

JOURNAL OF THE HOUSE

Second Regular Session, 92nd GENERAL ASSEMBLY

FORTY-NINTH DAY, THURSDAY, APRIL 8, 2004

The House met pursuant to adjournment.

Speaker Hanaway in the Chair.

Prayer by Reverend Donald W. Lammers.

Blessed be God, who is Creator of all and who has constant concern and love for all He has created.

Today, hundreds of veterans gather around us. We thank God who has placed in them a magnificent patriotism and a self-sacrificing commitment to the security of our nation.

We join these veterans in praying for our armed forces on active duty in the Middle East. Lord God, keep them safe in their time of self-sacrificing service to our country. Take into eternal life and happiness those who have been killed. Send neighbors to give the support, love and assistance needed by their grieving families.

Holy Lord, cause those with the power to make decisions, on all sides of the warfare in Iraq and the Middle East, to seek understanding of each other, and to seek justice and peace through negotiation.

Finally, we pray for ourselves. May we pursue our work with the concern for the well being of our State that our veterans and armed forces demonstrate for our Nation.

We pray to You who are our God for ever and ever. Amen.

The Pledge of Allegiance to the flag was recited.

The Speaker appointed the following to act as Honorary Pages for the Day, to serve without compensation: Ryan Conway, Caleb Eissler, Olivia Eissler, Noah Louis Copple, Derek Mikek, Will Driscoll, Keyonna Dale and Tori Tate.

The Journal of the forty-eighth day was approved as corrected by the following vote:

AYES: 154

Abel	Angst	Baker	Bean	Bearden
Behnen	Bishop	Bivins	Black	Bland
Bough	Boykins	Bringer	Brooks	Brown
Bruns	Burnett	Byrd	Campbell	Carnahan
Cooper 120	Cooper 155	Corcoran	Crawford	Crowell
Cunningham 145	Cunningham 86	Curls	Darrough	Daus
Davis 122	Davis 19	Deeken	Dempsey	Dethrow
Dixon	Donnelly	Dougherty	Dusenberg	El-Amin
Emery	Engler	Ervin	Fares	Fraser

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George	Goodman	Graham	Green	Guest
Hampton	Harris 110	Harris 23	Haywood	Henke
Hilgemann	Hobbs	Holand	Hoskins	Hubbard
Hunter	Ice	Jackson	Jetton	Johnson 47
Johnson 61	Johnson 90	Jolly	Jones	Kelly 144
Kelly 36	King	Kingery	Kratky	Kuessner
Lager	Lawson	Lembke	LeVota	Liese
Lipke	Lowe	Luetkemeyer	Marsh	May
Mayer	McKenna	Meadows	Meiners	Miller
Moore	Morris	Muckler	Munzlinger	Myers
Nieves	Page	Parker	Pearce	Phillips
Portwood	Pratt	Purgason	Quinn	Ransdall
Rector	Reinhart	Richard	Roark	Ruestman
Rupp	Salva	Sander	Schaaf	Schlottach
Schneider	Schoemehl	Seigfreid	Selby	Self
Shoemaker	Shoemyer	Smith 118	Smith 14	Spreng
St. Onge	Stefanick	Stevenson	Sutherland	Swinger
Taylor	Thompson	Threlkeld	Townley	Viebrock
Villa	Wagner	Walker	Wallace	Walton
Ward	Wasson	Whorton	Wildberger	Wilson 119
Wilson 130	Wilson 42	Witte	Wood	Yaeger
Yates	Young	Zweifel	Madam Speaker	

NOES: 006

Barnitz	Sager	Skaggs	Vogt	Walsh
Wilson 25				

PRESENT: 000

ABSENT WITH LEAVE: 003

Avery	Willoughby	Wright
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SPECIAL RECOGNITION

Speaker Hanaway, joined by Representatives Jackson and Ransdall, participated in the Presentation of Flags to Missouri Veterans. The following veterans were escorted to the dais and presented a Missouri State Flag:

World War I

Rev. Fred Robb, 107 years old. United States Marine Corps. He is from Springfield, Missouri.

World War II

Corporal Marcellus Markway, 34th Infantry Division, United States Army

Captain Maurice Markway, 6th Infantry Division, United States Army

Private 1st Class Norbert Bernskoetter, 1st Cavalry Division, United States Army

Chief Machinist Levi Schepers, Stationed on the USS Memphis, United States Navy

Petty Officer 3rd Class John Brenneke, United States Navy

Tech 5 Lawrence Brenneke, Infantry Division, United States Army

Private Victor Wieberg, Infantry Division, United States Army

Korea

Corporal Clarence Brenneke
Corporal Louis Markway, Infantry Division, United States Army
Specialist 3rd Class Norval Bopp, 3rd Armor Division
Sergeant 1st Class Lawrence Barrett, United States Army (career)
Staff Sergeant Perry Coy, Recipient of 3 Purple Hearts, a Silver and a Bronze Star
Lieutenant Colonel Robert Marsh, United States Air Force (career)
Sergeant Bob Deeken, 45th Tal Recon, United States Army
Sergeant Ralph Kalberloh, held Prisoner of War in Germany during World War II

World War II, Korea and Vietnam

Sergeant 1st Class Manuel G. Ramos

Vietnam

1st Lieutenant Richard Schutt, United States Army
1st Lieutenant Don Perdue, United States Army
Corporal Joe Frank, United States Army
Corporal Joseph T. Bryan, United States Marines
Corporal Delbert Bias, United States Marines
Sergeant Walt Klein, United States Marines
Master Sergeant Perry Dale Walker, United States Air Force
1st Sergeant Robert Adams, United States Army

Kosovo Peace Keeper and returned from Operation Iraqi Freedom

Specialist David Worley

Gulf War, Desert Storm, Operation Enduring Freedom and Operation Iraqi Freedom

Tech Sergeant David Albin, 139th Air Wing, St. Joseph

Operation Iraqi Freedom

Major Blaine Meads, 139th Air Wing, St. Joseph
Tech Sergeant John Temple, Bronze Star recipient
Lieutenant Colonel Mark Corson, Bronze Star Recipient,
450th Transportation Battalion, United States Army Reserve
Captain Katherine Numerick, 450th Transportation Battalion, United States Army Reserve
Sergeant Jennifer McLaughlin
Specialist Liza Spence
Specialist Amanda Evers, 1139th Military Police Company
Lieutenant Colonel - Chaplain Keith Darlington, Whiteman Air Force Base
Major Douglas Gifford
Staff Sergeant Darrin Anderson, 205th Medical Battalion, Missouri National Guard
Master Sergeant Charles Henke, 1139th Military Police Company, Missouri National Guard
Specialist Adam Helvy, 1138th Military Police Company, Missouri National Guard

2nd Lieutenant Mike Roberts, 1140th Engineers, recently returned from Ft. Leonard Wood, Engineering School, was also recognized.

Representative Bivins assumed the Chair.

HOUSE COURTESY RESOLUTIONS OFFERED AND ISSUED

House Resolution No. 1601 - Representative Guest
House Resolution No. 1602
and
House Resolution No. 1603 - Representative Rector
House Resolution No. 1604 - Representative Munzlinger
House Resolution No. 1605 - Representative Crawford
House Resolution No. 1606
through
House Resolution No. 1623 - Representative Viebrock
House Resolution No. 1624 - Representative Meadows
House Resolution No. 1625
through
House Resolution No. 1638 - Representative Hobbs
House Resolution No. 1639 - Representative Jetton
House Resolution No. 1640 - Representative Donnelly
House Resolution No. 1641 - Representative Jones
House Resolution No. 1642 - Representative Deeken
House Resolution No. 1643 - Representative Bringer
House Resolution No. 1644 - Representatives Pratt and Shoemyer
House Resolution No. 1645
and
House Resolution No. 1646 - Representative Fares

INTRODUCTION OF HOUSE BILL - APPROPRIATIONS

The following House Bill was read the first time and copies ordered printed:

HB 1021, introduced by Representative Bearden, to appropriate money for planning, expenses, and for capital improvements including, but not limited to, major additions and renovations, new structures, and land improvements of acquisitions and to transfer money among certain funds.

INTRODUCTION OF HOUSE BILLS

The following House Bills were read the first time and copies ordered printed:

HB 1727, introduced by Representative Harris (23), relating to the creation of a Missouri Military Family Relief Fund.

HB 1728, introduced by Representatives Donnelly, Vogt and Stevenson, relating to domestic violence.

HB 1729, introduced by Representative Shoemyer, relating to an income tax credit for property taxes paid on certain farm assets.

SECOND READING OF HOUSE BILLS

HB 1721 through **HB 1726** were read the second time.

SIGNING OF HOUSE BILL

Having been duly signed in open session of the Senate, **CCS SCS HCS HB 1014** was delivered to the Governor by the Chief Clerk of the House.

REFERRAL OF HOUSE CONCURRENT RESOLUTIONS

The following House Concurrent Resolutions were referred to the Committee indicated:

HCR 30 - Agriculture

HCR 33 - Judiciary

REFERRAL OF HOUSE JOINT RESOLUTION

The following House Joint Resolution was referred to the Committee indicated:

HJR 56 - Elections

REFERRAL OF HOUSE BILLS

The following House Bills were referred to the Committee indicated:

HS HCS HB 1453 - Budget (Fiscal Note)

HB 771 - Tax Policy

HB 776 - Elections

HB 827 - Budget

HB 871 - Tax Policy

HB 1540 - Crime Prevention and Public Safety

HB 1549 - Elections

HB 1574 - Elections

HB 1577 - Judiciary

HB 1578 - Judiciary

HB 1580 - Workforce Development and Workplace Safety

HB 1587 - Communications, Energy and Technology

HB 1593 - Judiciary

HB 1598 - Job Creation and Economic Development
HB 1621 - Retirement
HB 1624 - Agriculture
HB 1629 - Education
HB 1637 - Crime Prevention and Public Safety
HB 1638 - Budget
HB 1639 - Workforce Development and Workplace Safety
HB 1640 - Workforce Development and Workplace Safety
HB 1641 - Senior Security
HB 1642 - Job Creation and Economic Development
HB 1643 - Crime Prevention and Public Safety
HB 1644 - Judiciary
HB 1654 - Financial Services
HB 1657 - Children and Families
HB 1661 - Education
HB 1662 - Workforce Development and Workplace Safety
HB 1668 - Local Government
HB 1674 - Education
HB 1677 - Children and Families
HB 1678 - Workforce Development and Workplace Safety
HB 1679 - Tourism and Cultural Affairs
HB 1681 - Judiciary
HB 1682 - Judiciary
HB 1683 - Judiciary
HB 1684 - Tax Policy
HB 1685 - Elections
HB 1686 - Job Creation and Economic Development
HB 1687 - Crime Prevention and Public Safety
HB 1688 - Transportation and Motor Vehicles
HB 1689 - Judiciary
HB 1690 - Transportation and Motor Vehicles
HB 1691 - Judiciary
HB 1694 - Crime Prevention and Public Safety
HB 1699 - Homeland Security and Veterans Affairs
HB 1702 - Tax Policy
HB 1712 - Tax Policy
HB 1713 - Tax Policy
HB 1714 - Transportation and Motor Vehicles
HB 1715 - Transportation and Motor Vehicles
HB 1717 - Tax Policy

REFERRAL OF SENATE BILLS

The following Senate Bills were referred to the Committee indicated:

SCS SB 710 - Transportation and Motor Vehicles
SS SS SB 718 - Small Business
SS SCS SB 960 - Tax Policy
SS SCS SB 1081 - Local Government
SCS SB 1220 - Special Committee on General Laws
SCS SB 1247 - Judiciary
SS SS SCS SB 1371 - Senior Security

COMMITTEE REPORT

Committee on Small Business, Chairman St. Onge reporting:

Madam Speaker: Your Committee on Small Business, to which was referred **HB 1286** and **HB 1175**, begs leave to report it has examined the same and recommends that the **House Committee Substitute Do Pass**.

MESSAGES FROM THE SENATE

Madam Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and passed **SS#2 SS SCS HS HCS HB 1304**, entitled:

An act to repeal sections 355.176, 408.040, 508.010, 508.040, 508.070, 508.120, 510.263, 516.105, 537.067, 538.205, 538.210, 538.220, 538.225, and 538.300, RSMo, and to enact in lieu thereof sixteen new sections relating to claims for damages and payment thereof.

With Senate Substitute Amendment No. 1 for Senate Amendment No. 1, Senate Amendment No. 2, Senate Amendment No. 3, Senate Amendment No. 4, Senate Amendment No. 5 and Senate Amendment No. 7.

*Senate Substitute Amendment No. 1
for
Senate Amendment No. 1*

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill 1304, Page 15, Section 538.210, Line 27, by striking the words "August 28, 2013" and inserting in lieu thereof the following: "**August 28, 2006**".

Senate Amendment No. 2

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 1, In the Title, Line 6, by said title, by inserting immediately after the word "thereof" the following: ", with an emergency clause for certain sections"; and

Further amend said bill and page, Section A, Line 7 of said page, by inserting immediately after said line the following:

“135.163. 1. For all tax years beginning on or after January 1, 2005, in order to encourage the retention of physicians and other health care providers in this state, an eligible taxpayer shall be allowed a credit not to exceed fifteen thousand dollars per eligible taxpayer against the tax otherwise due pursuant to chapter 143, RSMo, not including sections 143.191 to 143.265, RSMo, in an amount equal to fifteen percent of the increase in amount paid by an eligible taxpayer for medical malpractice insurance premiums in the aggregate from one policy period to the next immediate policy period. For purposes of this section, the base policy period for calculation of the credit shall be the medical malpractice insurance policy in effect on August 28, 2004.

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

3. The director of the department of insurance and the director of the department of revenue shall jointly administer the tax credit authorized by this section. The director of the department of insurance shall enact procedures to verify the amount of the allowable credit and shall issue a certificate to each eligible taxpayer that certifies the amount of the allowable credit. Both the director of the department of insurance and the director of the department of revenue are authorized to promulgate rules and regulations necessary to administer the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

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

Further amend said bill, Page 2, Section 355.176, Line 14 of said page, by inserting immediately after said line the following:

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

- (1) Reinsurance, other than joint reinsurance to the extent stated in section 379.331;**
- (2) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured pursuant to marine, as distinguished from inland marine, insurance policies;**
- (3) Insurance against loss or damage to aircraft;**
- (4) All forms of motor vehicle insurance; and**
- (5) All forms of life, accident and health, [and] workers' compensation insurance, and medical malpractice liability insurance.**

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

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

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

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

(1) “Association” [means], the joint underwriting association established pursuant to the provisions of sections 383.150 to 383.195;

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

(3) “Director” [means], the director of the department of insurance;

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

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

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

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

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

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

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

(1) “Director”, the same meaning as such term is defined in section 383.100;

(2) “Health care provider”, the same meaning as such term is defined in section 383.100;

(3) “Insurer”, an insurance company licensed in this state to write liability insurance, as described in section 379.010, RSMo;

(4) “Medical malpractice insurance”, the same meaning as such term is defined in section 383.200.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

383.210. In determining the premium paid by any health care provider, a medical malpractice insurer shall apply a credit or debit based on the provider's loss experience, or shall establish an alternative method giving due consideration to the provider's loss experience. The insurer shall include a schedule of all such credits and debits, or a description of such alternative method in all filings it makes with the director of insurance. No medical malpractice insurer may use any rate or charge any premiums unless it has filed such schedule or alternative method with the director of insurance and the director has approved such schedule or alternative method. A debit shall be based only on those claims that have been paid on behalf of the provider.

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

(1) Information on closed claims:

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

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

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

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

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

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

a. The amount of the judgment and the amount actually paid to the plaintiff;

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

Category 1: Temporary injury, emotional only.

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

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

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

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

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

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

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

Category 9: Death;

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

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

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

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

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

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

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

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

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

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

(b) Number of providers insured:

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

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

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

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

(6) Information on the performance of the investments of the insurer, including the value of the investments held in the portfolio of the insurer as of December thirty-first of the preceding calendar year, and the rate of return on such investments, detailed by category of investment as follows:

(a) United States government bonds;

(b) Bonds exempt from federal taxation;

(c) Other unaffiliated bonds;

(d) Bonds of affiliates;

(e) Unaffiliated preferred stock;

(f) Preferred stock of affiliates;

(g) Unaffiliated common stock;

(h) Common stock of affiliates;

(i) Mortgage loans;

(j) Real estate; and

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

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

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

transmission software components which allow such information to be formatted for delivery to each medical malpractice insurer based on the requirements of the computer system of the insurer.

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

- (1) Developing a customized interface with the insurer's own rating engine;
- (2) Accessing a third-party rating engine of the insurer's choice;
- (3) Loading the insurer's rating information into a rating engine operated by the director;
- (4) Any other method agreed on between the director and the insurer.

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

5. Quotes provided on the Internet site shall at all times be accurate. When an insurer changes its rates, such rate changes shall be implemented at the Internet site by the director, in consultation with the insurer, as soon as practicable but in no event later than ten days after such changes take effect. During any period in which an insurer has changed its rates but the director has not yet implemented such changed rates on the Internet site, quotes for that insurer shall not be obtainable at the Internet site.

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

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

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

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

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

383.225. Each insurer shall file with the director of insurance new manuals of classifications, rules, underwriting rules, rates, rate plans and modifications, policy forms and other forms to which such rates are applied, that reflect the savings, if any, attributable to each provision of this act.

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

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

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

- (1) "Administrator", the chief executive officer of the Missouri physicians mutual insurance company;
- (2) "Board", the board of directors of the Missouri physicians mutual insurance company;
- (3) "Company", the Missouri physicians mutual insurance company.

383.610. The "Missouri Physicians Mutual Insurance Company" is created as an independent public corporation for the purpose of insuring Missouri physicians and their employees and their business against liability for professional negligence and other casualty losses. The company shall be organized and operated as a domestic mutual insurance company and it shall not be a state agency. The company shall have the powers granted a general not-for-profit corporation pursuant to section 355.131, RSMo. The company shall be a member of the Missouri property and casualty guaranty association, sections 375.771 to 375.799, RSMo, and as such will be subject to assessments therefrom, and the members of such association shall bear responsibility in the event of the insolvency of the company. The company shall be established pursuant to the provisions of sections 383.600 to 383.655. The company shall use flexibility and experimentation in the development of types of policies and coverages offered to physicians and their employees, subject to the approval of the director of the department of insurance.

383.615. 1. There is hereby created a board of directors for the company. The board shall be appointed by January 1, 2005, and shall consist of nine members appointed or selected as provided in this section. The governor shall appoint the initial nine members of the board with the advice and consent of the senate. Each

director shall serve a seven-year term. Terms shall be staggered so that no more than one director's term expires each year on the first day of July. The nine directors initially appointed by the governor shall determine their initial terms by lot. At the expiration of the term of any member of the board, the company's policy holders shall elect a new director in accordance with provisions determined by the board.

2. Any person may be a director who:

- (1) Does not have any interest as a stockholder, employee, attorney, agent, broker, or contractor of an insurance entity who writes medical liability insurance, or whose affiliates write medical liability insurance;
- (2) Is of good moral character and who has never pleaded guilty to, or been found guilty of a felony;
- (3) Is not employed by or affiliated with, the state of Missouri, any hospital, health maintenance organization, or other entity providing any type of insurance in this state.

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

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

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

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

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

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

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

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

4. No board member, officer, or employee of the company is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, 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 charged by the company for insurance. The board shall contract for the services of or hire an independent actuary, a member in good standing with the American Academy of Actuaries, to develop and recommend actuarially sound rates. Rates shall be set at amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable expenses of conducting the business of the company and maintain a reasonable surplus. The company shall conduct a program that shall be neither more nor less than self-supporting.

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

383.640. Any insurance producer licensed to sell professional negligence insurance in this state shall be authorized to sell insurance policies for the company in compliance with the bylaws adopted by the company and upon the approval of the board. The board shall 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 to decrease medical negligence by physicians and their staff for all policyholders.

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

3. The administrator or board may refuse to insure, or may terminate the insurance of any subscriber who refuses to attend such seminars or training or refuses to require their staff to attend such seminars or training as required by the board for its policyholders. The cost of said 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 indirectly, except as provided in this section.

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

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

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

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

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

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

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

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

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

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

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

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, and securities of the company to be made by a competent and independent firm of certified public accountants, the cost of the audit to be charged against the company. A copy of the audit report shall be filed with the director of the department of insurance and the administrator. The audit shall be open to the public for inspection.

2. The board shall submit an annual independently audited report in accordance with the procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business

done by the company during the previous year and contain a statement of the resources and liabilities of the company.

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

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

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

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

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

Further amend the title and enacting clause accordingly.

Senate Amendment No. 3

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 23, Section 3, Line 1, by inserting at the end of the said line, the following:

“Section 4. The board shall investigate all complaints relating to the proper practice of medicine by any person holding a certificate of registration under sections two to twelve A, inclusive, or of section sixty-five so far as it relates to medicine and report the same to the proper prosecuting officers.

There shall be established within the board of registration in medicine a disciplinary unit which will be responsible for investigating complaints and prosecuting disciplinary actions against licensees, pursuant to this section. The executive director of the board shall hire such attorneys and investigators as are necessary to carry out the responsibilities of the disciplinary unit.

The board is hereby authorized and directed to develop and implement, without cost to the commonwealth, a plan for a remediation program designed to improve physicians' clinical and communication skills. The board shall promulgate rules and regulations for such remediation programs which shall include, but not be limited to, the following provisions:

(a) the board shall offer a remediation program to physicians, on a voluntary basis, as an alternative to disciplinary action in appropriate cases as determined by the board;

(b) the board shall select providers of remediation and assessment services for physicians;

(c) the board shall make referrals of physicians to remediation and assessment providers, shall have the authority to approve individual remediation programs recommended by such providers and shall monitor the progress of each physician undertaking a remediation program;

(d) the board shall have the authority to determine successful completion of physician remediation programs and may make any further orders for probationary monitoring, disciplinary proceedings or other action as it deems appropriate;

(e) the board shall negotiate with insurance carriers, hospitals, health care providers, physicians and other affected parties to establish mechanisms for the funding of the remediation programs set forth in this

paragraph; provided, however, that said board shall establish terms and conditions under which the primary financial obligation for an individual remediation program shall be borne by the affected physician.

There shall also be established within the board of registration in medicine a risk management unit. Said risk management unit shall provide technical assistance and quality assurance programs designed to reduce or stabilize the frequency, amount and costs of claims against physicians and hospitals licensed or registered in the commonwealth. The board shall promulgate regulations requiring physicians to participate in risk management programs as a condition of licensure; provided that such regulations shall provide for an exemption from such requirements for physicians who are participating in pre-existing risk management programs that have been approved by the board.

There shall be established within the board of registration in medicine a data repository which will be responsible for the compilation of all data required under sections five A to five J, inclusive, and any other law or regulation which requires that information be reported to the board.

The board shall collect the following information to create individual profiles on licensees, in a format created by the board that shall be available for dissemination to the public:

(a) a description of any criminal convictions for felonies and serious misdemeanors as determined by the board, within the most recent ten years. For the purposes of this subsection, a person shall be deemed to be convicted of a crime if he pleaded guilty or if he was found or adjudged guilty by a court of competent jurisdiction;

(b) a description of any charges to which a physician pleads nolo contendere or where sufficient facts of guilt were found and the matter was continued without a finding by a court of competent jurisdiction;

(c) a description of any final board disciplinary actions within the most recent ten years;

(d) a description of any final disciplinary actions by licensing boards in other states within the most recent ten years;

(e) a description of revocation or involuntary restriction of hospital privileges for reasons related to competence or character that have been taken by the hospital's governing body or any other official of the hospital after procedural due process has been afforded, or the resignation from or nonrenewal of medical staff membership or the restriction of privileges at a hospital taken in lieu of or in settlement of a pending disciplinary case related to competence or character in that hospital. Only cases which have occurred within the most recent ten years shall be disclosed by the board to the public;

(f) all medical malpractice court judgments and all medical malpractice arbitration awards in which a payment is awarded to a complaining party during the most recent ten years and all settlements of medical malpractice claims in which a payment is made to a complaining party within the most recent ten years. Dispositions of paid claims shall be reported in a minimum of three graduated categories indicating the level of significance of the award or settlement. Information concerning paid medical malpractice claims shall be put in context by comparing an individual licensee's medical malpractice judgment awards and settlements to the experience of other physicians within the same specialty. Information concerning all settlements shall be accompanied by the following statement: "Settlement of a claim may occur for a variety of reasons which do not necessarily reflect negatively on the professional competence or conduct of the physician. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred." Nothing herein shall be construed to limit or prevent the board from providing further explanatory information regarding the significance of categories in which settlements are reported.

Pending malpractice claims shall not be disclosed by the board to the public. Nothing herein shall be construed to prevent the board from investigating and disciplining a licensee on the basis of medical malpractice claims that are pending.

(g) names of medical schools and dates of graduation;

(h) graduate medical education;

(i) specialty board certification;

(j) number of years in practice;

(k) names of the hospitals where the licensee has privileges;

(l) appointments to medical school faculties and indication as to whether a licensee has a responsibility for graduate medical education within the most recent ten years;

(m) information regarding publications in peer-reviewed medical literature within the most recent ten years;

(n) information regarding professional or community service activities and awards;

(o) the location of the licensee's primary practice setting;
(p) the identification of any translating services that may be available at the licensee's primary practice location;

(q) an indication of whether the licensee participates in the medicaid program.

The board shall provide individual licensees with a copy of their profiles prior to release to the public. A licensee shall be provided a reasonable time to correct factual inaccuracies that appear in such profile.

A physician may elect to have his profile omit certain information provided pursuant to clauses (l) to (n), inclusive, concerning academic appointments and teaching responsibilities, publication in peer-reviewed journals and professional and community service awards. In collecting information for such profiles and in disseminating the same, the board shall inform physicians that they may choose not to provide such information required pursuant to said clause (l) to (n), inclusive.”; and

Further amend the title and enacting clause accordingly.

Senate Amendment No. 4

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 18, Section 538.213, Line 9, by inserting after all of said line the following:

“6. Beginning on August 28, 2006, the limitation on awards for noneconomic damages provided for in this section shall be increased or decreased on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal Consumption Expenditures as published by the Bureau of Economic Analysis of the United States Department of Commerce. The current value of the limitation shall be calculated by the director of the department of insurance, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, RSMo.”.

Senate Amendment No. 5

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 21, Section 538.225, Lines 16-20, by striking all of said lines from the bill and inserting in lieu thereof the following:

“6. As used in this section, the term “legally qualified health care provider” means a health care provider licensed in this state or any other state in substantially the same profession and specialty as the defendant.”.

Senate Amendment No. 7

AMEND Senate Substitute No. 2 for Senate Substitute for Senate Committee Substitute for House Substitute for House Committee Substitute for House Bill No. 1304, Page 2, Section 355.176, Line 14, of said page, by inserting immediately after said line the following:

“383.010. 1. Notwithstanding any direct or implied prohibitions in chapter 375, 377, or 379, RSMo, any three or more persons, residents of this state, being licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339, RSMo, or under rule 8 of the supreme court of Missouri or architects licensed pursuant to chapter 327, RSMo, may, as provided in sections 383.010 to 383.040, form a business entity for the purpose of providing malpractice insurance or indemnification for such persons upon the assessment plan, and upon compliance with section 379.260, RSMo, liability and automobile insurance as defined in subdivisions (1) and (3) of section 379.230, RSMo, may be provided upon the assessment plan to those persons licensed pursuant to chapter 197, RSMo, and for whom medical malpractice insurance is provided under this section, except that automobile insurance shall be provided only for ambulances as defined in section 190.100, RSMo. Hospitals, public or private, whether incorporated or not, as defined in chapter 197, RSMo, if licensed by the state of Missouri, professional corporations formed under the provisions of chapter 356, RSMo, for the practice of law and corporations, copartnerships or associations licensed under the provisions

of chapter 339, RSMo, may also become members of any such entity. The term “persons” as used in sections 383.010 to 383.040 includes such hospitals, professional corporations and real estate business entities.

2. Anything in this section to the contrary notwithstanding, any persons duly licensed under the provisions of the laws of any other state who, if licensed under any similar provisions of the laws of this state, would be eligible to become members and insureds of an entity created under the authority of this section, may become members and insureds of such an entity, irrespective of whether such persons are residents of this state; provided, however, that any such persons must be employed by, or be a partner, shareholder or member of, a professional corporation, corporation, copartnership or association insured by or to be insured by such an entity.

3. **Except as provided in this subsection**, notwithstanding any provision of law which might be construed to the contrary, sections 379.882 and 379.888, RSMo, defining “commercial casualty insurance”, shall not include professional malpractice insurance policies issued by any insurer in this state. **Sections 379.882 to 379.888, RSMo, defining “commercial casualty insurance” shall include policies providing professional malpractice insurance or indemnification to any health care provider, as defined in section 538.205, RSMo, issued by any insurer in this state, including associations established under sections 383.010 to 383.040.**

383.035. 1. Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall be subject to the provisions of the following provisions of the revised statutes of Missouri:

(1) Sections 374.010, 374.040, 374.046, 374.110, 374.115, 374.122, 374.170, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, RSMo, relating to the general authority of the director of the department of insurance;

(2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039, RSMo, relating to dealings with licensed agents and brokers;

(3) Sections 375.041 and 379.105, RSMo, relating to annual statements;

(4) Section 375.163, RSMo, relating to the competence of managing officers;

(5) Section 375.246, RSMo, relating to reinsurance requirements, except that no association shall be required to maintain reinsurance, and for insurance issued to members who joined the association on or before January 1, 1993, an association shall be allowed credit, as an asset or as a deduction from liability, for reinsurance which is payable to the ceding association's insured by the assuming insurer on the basis of the liability of the ceding association under contracts reinsured without diminution because of the insolvency of the ceding association;

(6) Section 375.390, RSMo, relating to the use of funds by officers for private gain;

(7) Section 375.445, RSMo, relating to insurers operating fraudulently;

(8) Section 379.080, RSMo, relating to permissible investments, except that limitations in such section shall apply only to assets equal to such positive surplus as is actually maintained by the association;

(9) Section 379.102, RSMo, relating to the maintenance of unearned premium and loss reserves as liabilities, except that any such loss reserves may be discounted in accordance with reasonable actuarial assumptions;

(10) Sections 379.882 to 379.893, RSMo, relating to commercial casualty insurance;

(11) Subsection 6 of section 379.321, RSMo, relating to commercial casualty rate filing and notice requirements; and

(12) Sections 374.202 to 374.207, RSMo, relating to the examination powers of the director of insurance.

2. Any association which was licensed pursuant to the provisions of sections 383.010 to 383.040 on or before January 1, 1992, shall be allowed until December 31, 1995, to comply with the provisions of this section as they relate to investments, reserves and reinsurance.

3. Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall file with its annual statement a certification by a fellow or an associate of the Casualty Actuarial Society. Such certification shall conform to the National Association of Insurance Commissioners annual statement instructions unless otherwise provided by the director of the department of insurance.

4. The director of the department of insurance shall have authority in accordance with section 374.045, RSMo, to make all reasonable rules and regulations to accomplish the purpose of sections 383.010 to 383.040, including the extent to which insurance provided by an association may be extended to provide payment to a covered person resulting from a specific illness possessed by such covered person; except that no rule or regulation may place limitations or restrictions on the amount of premium an association may write or on the amount of insurance or limit of liability an association may provide.

5. Other than as provided in this section, no other insurance law of the state of Missouri shall apply to an association licensed pursuant to the provisions of this chapter, unless such law shall expressly state it is applicable to such associations.

6. If, after August 28, 1992, and after its second full calendar year of operation, any association licensed under the provisions of sections 383.010 to 383.040 shall file an annual statement which shows a surplus as regards policyholders of less than zero dollars, or if the director of the department of insurance has other conclusive and credible evidence more recent than the last annual statement indicating the surplus as regards policyholders of an association is less than zero dollars, the director of the department of insurance may order such association to submit, within ninety days following such order, a voluntary plan under which the association will restore its surplus as regards policyholders to at least zero dollars. The director of the department of insurance may monitor the performance of the association's plan and may order modifications thereto, including assessments or rate or premium increases, if the association fails to meet any targets proposed in such plan for three consecutive quarters.

7. If the director of the department of insurance issues an order in accordance with subsection 6 of this section, the association may, in accordance with chapter 536, RSMo, file a petition for review of such order. Any association subject to an order issued in accordance with subsection 6 of this section shall be allowed a period of three years, or such longer period as the director may allow, to accomplish its plan to restore its surplus as regards policyholders to at least zero dollars. If at the end of the authorized period of time the association has failed to restore its surplus to at least zero dollars, or if the director of the department of insurance has ordered modifications of the voluntary plan and the association's surplus has failed to increase within three consecutive quarters after such modification, the director of the department of insurance may allow an additional time for the implementation of the voluntary plan or may exercise his powers to take charge of the association as he would a mutual casualty company pursuant to sections 375.1150 to 375.1246, RSMo. Sections 375.1150 to 375.1246, RSMo, shall apply to associations licensed pursuant to sections 383.010 to 383.040 only after the conditions set forth in this section are met. When the surplus as regards policyholders of an association subject to subsection 6 of this section has been restored to at least zero dollars, the authority and jurisdiction of the director of the department of insurance under subsections 6 and 7 of this section shall terminate, but this subsection may again thereafter apply to such association if the conditions set forth in subsection 6 of this section for its application are again satisfied.

8. Any association licensed pursuant to the provisions of sections 383.010 to 383.040 shall place on file with the director of the department of insurance, except as to excess liability risks which by general custom are not written according to manual rates or rating plans, a copy of every manual of classifications, rules, underwriting rules and rates, every rating plan and every modification of the foregoing which it uses. Filing with the director of the department of insurance within ten days after such manuals, rating plans or modifications thereof are effective shall be sufficient compliance with this subsection. Any rates, rating plans, rules, classifications or systems in effect or in use by an association on August 28, 1992, may continue to be used by the association. Upon written application of a member of an association, stating his reasons therefor, filed with the association, a rate in excess of that provided by a filing otherwise applicable may be used by the association for that member.

383.400. 1. As used in sections 383.400 to 383.407, the term “insurer” or “insurers” means any insurance company, mutual insurance company, medical malpractice association, any entity created under this chapter, or other entity providing any insurance to any health care provider, as defined in section 538.205, RSMo, practicing medicine in the state of Missouri, against claims for malpractice or professional negligence.

2. Notwithstanding any other provision of law, no insurer shall, with regards to medical malpractice insurance, as defined in section 383.150:

(1) Charge an assessment or surcharge, or increase the premium charges, by more than one thousand dollars for such insurance without first providing written notice by United States mail to the insured at least sixty days prior to the effective date of such actions;

(2) Fail or refuse to renew the aforesaid insurance without first providing written notice by United States mail to the insured at least sixty days prior to the effective date of such actions, unless such failure or refusal to renew is based upon a failure to pay sums due or a termination or suspension of the health care provider's license to practice medicine in the state of Missouri; or

(3) Cease the issuance of such policies of insurance in the state of Missouri without first providing written notice by United States mail to the insured and to the Missouri department of insurance at least one hundred eighty days prior to the effective date of such actions.

383.401. The Missouri department of insurance shall, prior to May 30, 2005, establish between twelve and twenty risk-reporting categories for medical malpractice insurance premiums, as defined in section 383.150, and shall establish regulations for the reporting of all premiums charged by such categories.

383.402. All insurers shall, with regards to medical malpractice insurance as defined in section 383.150, provide to the Missouri department of insurance, beginning on June 1, 2005, and not less than annually

thereafter, an accurate report as to the actual rates charged by such company for such insurance, for each of the risk-reporting categories established in section 383.401.

383.403. Not later than December 31, 2006, and at least annually thereafter, the Missouri department of insurance shall, utilizing the information provided pursuant to section 383.402 establish and publish, a market rate reflecting the median of the actual rates charged for each of the aforesaid risk-reporting categories for the preceding year.

383.404. After January 1, 2007, insurance premium rates charged by any insurer, with regards to medical malpractice insurance as defined in section 383.150, which are no greater than twenty percent higher, or twenty percent lower than the market rate established pursuant to section 383.403, shall be presumed to be reasonable.

383.405. After January 1, 2007, insurance premium rates charged by any insurer, with regards to medical malpractice insurance as defined in section 383.150, which are greater than twenty percent higher, or twenty percent lower than the market rate established pursuant to section 383.403, shall be presumed to be unreasonable.

383.406. 1. As used in this section, "director" means the director of the department of insurance.

2. If any insurer proposes to increase or decrease the premium rates so that they are presumed to be unreasonable under section 383.405 for medical malpractice insurance as defined in section 383.150, the insurer shall notify the director in writing at least sixty days prior to the effective date of the proposed premium rate change. The notice shall include a detailed description of the proposed premium rate change, actuarial justification for the premium rate change, and such other information as the director may prescribe by rule.

3. Within ten days of receipt of the notice from the insurer, the director shall set a date for a hearing on the proposed premium rate change and shall publish notice of the hearing. The date set for the hearing shall be within thirty days after receipt of the notice from the insurer. The director shall provide a copy of any information filed by the insurer under subsection 2 of this section to any person making a written request for such information. The hearing may, at the director's discretion, be a public hearing.

4. At the hearing, the insurer may provide additional information in support of its proposed premium rate change, and any member of the public may provide information in support of or in opposition to the proposed premium rate change.

5. Within twenty days after the close of the hearing, the director shall review all of the information submitted and determine whether the proposed premium rate change is justified. No rate shall be considered justified that is excessive, inadequate, or unfairly discriminatory. If the director determines that the rate is justified, the director shall issue an order authorizing the insurer to use the premium rate as proposed. If the director determines that the rate is not justified, the director shall issue an order prohibiting the use of the premium rate as proposed. The insurer may appeal the order under chapter 536, RSMo.

383.407. 1. If the director finds that any insurer or filing organization has violated any provision of sections 383.400 to 383.406, the director may impose a penalty of not more than five hundred dollars for each violation, but if the director finds the violation to be willful, the director may impose a penalty of not more than five thousand dollars for each violation. Such penalties may be in addition to any other penalty provided by law.

2. The director may suspend the license of any rating organization or insurer that fails to comply with an order of the director relating to sections 383.400 to 383.406 within the time limited by such order, or any extension thereof which the director may grant. The director shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The director may determine when a suspension of license shall become effective and it shall remain in effect for a period fixed by the director, unless the director modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded, or reversed.

3. No penalty shall be imposed or no license shall be suspended or revoked except upon a written order of the director, stating the director's findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation."; and

Further amend the title and enacting clause accordingly.

In which the concurrence of the House is respectfully requested.

Madam Speaker: I am instructed by the Senate to inform the House of Representatives that the Senate has taken up and passed **SS SCS SBs 1233, 840 & 1043**, entitled:

An act to repeal sections 67.1800, 67.1808, 67.1818, 137.298, 301.010, 301.020, 301.025, 301.041, 301.055, 301.057, 301.058, 301.069, 301.129, 301.130, 301.132, 301.144, 301.190, 301.193, 301.217, 301.219, 301.221, 301.227, 301.280, 301.463, 301.2999, 301.3098, 302.177, 302.225, 302.272, 302.302, 302.309, 302.700, 302.725, 302.735, 302.740, 302.755, 302.756, 302.760, 304.013, 304.035, 304.155, 304.156, 304.157, 307.100, 307.366, 390.020, 390.136, 390.340, 577.054, 577.080, 622.095, 622.618, and 643.315, RSMo, and to enact in lieu thereof ninety-five new sections relating to motor vehicles, with penalty provisions and an effective date for certain sections.

In which the concurrence of the House is respectfully requested.

ADJOURNMENT

On motion of Representative Crowell, the House adjourned until 4:00 p.m., Tuesday, April 13, 2004.

CORRECTIONS TO THE HOUSE JOURNAL

AFFIDAVITS

I, State Representative Frank A. Barnitz, District 150, hereby state and affirm that my vote as recorded on Page 1011 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted no. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Frank A. Barnitz
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Russ Carnahan, District 59, hereby state and affirm that my vote as recorded on Page 1001 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Russ Carnahan
State Representative

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State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Steve Hunter, District 127, hereby state and affirm that my votes as recorded on Pages 997 and 1001 of the House Journal for Wednesday, April 7, 2004 showing that I voted no/absent with leave, respectively were incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time these votes were taken, I did in fact vote, and my votes or absence were incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Steve Hunter
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Brian Munzlinger, District 1, hereby state and affirm that my vote as recorded on Page 1005 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Brian Munzlinger
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Marilyn Ruestman, District 131, hereby state and affirm that my vote as recorded on Page 1001 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Marilyn Ruestman
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Rob Schaaf, District 28, hereby state and affirm that my vote as recorded on Page 1005 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Rob Schaaf
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

I, State Representative Charlie Schlottach, District 111, hereby state and affirm that my vote as recorded on Page 998 of the House Journal for Wednesday, April 7, 2004 showing that I voted absent with leave was incorrectly recorded. Pursuant to House Rule 88, I ask that the Journal be corrected to show that I voted aye. I further state and affirm that I was present in the House Chamber at the time this vote was taken, I did in fact vote, and my vote or absence was incorrectly recorded.

IN WITNESS WHEREOF, I have hereunto subscribed my hand to this affidavit on this 8th day of April 2004.

/s/ Charlie Schlottach
State Representative

State of Missouri)
) ss.
County of Cole)

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

/s/ Trent Skaggs
State Representative

/s/ Stephen S. Davis
Chief Clerk

/s/ Gina Walsh
State Representative

/s/ Stephen S. Davis
Chief Clerk

/s/ Patricia Yaeger
State Representative

[illegible]

Subscribed and sworn to before me this 8th day of April in the year 2004.

/s/ Stephen S. Davis
Chief Clerk

COMMITTEE MEETINGS

AGRICULTURE

Tuesday, April 13, 2004, 1:00 p.m. Hearing Room 1.

Possible Executive session.

Public hearings to be held on: HB 1627, HB 1632

BUDGET

Tuesday, April 13, 2004, 2:00 p.m. Hearing Room 3.

Possible Executive session. HB 1453 fiscal review.

Public hearing to be held on: HB 1676

CHILDREN AND FAMILIES

Wednesday, April 14, 2004, 8:00 a.m. Hearing Room 1.

AMENDED

Public hearings to be held on: HB 1339, HB 1263, SJR 29

CONSERVATION AND NATURAL RESOURCES

Wednesday, April 14, 2004, 12:00 p.m. Hearing Room 5.

Executive session may follow.

Public hearing to be held on: HB 1695

CRIME PREVENTION AND PUBLIC SAFETY

Tuesday, April 13, 2004, Hearing Room 3 upon afternoon adjournment.

Executive session may follow.

Public hearings to be held on: HB 1590, HB 1626, HB 1650, HB 1565, HB 1600,
SCS SB 788, SS SS SCS SB 715, SCS SB 1304

EDUCATION

Wednesday, April 14, 2004, House Chamber side gallery upon morning adjournment.

Executive session. If a hearing room becomes available, this notice will be amended.

ELECTIONS

Tuesday, April 13, 2004, 5:00 p.m. Hearing Room 7.

Public hearings to be held on: SCS SB 1091, SCS SB 1197

Executive session will be held on: HB 1220, HB 1265, HB 1319, HB 1539, HJR 29, HJR 46

ETHICS

Tuesday, April 13, 2004, Hearing Room 4 upon afternoon adjournment.

Executive session may follow. Missouri Cancer Caucus, FFA Caucus, House Chair Caucus.

HEALTH CARE POLICY

Tuesday, April 13, 2004, 2:00 p.m. Hearing Room 5.

Public hearings to be held on: HB 1151, HB 987, HB 1318, SCR 34, SB 1083

HOMELAND SECURITY AND VETERANS AFFAIRS

Tuesday, April 13, 2004, Hearing Room 5 upon afternoon adjournment.

Executive session will follow.

Public hearing to be held on: SCS SB 1365

JOB CREATION AND ECONOMIC DEVELOPMENT

Tuesday, April 13, 2004, Hearing Room 1 upon evening adjournment.

Executive session may follow.

Public hearing to be held on: HB 1181

JOB CREATION AND ECONOMIC DEVELOPMENT

Wednesday, April 14, 2004, 12:00 p.m. Hearing Room 6.

Executive session may follow.

Public hearings to be held on: HB 1476, SCS SB 1155, SCS SB 1141, SB 1249, SCS SB 1269, SB 1344

JOINT COMMITTEE ON OUT-OF-SCHOOL PROGRAMS

Monday, April 19, 2004, 9:30 a.m. Hearing Room 6.

Departments of Mental Health, Economic Development and Public Safety.

Discussion of letter to White House Task Force.

PROFESSIONAL REGISTRATION AND LICENSING

Tuesday, April 13, 2004, 3:00 p.m. Hearing Room 4.

Public hearing to be held on: SS SS SCS SB 1122

Executive session may be held on: HB 1464, SS SS SCS SB 1122

RULES

Thursday, April 15, 2004, 8:30 a.m. Hearing Room 5.

Executive session may follow. Note SB 1108 is Revision bill SRB 1108.

Public hearings to be held on: HR 1033, SB 1108, SCR 30

SENIOR SECURITY

Tuesday, April 13, 2004, Hearing Room 6 upon evening adjournment.

Executive session may follow.

Public hearings to be held on: SB 1123, SB 1160, SB 1371

SPECIAL COMMITTEE ON GENERAL LAWS

Tuesday, April 13, 2004, House Lounge upon evening adjournment.

Executive session will be held on: HB 1671, SCS SBs 1020, 889 & 869,
SB 1052, SCS SB 1253

TAX POLICY

Tuesday, April 13, 2004, 2:00 p.m. Hearing Room 7.

Executive session may follow.

Public hearings to be held on: HB 1702, HB 1712, HB 1713, HB 1564, SB 1311, SB 1285

TRANSPORTATION AND MOTOR VEHICLES

Wednesday, April 14, 2004, 12:00 p.m. Hearing Room 7.

Possible Executive session.

Public hearings to be held on: SCS SB 757, SCS SB 771, SB 772, SB 824,
SCS SB 845, SB 894, SB 899, SB 900, SCS SB 956, SCS SB 992, SB 1259, SB 870

HOUSE CALENDAR

FIFTIETH DAY, TUESDAY, APRIL 13, 2004

HOUSE BILL FOR SECOND READING - APPROPRIATIONS

HB 1021 - Bearden (16)

HOUSE BILLS FOR SECOND READING

- 1 HB 1727 - Harris (23)
- 2 HB 1728 - Donnelly (73)
- 3 HB 1729 - Shoemyer (9)

HOUSE JOINT RESOLUTION FOR PERFECTION

HCS HJR 28 - Roark (139)

HOUSE BILLS FOR PERFECTION

- 1 HCS HB 1105, 1062, 1111, 1113 & 1119 - Crawford (117)
- 2 HCS HB 1380 - Lager (4)
- 3 HCS HB 1150 - May (149)
- 4 HB 1092 - Deeken (114)
- 5 HCS HB 774 - Sander (22)
- 6 HCS HB 843, 880 & 1042 - Angst (146)
- 7 HCS HB 1099 - Reinhart (34)
- 8 HB 1424 - Stefanick (93)
- 9 HB 773 - Icet (84)

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- 10 HB 1302 - Lager (4)
- 11 HCS HB 1085 - Townley (112)
- 12 HCS HB 1195 - Behnen (2)
- 13 HB 1337 - Nieves (98)
- 14 HCS HB 1617 - Hanaway (87)
- 15 HB 1109 - Crawford (117)
- 16 HB 1160 - Parker (12)
- 17 HCS HB 1243, 1094 & 931 - Mayer (159)
- 18 HB 1409 - Richard (129)
- 19 HB 1664 - Hanaway (87)
- 20 HB 1665 - Hanaway (87)
- 21 HB 844 - Mayer (159)
- 22 HCS HB 1477 & 1563 - Schaaf (28)
- 23 HCS HB 1403 - Moore (20)
- 24 HCS HB 1286 & 1175 - Guest (5)

HOUSE JOINT RESOLUTION FOR THIRD READING

HS HCS HJR 39, 38, 42 & 47 - Engler (106)

HOUSE BILLS FOR THIRD READING

- 1 HS HCS HB 1511 - Byrd (94)
- 2 HS HCS HB 1207 - Icet (84)
- 3 HS HCS HB 1453, (Budget 4-08-04), E.C. - Hanaway (87)

HOUSE BILL FOR THIRD READING - FEDERAL MANDATE

HCS HB 1118, (Budget 4-01-04) - Schlottach (111)

HOUSE BILLS FOR THIRD READING - CONSENT

- 1 HCS HB 1524 - Ransdall (148)
- 2 HCS HB 1069 - Bivins (97)

SENATE BILL FOR SECOND READING

SS SCS SBs 1233, 840 & 1043 - Dolan (202)

SENATE BILLS FOR THIRD READING

- 1 HCS SB 1080 - Wallace (143)
- 2 HCS SCS SB 754 - Luetkemeyer (115)
- 3 HCS SS SCS SB 1099 - Dempsey (18)

HOUSE BILL WITH SENATE AMENDMENTS

SS#2 SS SCS HS HCS HB 1304, as amended - Byrd (94)

BILLS IN CONFERENCE

1 HS HCS SS SCS SB 730, as amended - Portwood (92)

2 CCR#2 HCS SB 739, as amended - Myers (160)

VETOED HOUSE BILL

HCR 5 - Byrd (94)