon the approval of the board. The board shall
4 establish a schedule of commissions to pay for the services of the producer.

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

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

6 3. The administrator or board may refuse to insure or may terminate the insurance
7 of any subscriber who refuses to attend such seminars or training or refuses to require
8 their staff to attend such seminars or training as required by the board for its
9 policyholders. The administrator or board may also refuse to insure, or may terminate the
10 insurance of any subscriber who refuses to follow the practice patterns of the company.
11 The cost of such training seminars or a part thereof may be paid by the company.

383.650. 1. The company shall not receive any state appropriations, directly or
2 indirectly, except as provided in this section.

3 2. After October 1, 2004, the treasurer of the state of Missouri may make one or
4 more loans to the company in an amount not to exceed an aggregate amount of ten million
5 dollars from the fund maintained by the treasurer for start-up funding and initial
6 capitalization of the company. The general assembly shall place such sum of funds in a
7 special fund under the supervision of the Missouri state treasurer called the "Missouri
8 Medical Malpractice Mutual Insurance Company Loan Fund". The board of the company
9 shall make application to the treasurer for the loans, stating the amount to be loaned to the
10 company. The loans shall be for a term of ten years and, at the time the application for
11 such loans is approved by the director, shall bear interest at the annual rate based on the

12 rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758,
13 RSMo.

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

19 **4. The board may issue bonds to refund other bonds issued pursuant to this section.**

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

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

27 **7. The proceeds of the bonds and the earnings of those proceeds shall be used by**
28 **the board for the development and operation of the company, to pay expenses incurred in**
29 **the preparation, issuance, and sale of the bonds and to pay any obligations relating to the**
30 **bonds and the proceeds of the bonds under the United States Internal Revenue Code of**
31 **1986, as amended.**

32 **8. The bonds may be sold at a public sale or a private sale. If the bonds are sold at**
33 **a public sale, the notice of sale and other procedures for the sale shall be determined by the**
34 **administrator or the company.**

35 **9. This section is full authority for the issuance and sale of the bonds and the bonds**
36 **shall not be invalid for any irregularity or defect in the proceedings for their issuance and**
37 **sale and shall be incontestable in the hands of bona fide purchasers or holders of the bonds**
38 **for value.**

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

43 **11. The bonds shall be legal investment for any person or board charged with the**
44 **investment of public funds and may be accepted as security for any deposit of public**
45 **money, and the bonds and interest thereon are exempt from taxation by the state and any**
46 **political subdivision or agency of the state.**

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

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

383.655. 1. The board shall cause an annual audit of the books of accounts, funds,
2 **and securities of the company to be made by a competent and independent firm of certified**
3 **public accountants, the cost of the audit to be charged against the company. A copy of the**
4 **audit report shall be filed with the director of the department of insurance and the**
5 **administrator. The audit shall be open to the public for inspection.**

6 **2. The board shall submit an annual independently audited report in accordance**
7 **with the procedures governing annual reports adopted by the National Association of**
8 **Insurance Commissioners by March first of each year and the report shall be delivered to**
9 **the governor and the general assembly and shall indicate the business done by the company**
10 **during the previous year and contain a statement of the resources and liabilities of the**
11 **company.**

12 **3. The administrator shall annually submit to the board for its approval an**
13 **estimated budget of the entire expense of administering the company for the succeeding**
14 **calendar year having due regard to the business interests and contract obligations of the**
15 **company.**

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

24 **5. The department of insurance shall conduct an examination for the company in**
25 **the manner and under the conditions provided by the statutes of the insurance code for the**
26 **examination of insurance carriers. The board shall pay the cost of the examination as an**
27 **expense of the company. The company is subject to all provisions of the statutes which**
28 **relate to private insurance carriers and to the jurisdiction of the department of insurance**
29 **in the same manner as private insurance carriers, except as provided by the director.**

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

34 **7. Every person provided insurance coverage by the company, upon complying**
35 **with the underwriting standards adopted by the company, and upon completing the**
36 **application form prescribed by the company, shall be furnished with a policy showing the**
37 **date on which the insurance becomes effective.**