

FIRST REGULAR SESSION

HOUSE BILL NO. 394

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BYRD.

Read 1st time January 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

1301L.011

AN ACT

To repeal sections 383.010 and 383.035, RSMo, and to enact in lieu thereof thirteen new sections relating to insurance for health care providers in Missouri.

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

Section A. Sections 383.010 and 383.035, RSMo, are repealed and thirteen new sections
2 enacted in lieu thereof, to be known as sections 383.010, 383.035, 383.400, 383.401, 383.402,
3 383.403, 383.404, 383.405, 383.406, 383.407, 383.425, 383.430, and 383.435, to read as
4 follows:

383.010. 1. Notwithstanding any direct or implied prohibitions in chapter 375, 377, or
2 379, RSMo, any three or more persons, residents of this state, being licensed under the
3 provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339, RSMo, or under rule 8 of the
4 supreme court of Missouri or architects licensed pursuant to chapter 327, RSMo, may, as
5 provided in sections 383.010 to 383.040, form a business entity for the purpose of providing
6 malpractice insurance or indemnification for such persons upon the assessment plan, and upon
7 compliance with section 379.260, RSMo, liability and automobile insurance as defined in
8 subdivisions (1) and (3) of section 379.230, RSMo, may be provided upon the assessment plan
9 to those persons licensed pursuant to chapter 197, RSMo, and for whom medical malpractice
10 insurance is provided under this section, except that automobile insurance shall be provided only
11 for ambulances as defined in section 190.100, RSMo. Hospitals, public or private, whether
12 incorporated or not, as defined in chapter 197, RSMo, if licensed by the state of Missouri,
13 professional corporations formed under the provisions of chapter 356, RSMo, for the practice
14 of law and corporations, copartnerships or associations licensed under the provisions of chapter

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 339, RSMo, may also become members of any such entity. The term "persons" as used in
16 sections 383.010 to 383.040 includes such hospitals, professional corporations and real estate
17 business entities.

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

26 3. **Except as provided in this subsection**, notwithstanding any provision of law which
27 might be construed to the contrary, sections 379.882 and 379.888, RSMo, defining "commercial
28 casualty insurance", shall not include professional malpractice insurance policies issued by any
29 insurer in this state. **Sections 379.882 to 379.888, RSMo, defining "commercial casualty**
30 **insurance" shall include policies providing professional malpractice insurance or**
31 **indemnification to any health care provider, as defined in section 538.205, RSMo, issued**
32 **by any insurer in this state, including associations established under sections 383.010 to**
33 **383.040.**

383.035. 1. Any association licensed pursuant to the provisions of sections 383.010 to
2 383.040 shall be subject to the provisions of the following provisions of the revised statutes of
3 Missouri:

4 (1) Sections 374.010, 374.040, 374.046, 374.110, 374.115, 374.122, 374.170, 374.210,
5 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, RSMo, relating to the general
6 authority of the director of the department of insurance;

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

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

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

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

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

- 18 (7) Section 375.445, RSMo, relating to insurers operating fraudulently;
- 19 (8) Section 379.080, RSMo, relating to permissible investments, except that limitations
20 in such section shall apply only to assets equal to such positive surplus as is actually maintained
21 by the association;
- 22 (9) Section 379.102, RSMo, relating to the maintenance of unearned premium and loss
23 reserves as liabilities, except that any such loss reserves may be discounted in accordance with
24 reasonable actuarial assumptions;
- 25 **(10) Sections 379.882 to 379.893, RSMo, relating to commercial casualty insurance;**
- 26 **(11) Subsection 6 of section 379.321, RSMo, relating to commercial casualty rate**
27 **filing and notice requirements; and**
- 28 **(12) Sections 374.202 to 374.207, RSMo, relating to the examination powers of the**
29 **director of insurance.**
- 30 2. Any association which was licensed pursuant to the provisions of sections 383.010
31 to 383.040 on or before January 1, 1992, shall be allowed until December 31, 1995, to comply
32 with the provisions of this section as they relate to investments, reserves and reinsurance.
- 33 3. Any association licensed pursuant to the provisions of sections 383.010 to 383.040
34 shall file with its annual statement a certification by a fellow or an associate of the Casualty
35 Actuarial Society. Such certification shall conform to the National Association of Insurance
36 Commissioners annual statement instructions unless otherwise provided by the director of the
37 department of insurance.
- 38 4. The director of the department of insurance shall have authority in accordance with
39 section 374.045, RSMo, to make all reasonable rules and regulations to accomplish the purpose
40 of sections 383.010 to 383.040, including the extent to which insurance provided by an
41 association may be extended to provide payment to a covered person resulting from a specific
42 illness possessed by such covered person; except that no rule or regulation may place limitations
43 or restrictions on the amount of premium an association may write or on the amount of insurance
44 or limit of liability an association may provide.
- 45 5. Other than as provided in this section, no other insurance law of the state of Missouri
46 shall apply to an association licensed pursuant to the provisions of this chapter, unless such law
47 shall expressly state it is applicable to such associations.
- 48 6. If, after August 28, 1992, and after its second full calendar year of operation, any
49 association licensed under the provisions of sections 383.010 to 383.040 shall file an annual
50 statement which shows a surplus as regards policyholders of less than zero dollars, or if the
51 director of the department of insurance has other conclusive and credible evidence more recent
52 than the last annual statement indicating the surplus as regards policyholders of an association
53 is less than zero dollars, the director of the department of insurance may order such association

54 to submit, within ninety days following such order, a voluntary plan under which the association
55 will restore its surplus as regards policyholders to at least zero dollars. The director of the
56 department of insurance may monitor the performance of the association's plan and may order
57 modifications thereto, including assessments or rate or premium increases, if the association fails
58 to meet any targets proposed in such plan for three consecutive quarters.

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

77 8. Any association licensed pursuant to the provisions of sections 383.010 to 383.040
78 shall place on file with the director of the department of insurance, except as to excess liability
79 risks which by general custom are not written according to manual rates or rating plans, a copy
80 of every manual of classifications, rules, underwriting rules and rates, every rating plan and every
81 modification of the foregoing which it uses. Filing with the director of the department of
82 insurance within ten days after such manuals, rating plans or modifications thereof are effective
83 shall be sufficient compliance with this subsection. Any rates, rating plans, rules, classifications
84 or systems in effect or in use by an association on August 28, 1992, may continue to be used by
85 the association. Upon written application of a member of an association, stating his reasons
86 therefor, filed with the association, a rate in excess of that provided by a filing otherwise
87 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"
2 **means any insurance company, mutual insurance company, medical malpractice**

3 association, any entity created under this chapter, or other entity providing any insurance
4 to any health care provider, as defined in section 538.205, RSMo, practicing medicine in
5 the state of Missouri, against claims for malpractice or professional negligence.

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

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

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

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

383.401. The Missouri department of insurance shall, prior to May 30, 2006,
2 establish between twelve and twenty risk-reporting categories for medical malpractice
3 insurance premiums, as defined in section 383.150, and shall establish regulations for the
4 reporting of all premiums charged by such categories.

383.402. All insurers shall, with regards to medical malpractice insurance as
2 defined in section 383.150, provide to the Missouri department of insurance, beginning on
3 June 1, 2006, and not less than annually thereafter, an accurate report as to the actual rates
4 charged by such company for such insurance, for each of the risk-reporting categories
5 established in section 383.401.

383.403. Not later than December 31, 2007, and at least annually thereafter, the
2 Missouri department of insurance shall, utilizing the information provided pursuant to
3 section 383.402 establish and publish, a market rate reflecting the median of the actual
4 rates charged for each of the aforesaid risk-reporting categories for the preceding year.

383.404. After January 1, 2008, insurance premium rates charged by any insurer,
2 with regards to medical malpractice insurance as defined in section 383.150, which are no
3 greater than twenty percent higher, or twenty percent lower than the market rate
4 established pursuant to section 383.403, shall be presumed to be reasonable.

383.405. After January 1, 2008, insurance premium rates charged by any insurer,

2 with regards to medical malpractice insurance as defined in section 383.150, which are
3 greater than twenty percent higher, or twenty percent lower than the market rate
4 established pursuant to section 383.403, shall be presumed to be unreasonable.

2 383.406. 1. As used in this section, "director" means the director of the department
2 of insurance.

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

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

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

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

27 6. No insurer who charges a premium rate that is presumed to be unreasonable
28 under section 383.405 because the rate is greater than twenty percent lower than the
29 market rate shall be subject to the hearing requirements in this section if the insurer files
30 a certificate of actuarial soundness with the director of the department of insurance.

2 383.407. 1. If the director finds that any insurer or filing organization has violated
2 any provision of sections 383.400 to 383.406, the director may impose a penalty of not more
3 than five hundred dollars for each violation, but if the director finds the violation to be

4 willful, the director may impose a penalty of not more than five thousand dollars for each
5 violation. Such penalties may be in addition to any other penalty provided by law.

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

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

 383.425. 1. Beginning January 1, 2006, any public corporation organized pursuant
2 to section 287.902, RSMo, may form a corporation, association or company for the purpose
3 of issuing medical malpractice insurance, as that term is defined in section 383.100, under
4 the provisions of this section. Any corporation, association, or company formed under the
5 provisions of this section shall be organized and operated as a stock company. The
6 incorporators of such a stock company shall also meet the requirements of chapter 379,
7 RSMo, relating to the organization of insurance companies and the laws of this state
8 governing the organization of private corporations unless the provisions of this section
9 provide otherwise. All insurance laws of this state shall apply to any corporation,
10 association, or company formed under the provisions of this section unless the provisions
11 of this section provide otherwise. No company, corporation or association authorized to
12 issue medical malpractice insurance pursuant to chapter 379 prior to August 28, 2005, shall
13 incorporate under the provisions of this section.

14 2. In addition to the requirements set forth in section 379.035, RSMo, the
15 declaration and the articles of incorporation filed by the incorporators of the proposed
16 stock company shall provide that the stock insurance company shall issue medical
17 malpractice insurance to health care providers in Missouri.

18 3. Any company formed under the provisions of this section shall be subject to all
19 provisions of the statutes that relate to private insurance carriers and to the jurisdiction
20 of the department of insurance in the same manner as private insurance carriers, except
21 as provided by the director. The director of the department of insurance may waive the

22 capital and surplus requirements of chapter 379 solely for medical malpractice for any
23 company formed under the provisions of this section for a period of five years after its
24 incorporation.

25 4. Notwithstanding section 375.772, RSMo, any stock company incorporated or
26 formed under this section shall not be a member of the Missouri property and casualty
27 insurance guarantee association, be subject to assessments from such association, nor be
28 classified as an insolvent insurer under sections 375.771 to 375.779, RSMo, unless the
29 company meets the capital and surplus requirements provided in chapter 379, RSMo, and
30 maintains such capital and surplus requirements for a period of not less than three
31 consecutive years. After the three-year period has expired, the stock company
32 incorporated under the provisions of this section shall participate in the Missouri property
33 and casualty insurance guarantee association pursuant to sections 375.771 to 375.779,
34 RSMo, provided that the company shall continue to meet the capital and surplus
35 requirements provided in chapter 379, RSMo.

36 5. Any association formed pursuant to sections 383.020 to 383.040 for the purpose
37 of providing medical malpractice insurance to its members, may be merged into one of the
38 stock companies formed under this section.

383.430. The department of insurance shall promulgate rules defining the term
2 "claim" as it applies to claims made for medical malpractice. Any rule or portion of a rule,
3 as that term is defined in section 536.010, RSMo, that is created under the authority
4 delegated in this section shall become effective only if it complies with and is subject to all
5 of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This
6 section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the
7 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or
8 to disapprove and annul a rule are subsequently held unconstitutional, then the grant of
9 rulemaking authority and any rule proposed or adopted after August 28, 2005, shall be
10 invalid and void.

383.435. The department of insurance shall study and make a report on the
2 feasibility and economic impact of offering medical malpractice policies of insurance in this
3 state which are written so as to apply to injury which results from acts or omissions
4 occurring during the policy period, regardless of the timing of the filing of a claim based
5 on such acts or omissions. The report shall be submitted to the general assembly by
6 January 15, 2007, and shall include any data and information compiled by department as
7 a result of such study, and any findings and recommendations of the department.