

FIRST REGULAR SESSION

HOUSE BILL NO. 910

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BAKER (25) (Sponsor), TILLEY, THRELKELD, WILDBERGER, KUESSNER, BRUNS, PARSON, WITTE, SHOEMYER, LeVOTA, PAGE, JONES, BEAN, HOBBS, WRIGHT-JONES, LAMPE AND AULL (Co-sponsors).

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

STEPHEN S. DAVIS, Chief Clerk

2142L.011

AN ACT

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

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

Section A. Chapter 383, RSMo, is amended by adding thereto ten new sections, to be
2 known as sections 383.250, 383.253, 383.256, 383.259, 383.262, 383.265, 383.268, 383.271,
3 383.274, and 383.277, to read as follows:

383.250. 1. Sections 383.250 to 383.277 shall be known and may be cited as the
2 **"Missouri Medical Malpractice Insurance Company Act".**

3 **2. As used in sections 383.250 to 383.277, the following terms mean:**

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

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

8 **(3) "Company", the Missouri medical insurance company established in section**
9 **383.253.**

383.253. There is hereby established the "Missouri Medical Malpractice Insurance
2 **Company" as an independent public corporation for the purpose of insuring health care**
3 **providers, as defined in section 538.205, RSMo, practicing medicine in the state of Missouri**
4 **in federally designated health professional shortage areas (HPSAs) against claims for**

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.

5 malpractice or professional negligence. The company shall be organized and operated as
6 a domestic mutual insurance company and the company shall not be a state agency. The
7 company shall have the powers granted a general not-for-profit corporation under section
8 355.090, RSMo, to the extent the provisions of section 355.090, RSMo, do not conflict with
9 the provisions of sections 383.250 to 383.277. The company shall be a member of the
10 Missouri property and casualty guarantee association under sections 375.771 to 375.779,
11 RSMo, and as such shall be subject to assessments therefrom, and the members of such
12 association shall bear responsibility in the event of the insolvency of the company. The
13 company shall be established under the provisions of sections 383.250 to 383.277. The
14 company shall use flexibility and experimentation in the development of types of policies
15 and coverages offered to health care providers, subject to the approval of the director of
16 the department of insurance.

383.256. 1. The company shall be under the management of a board of directors.
2 The board shall be appointed by January 1, 2006, and shall consist of five members
3 appointed or selected as provided in this section. The governor shall appoint the initial five
4 members of the board with the advice and consent of the senate. Each director shall serve
5 a five-year term. Terms shall be staggered so that no more than one director's term expires
6 each year on the first day of July. The five directors initially appointed by the governor
7 shall determine their initial terms by lot. At the expiration of the term of any member of
8 the board, the company's policyholders shall elect a new director in accordance with
9 provisions determined by the board.

10 2. Any person may be a director who:

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

14 (2) Is of good moral character and who has never pled guilty to or been found
15 guilty of a felony.

16 3. The board shall annually elect a chairperson and any other officers it deems
17 necessary for the performance of its duties. Board committees and subcommittees may also
18 be formed.

383.259. 1. By March 1, 2006, the board shall hire an administrator who shall serve
2 at the pleasure of the board and the company shall be fully prepared to be operational by
3 March 1, 2007, and assume its responsibilities under sections 383.250 to 383.277. The
4 administrator shall receive compensation as established by the board and shall have
5 proven successful experience as an executive at the general management level in the
6 insurance business.

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

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

14 **4. No board member, officer, or employee of the company shall be liable in a**
15 **private capacity for any act performed or obligation entered into when done in good faith,**
16 **without intent to defraud, and in an official capacity in connection with the administration,**
17 **management, or conduct of the company or affairs relating to it.**

383.262. The board shall have full power and authority to establish rates to be
2 **charged by the company for insurance. The board shall contract for the services of or hire**
3 **an independent actuary who is a member in good standing with the American Academy**
4 **of Actuaries to develop and recommend actuarially sound rates. Rates shall be set at**
5 **amounts sufficient, when invested, to carry all claims to maturity, meet the reasonable**
6 **expenses of conducting the business of the company, and maintain a reasonable surplus.**
7 **The company shall conduct a medical malpractice program that shall be neither more nor**
8 **less than self-supporting.**

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

383.268. Any insurance agent or broker licensed to sell medical malpractice
2 **insurance in this state shall be authorized to sell insurance policies for the company in**
3 **compliance with the bylaws adopted by the company. The board shall establish a schedule**
4 **of commissions to pay the services of the agent.**

383.271. The administrator shall formulate, implement, and monitor a risk
2 **management program for all policyholders. Such program shall include but not be limited**
3 **to:**

4 **(1) Investigation and analysis of frequency, severity, and causes of adverse medical**
5 **inquiries;**

6 **(2) Development of measures to control such injuries;**

- 7 **(3) Systemic reporting of medical incidents;**
8 **(4) Investigation and analysis of patient complaints; and**
9 **(5) Auditing of association members to assure implementation of such program.**

10

11 **The plan may refuse to insure any insured who refuses or fails to comply with the risk**
12 **management program implemented by the association. Prior to cancellation or refusal to**
13 **renew an insured, the association shall provide the insured with a sixty-day notice of intent**
14 **to cancel or nonrenew and shall further notify the insured of any action which must be**
15 **taken to be in compliance with the risk management program.**

383.274. 1. The Missouri medical malpractice insurance company shall not receive
2 **any state appropriations, directly or indirectly.**

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

8 **3. The board may issue bonds to refund other bonds issued under this section.**

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

13 **5. The bonds shall be executed with the manual or facsimile signature of the**
14 **administrator or the chairperson of the board and attested by another member of the**
15 **board. The bonds may bear the seal, if any, of the company.**

16 **6. The proceeds of the bonds and the earnings on such proceeds shall be used by**
17 **the board for the development and operation of the Missouri medical malpractice**
18 **insurance company to pay expenses incurred in the preparation, issuance, and sale of the**
19 **bonds and to pay obligations relating to the bonds and the proceeds of the bonds under the**
20 **United States Internal Revenue Code of 1986, as amended.**

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

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

28 **9. An amount of money from the sources specified in subsection 2 of this section**
29 **sufficient to pay the principal of and any interest on the bonds as they become due each**
30 **year shall be set aside and is hereby pledged for the payment of the principal and interest**
31 **on the bonds.**

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

36 **11. The bonds shall be payable to the company which shall keep a complete record**
37 **relating to the payment of the bonds.**

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

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

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

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

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

24 **5. The department of insurance shall conduct an examination of the company in**
25 **the manner and under the conditions provided by the statutes of the insurance code for the**

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

30 **6. Every health care provider provided insurance coverage by the company, upon**
31 **complying with the underwriting standards adopted by the company and upon completing**
32 **the application form prescribed by the company, shall be furnished with a policy showing**
33 **the date on which the insurance becomes effective.**