

SECOND REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1837
93RD GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy March 16, 2006 with recommendation that House Committee Substitute for House Bill No. 1837 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules on March 28, 2006 with recommendation that House Committee Substitute for House Bill No. 1837 Do Pass.

Taken up for Perfection April 11, 2006. House Committee Substitute for House Bill No. 1837 ordered Perfected and printed, as amended.

STEPHEN S. DAVIS, Chief Clerk

5239L.04P

AN ACT

To repeal sections 383.010, 383.035, 383.079, 383.105, 383.110, 383.115, 383.125, 383.160, and 383.165, RSMo, and to enact in lieu thereof twenty-two new sections relating to malpractice insurance.

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

Section A. Sections 383.010, 383.035, 383.079, 383.105, 383.110, 383.115, 383.125,
2 383.160, and 383.165, RSMo, are repealed and twenty-two new sections enacted in lieu thereof,
3 to be known as sections 383.010, 383.035, 383.079, 383.104, 383.105, 383.110, 383.112,
4 383.115, 383.125, 383.160, 383.165, 383.198, 383.300, 383.302, 383.304, 383.306, 383.308,
5 383.310, 383.312, 383.325, 383.330, and 383.335, to read as 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

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.

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.] **Any**
13 **entity licensed under chapter 197, RSMo**, professional corporations [formed under the
14 provisions of chapter 356, RSMo, for the practice of law and corporations, copartnerships or
15 associations licensed under the provisions of chapter 339, RSMo], **and limited liability**
16 **companies, corporations, limited liability partnerships, partnerships, and other similar**
17 **entities formed for the practice of law or medicine** may also become members of any such
18 entity. The term "persons" as used in sections 383.010 to 383.040 includes such hospitals,
19 professional corporations and real estate business entities.

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

28 3. Notwithstanding any provision of law which might be construed to the contrary,
29 sections 379.882 and 379.888, RSMo, defining "commercial casualty insurance", shall not
30 include professional malpractice insurance policies issued by any insurer in this state.

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 383.100 to 383.112 relating to reports from medical malpractice**
26 **insurers;**

27 **(11) Sections 383.198 and 383.300 to 383.314 relating to notification, data reporting,**
28 **and rating requirements.**

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

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

37 [4.] 3. The director of the department of insurance shall have authority in accordance
38 with section 374.045, RSMo, to make all reasonable rules and regulations to accomplish the
39 purpose of sections 383.010 to 383.040, including the extent to which insurance provided by an
40 association may be extended to provide payment to a covered person resulting from a specific
41 illness possessed by such covered person; except that no rule or regulation may place limitations
42 or restrictions on the amount of premium an association may write or on the amount of insurance
43 or limit of liability an association may provide.

44 [5.] 4. Other than as provided in this section, no other insurance law of the state of
45 Missouri shall apply to an association licensed pursuant to the provisions of this chapter, unless
46 such law shall expressly state it is applicable to such associations.

47 [6.] 5. If, [after August 28, 1992, and] after its second full calendar year of operation, any
48 association licensed under the provisions of sections 383.010 to 383.040 shall file an annual

49 statement which shows a surplus as regards policyholders of less than zero dollars, or if the
50 director of the department of insurance has other conclusive and credible evidence more recent
51 than the last annual statement indicating the surplus as regards policyholders of an association
52 is less than zero dollars, the director of the department of insurance may order such association
53 to submit, within ninety days following such order, a voluntary plan under which the association
54 will restore its surplus as regards policyholders to at least zero dollars. The director of the
55 department of insurance may monitor the performance of the association's plan and may order
56 modifications thereto, including assessments or rate or premium increases, if the association fails
57 to meet any targets proposed in such plan for three consecutive quarters.

58 [7.] 6. If the director of the department of insurance issues an order in accordance with
59 subsection [6] 5 of this section, the association may, in accordance with chapter 536, RSMo, file
60 a petition for review of such order. Any association subject to an order issued in accordance with
61 subsection [6] 5 of this section shall be allowed a period of three years, or such longer period as
62 the director may allow, to accomplish its plan to restore its surplus as regards policyholders to
63 at least zero dollars. If at the end of the authorized period of time the association has failed to
64 restore its surplus to at least zero dollars, or if the director of the department of insurance has
65 ordered modifications of the voluntary plan and the association's surplus has failed to increase
66 within three consecutive quarters after such modification, the director of the department of
67 insurance may allow an additional time for the implementation of the voluntary plan or may
68 exercise [his] **the director's** powers to take charge of the association as [he] **the director** would
69 a mutual casualty company pursuant to sections 375.1150 to 375.1246, RSMo. Sections
70 375.1150 to 375.1246, RSMo, shall apply to associations licensed pursuant to sections 383.010
71 to 383.040 only after the conditions set forth in this section are met. When the surplus as regards
72 policyholders of an association subject to subsection [6] 5 of this section has been restored to at
73 least zero dollars, the authority and jurisdiction of the director of the department of insurance
74 under subsections **5 and 6** [and 7] of this section shall terminate, but this subsection may again
75 thereafter apply to such association if the conditions set forth in subsection [6] 5 of this section
76 for its application are again satisfied.

77 [8.] 7. Any association licensed pursuant to the provisions of sections 383.010 to
78 383.040 shall place on file with the director of the department of insurance, except as to excess
79 liability risks which by general custom are not written according to manual rates or rating plans,
80 a copy of every manual of classifications, rules, underwriting rules and rates, every rating plan
81 and every modification of the foregoing which it uses. Filing with the director of the department
82 of insurance within ten days after such manuals, rating plans or modifications thereof are
83 effective shall be sufficient compliance with this subsection. Any rates, rating plans, rules,
84 classifications or systems in effect or in use by an association on August 28, 1992, may continue

85 to be used by the association. Upon written application of a member of an association, stating
86 his **or her** reasons therefor, filed with the association, a rate in excess of that provided by a filing
87 otherwise applicable may be used by the association for that member.

383.079. The director shall compile a statistical summary of all data submitted and shall
2 issue a public report to the Missouri Bar and the supreme court of the state of Missouri.
3 **Beginning June 1, 2007, and annually thereafter, the director shall submit to the general**
4 **assembly an accurate report as to the actual and base rates, as defined in section 383.308,**
5 **charged for malpractice insurance and any changes to such rates from the previous year.**

383.104. 1. As used in sections 383.104 and 383.105, the term “health care
2 provider” means physicians and surgeons licensed pursuant to chapter 334 RSMo. In
3 addition to the reporting requirements under section 383.105, every insurer providing
4 medical malpractice insurance to a Missouri health care provider and every health care
5 provider who maintains professional liability coverage through a plan of self-insurance
6 shall submit an annual report on or before June first of each year to the director of the
7 department of insurance containing the following information specific to the state of
8 Missouri for the immediately preceding calendar year ending December thirty-first:

9 (1) The following policy information designated separately by policyholder zip
10 code:

- 11 (a) The number of policies written;
- 12 (b) The number of policies canceled;
- 13 (c) The number of policies renewed;
- 14 (d) The number of policies not renewed;
- 15 (e) Written premium; and
- 16 (f) Paid losses; and

17 (2) The following claims information provided on an aggregate basis only and
18 without specific information on any individual claim, payment, or settlement;

- 19 (a) The number of claims pending at the beginning of the year;
- 20 (b) The number of claims pending at the end of the year;
- 21 (c) The number of claims paid;
- 22 (d) The number of claims closed with no payment;
- 23 (e) The number and amounts of claims in which a judgment was paid, including
24 an identification of the following:
 - 25 a. Highest amount;
 - 26 b. Lowest amount;
 - 27 c. Average amount; and
 - 28 d. Median amount;

29 (f) The number and amounts of claims in which a settlement was paid, including
30 an identification of the following:

31 a. Highest amount;

32 b. Lowest amount;

33 c. Average amount; and

34 d. Median amount;

35 (g) The total premium collected;

36 (h) The total general and administrative expenses paid; and

37 (i) The total loss adjustment expenses paid.

38 2. All information provided by the insurer under subsection 1 of this section shall
39 be on an aggregate basis only and shall not provide specific information on any individual
40 claim, payment, or settlement.

41 3. No later than September first of each year, the director of insurance shall
42 prepare a report for the previous calendar year ending December thirty-first based upon
43 the information provided under subdivision (1) of subsection 1 of this section. The report
44 shall be submitted to the governor, the speaker of the house of representatives, and the
45 president pro tempore of the senate. The report shall:

46 (1) Provide the information required under subdivision (1) of subsection 1 of this
47 section for each insurer;

48 (2) Be presented in a manner that is understandable in both wording and content
49 for the average consumer;

50 (3) Inform the general assembly and Missouri insurance consumers whether
51 insurance rates, underwriting practices, and claims administration are excessive,
52 inadequate, or unfairly discriminatory under section 383.198; and

53 (4) Protect the proprietary information of the insurer by redacting the name of the
54 insurer and any insured in compiling the report.

55 4. All information submitted under subsection 3 of section 383.105 shall be
56 confidential and shall not be subject to disclosure under chapter 610, RSMo. Nothing in
57 this subsection shall prohibit the director from using or utilizing such information for the
58 purpose of conducting actuarial or market analysis so long as such use or analysis is
59 performed in a manner which does not identify, either directly or by reference to other
60 publicly available information, the case, parties, or sums involved in any payment or
61 settlement agreement.

383.105. 1. Every insurer providing medical malpractice insurance to a Missouri health
2 care provider and every health care provider who maintains professional liability coverage
3 through a plan of self-insurance shall submit to the director of the department of insurance:

4 **(1)** A report of all claims, both open claims filed during the reporting period and closed
5 claims filed during the reporting period, for medical malpractice made against any of its Missouri
6 insureds during the preceding three-month period; **and**

7 **(2) Notification when the insurer pays a judgment or makes a payment to settle a**
8 **medical malpractice claim against a person authorized by law to practice medicine in the**
9 **state. Any judgments or payments, regardless of the dollar amount, shall be reported to**
10 **the appropriate licensing board of the health care provider. The provisions of this**
11 **subdivision shall be subject to the provisions of subsection 3 of section 383.104.**

12 2. The report **required under subdivision (1) of subsection 1 of this section** shall be
13 in writing and contain the following information:

14 (1) Name and address of the insured and the person working for the insured who
15 rendered the service which gave rise to the claim, if the two are different;

16 (2) Specialty coverage of the insured;

17 (3) Insured's policy number;

18 (4) Nature and substance of the claim;

19 (5) Date and place in which the claim arose;

20 (6) Name, address and age of the claimant or plaintiff;

21 (7) Within six months after final disposition of the claim, the amounts paid, if any, and
22 the date and manner of disposition (judgment, settlement or otherwise);

23 (8) Expenses incurred; and

24 (9) Such additional information as the director may require.

25 3. **The notification required in subdivision (2) of subsection 1 of this section shall**
26 **be in writing and shall be provided within sixty days after the judgment has been paid or**
27 **a payment has been made to settle a medical malpractice claim against a person authorized**
28 **by law to practice medicine in this state. Such notification shall include:**

29 (a) **The insured's name;**

30 (b) **The insured's claim number;**

31 (c) **The hospital where the incident occurred;**

32 (d) **The physician's Missouri medical license number;**

33 (e) **A description of the injury;**

34 (f) **The claimant's name;**

35 (g) **The patient's name;**

36 (h) **The insurer's name;**

37 (i) **The payment amount;**

38 (j) **The date of payment;**

39 (k) **If a civil action was filed, a copy of the complaint and affidavit;**

40 (l) If a civil action was not filed, a copy of the claim letter from the plaintiff's
41 attorney or the patient; and

42 (m) A copy of the insured's National Practitioner Data Bank form.

43

44 Such information shall be subject to the provisions of subsection 3 of section 383.104.

45 4. As used in [this section] sections 383.100 to 383.125, "insurer" includes every
46 insurance company authorized to transact insurance business in this state, every unauthorized
47 insurance company transacting business pursuant to chapter 384, RSMo, every risk retention
48 group, every insurance company issuing insurance to or through a purchasing group, **every entity**
49 **operating under this chapter**, and any other person providing insurance coverage in this state[.
50 With respect to any insurer transacting business pursuant to chapter 384, RSMo, filing the report
51 required by this section shall be the obligation of the surplus lines broker or licensee originating
52 or accepting the insurance] , **including self-insured health care providers.**

383.110. [Such] **The reports required under subdivision (1) of subsection 1 of section**
2 **383.105** shall be made to the director of the department of insurance quarterly on dates and in
3 the form to be determined by the director.

383.112. Any insurer, as defined in section 383.105, that fails to timely report claims
2 **information as required by sections 383.100 to 383.125 or sections 383.300 to 383.314 may,**
3 **at the discretion of the department of insurance, be subject to the penalties applicable to**
4 **insurance companies under section 374.215, RSMo.**

383.115. 1. Information submitted [pursuant to] **under subdivisions (1), (3), and (6)**
2 **of** subsection 2 of section 383.105[, subdivisions (1), (3) and (6)] shall be deemed to be
3 confidential communication except as provided in section 383.125.

4 2. Statistics in summary form of the information submitted pursuant to sections 383.100
5 to 383.125, except as provided in subsection 1 **or as otherwise specifically prohibited under**
6 **sections 383.100 to 383.125**, shall be a matter of public record.

383.125. The director shall, upon receipt, submit in writing the pertinent and appropriate
2 data and information submitted [pursuant to subsection 2] **under subsections 2 and 3** of section
3 383.105 to the applicable health care licensing board. The director shall also submit a report
4 containing the information described in subdivisions (3) to (8) of subsection 2 of section 383.105
5 to the director of the department of social services or the director's designee. Information shall
6 be disclosed to the department of social services so that the department of social services can
7 determine whether the claimant or plaintiff was concurrently enrolled in the Medicaid program
8 during the period in which the alleged incident occurred. The information provided to the
9 department shall be subject to the confidentiality restrictions provided in subsection 7 of section
10 208.217, RSMo, and of section 383.115.

383.160. 1. All association policies of insurance shall be written so as to apply to injury which results from acts or omissions occurring during the policy period. No policy form shall be used by the association unless it has been filed with the director and approved [or thirty days have elapsed and he has not delivered to the board written disapproval of it as misleading or not in the public interest]. The director shall have the power to disapprove any policy form previously approved if found by him after hearing to be misleading or not in the public interest.

2. Cancellation of the association's policies shall be governed by law.

3. The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to the casualty rate regulation law giving due consideration to the past and prospective loss and expense experience in medical malpractice insurance of all of the insurers, trends in the frequency and severity of losses, the investment income of the association, and such other information as the director may require. All rates shall be actuarially sound and shall be calculated to be self-supporting.

4. In the event sufficient funds are not available for the sound financial operation of the association, additional funds shall be raised by making an assessment on all member companies. Assessments shall be made against members in the proportion that the net direct premiums for the preceding calendar year of each member for each line of insurance requiring it to participate in said plan bear to the net direct premiums for the preceding calendar year of all members for such line of insurance; provided that, assessments made pursuant to sections 383.150 to 383.195 shall not exceed in any calendar year one percent of each member's net direct premiums attributable to the line or lines of insurance the writing of which requires it to be a member.

5. All members shall deduct the amount of any assessment from past or future premium taxes due but not yet paid the state.

6. Any funds which result from policyholder premiums and other revenues received in excess of those funds required for reserves, loss payments and expenses incurred and accrued at the end of any calendar year shall be paid proportionately to the general fund to the extent that credit against premium tax liability has been granted pursuant to subsection 5 of this section and to members which have been assessed but have not received tax credits as provided in subsection 5 of this section.

383.165. Each policyholder shall pay to the association in the first policy year, in addition to the premium payment due for insurance through the association, an amount equal to said premium payment. Such charge shall be separately stated in the policy. **Such charge shall be paid in the form of cash or cash equivalent and not in the form of a promissory note.**

383.198. 1. Notwithstanding the provisions of sections 383.037 and 383.160, no insurer, as defined in section 383.300, shall issue or sell in the state of Missouri a policy

3 insuring a health care provider, as defined in section 538.205, RSMo, for damages for
4 personal injury or death arising out of the rendering of or failure to render health care
5 services if the director finds, based upon competent and compelling evidence, that the base
6 rates of such insurer are excessive, inadequate, or unfairly discriminatory. The provisions
7 of this section do not apply to policies described in section 383.335, RSMo.

8 **2. In making a determination under subsection 1 of this section, the director of the**
9 **department of insurance shall use the following factors:**

10 **(1) Rates shall not be excessive or inadequate, nor shall they be unfairly**
11 **discriminatory;**

12 **(2) No rate shall be held to be excessive unless such rate is unreasonably high for**
13 **the insurance provided with respect to the classification to which such rate is applicable;**

14 **(3) No rate shall be held to be inadequate unless such rate is unreasonably low for**
15 **the insurance provided with respect to the classification to which such rate is applicable;**

16 **(4) To the extent Missouri loss experience is available, rates and projected losses**
17 **shall be based on Missouri loss experience and not the insurance company's or the**
18 **insurance industry's loss experiences in states other than Missouri unless the failure to do**
19 **so jeopardizes the financial stability of the insurer; provided however, that loss experiences**
20 **relating to the specific proposed insured occurring outside the state of Missouri may be**
21 **considered in allowing a surcharge to such insured's premium rate;**

22 **(5) Investment income or investment losses of the insurance company for the ten-**
23 **year period prior to the request for rate approval may be considered in reviewing rates.**
24 **Investment income or investment losses for a period of less than ten years shall not be**
25 **considered in reviewing rates. Industry-wide investment income or investment losses for**
26 **the ten-year period prior to the request for rate approval may be considered for any**
27 **insurance company that has not been authorized to issue insurance for more than ten**
28 **years;**

29 **(6) The locale in which the health care practice is occurring;**

30 **(7) Inflation;**

31 **(8) Reasonable administrative costs of the insurer;**

32 **(9) Reasonable costs of defense of claims against Missouri health care providers;**

33 **(10) A reasonable rate of return on investment for the owners or shareholders of**
34 **the insurer when compared to other similar investments at the time of the rate request;**
35 **except that, such factor shall not be used to offset losses in other states or in activities of the**
36 **insurer other than the sale of policies of insurance to Missouri health care providers; and**

37 **(11) Any other reasonable factors may be considered in the approval or rejection**
38 **of the rate request.**

39 **3. The director's determination under subsection 1 of this section of whether a base**
40 **rate is excessive, inadequate, or unfairly discriminatory may be based on any subcategory**
41 **or subspecialty of the health care industry that the director determines to be reasonable.**

42 **4. The insurer may charge an additional premium or grant a discount rate to any**
43 **health care provider based on criteria as it relates to a specified insured health care**
44 **provider or other specific health care providers within the specific insured's employ or**
45 **business entity. Such criteria may include:**

46 **(1) Loss experiences;**

47 **(2) Training and experience;**

48 **(3) Number of employees of the insured entity;**

49 **(4) Availability of equipment, capital, or hospital privileges;**

50 **(5) Loss prevention measures taken by the insured;**

51 **(6) The number and extent of claims not resulting in losses;**

52 **(7) The specialty or subspecialty of the health care provider;**

53 **(8) Access to equipment and hospital privileges; and**

54 **(9) Any other reasonable criteria identified by the insurer and filed with the**
55 **department of insurance.**

56 **5. The director of the department of insurance shall promulgate rules for the**
57 **enforcement of this section. Any rule or portion of a rule, as that term is defined in section**
58 **536.010, RSMo, that is created under the authority delegated in this section shall become**
59 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
60 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
61 **nonseverable and if any of the powers vested with the general assembly pursuant to**
62 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
63 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
64 **rule proposed or adopted after August 28, 2006, shall be invalid and void.**

383.300. 1. As used in sections 383.300 to 383.314, 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 in the state of**
5 **Missouri, against claims for malpractice or professional negligence; provided, however,**
6 **that the term "insurer" or "insurers" shall not mean any surplus lines insurer operating**
7 **under chapter 384, RSMo, or any entity to the extent it is self-insuring its exposure to**
8 **medical malpractice liability.**

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

11 (1) Increase an individuals rate charged by more than fifteen percent for such
12 insurance without first providing written notice by United States mail to the insured at
13 least sixty days prior to the effective date of such actions; provided, however, such notice
14 is not required if the change is due to the request of the insured or due to a material change
15 in the nature of the insured's health care practice or individual risk characteristics;

16 (2) Refuse to renew such insurance without first providing written notice by
17 certified United States mail to the insured at least sixty days prior to the effective date of
18 such actions, unless such refusal to renew is based upon a failure to pay sums due or a
19 termination or suspension of the health care provider's license to practice medicine in the
20 state of Missouri, termination of the insurer's reinsurance program, or a material change
21 in the nature of the insured's health care practice or individual risk characteristics; or

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

26 3. Any insurer that fails to provide the notice required under subdivisions (1) and
27 (2) of subsection 2 of this section shall, at the option of the insured, continue the coverage
28 in accordance with the provisions of subdivision (2) of subsection 6 of section 379.321,
29 RSMo.

 383.302. The department of insurance shall, prior to June 30, 2007, establish risk-
2 reporting categories by physician specialty, such as obstetrics/gynecology, pediatrics, and
3 internal medicine, for medical malpractice insurance base rates, as defined in section
4 383.308, and shall establish reasonable regulations for the reporting of all base rates
5 charged by such categories. The department of insurance shall consider, among other
6 criteria, the history or prior court judgments for claims under this chapter in each county
7 of this state in establishing the risk reporting categories.

 383.304. All insurers shall, with regards to medical malpractice insurance as
2 defined in section 383.150, provide to the department of insurance, beginning on January
3 1, 2007, and not less than annually thereafter, an accurate report as to the actual rates,
4 including assessments levied against members, excluding members whose practice is part-
5 time, charged by such company for such insurance, for each of the risk-reporting
6 categories and/or codes established in section 383.302.

 383.306. Not later than June 1, 2007, and at least annually thereafter, the
2 department of insurance shall, utilizing the information provided under section 383.304
3 establish and publish, a market rate reflecting the mean of the actual rates charged for
4 each of the risk-reporting categories for the preceding year by insurers which have been

5 certified to have rates which are not inadequate by an actuary selected and approved by
6 the department of insurance.

383.308. For purposes of sections 383.300 to 383.314, the following terms mean:

2 (1) "Base rate", the premium rate designed to reflect the average aggregate
3 experience of a particular health care provider classification prior to adjustment for
4 individual risk characteristics;

5 (2) "Schedule rating or individual risk rating credits or debits", rating factors or
6 adjustments applied to an insurer's base rates to increase or decrease the premium of an
7 individual insured or unit or exposure to adjust the base rate to account for individual risk
8 characteristics not reflected in the base rate.

383.310. The department of insurance may establish reporting standards for
2 insurers by which the insurers shall annually report the total amount of premiums received
3 for each of the health care provider classifications designated by the department and the
4 total number of policies in each category. Such information shall be considered
5 confidential and shall be a closed record under chapter 610, RSMo.

383.312. 1. The department of insurance shall establish reporting standards for
2 insurers by which the insurers, or an advisory organization designated by the department,
3 shall annually report such Missouri medical malpractice insurance actual premium, actual
4 premium deviation from the base rate, loss, exposure, and other information as the
5 department may require for the purpose of compiling a Missouri medical malpractice
6 ratemaking database. The reports shall be in a format determined by the department.
7 Such information shall be considered confidential information and shall be a closed record
8 under chapter 610, RSMo.

9 2. The department shall collect the information required in subsection 1 of this
10 section and compile it in a manner appropriate for assisting Missouri medical malpractice
11 insurers in developing their future base rates, schedule rating or individual risk rating
12 factors, and other aspects of their rating plans. In compiling the information and making
13 it available to Missouri insurers and the public, the department shall remove any
14 individualized information that identifies a particular insurer or provider as the source or
15 subject of the information. The department may combine such information with similar
16 information obtained through insurer examinations so as to cover periods of more than one
17 year.

383.325. If any insurer fails to timely submit any report required under sections
2 383.100 to 383.125 or sections 383.302 to 383.312, the department may enforce such
3 provisions in the manner prescribed under section 374.215, RSMo. The penalties
4 prescribed in section 374.215, RSMo, shall apply to violations of sections 383.100 to 383.125

5 and sections 383.302 to 383.312, and such violation shall be classified as a level two
6 violation under section 374.049, RSMo.

383.330. 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, 2006, shall be
10 invalid and void.

383.335. By January 1, 2011, all insurers writing medical malpractice insurance in
2 this state shall offer medical malpractice policies of insurance which are written so as to
3 apply to injury which results from acts or omissions occurring during the policy period,
4 regardless of the timing of the filing of a claim based on such acts and omissions.

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