

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1837
93RD GENERAL ASSEMBLY

5239S.09T

2006

AN ACT

To repeal sections 374.046, 383.010, 383.035, and 383.105, RSMo, and to enact in lieu thereof eighteen new sections relating to malpractice insurance.

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

Section A. Sections 374.046, 383.010, 383.035, and 383.105, RSMo, are repealed and
2 eighteen new sections enacted in lieu thereof, to be known as sections 374.046, 374.047,
3 374.048, 374.049, 383.010, 383.016, 383.035, 383.105, 383.106, 383.107, 383.108, 383.124,
4 383.196, 383.197, 383.198, 383.199, 383.450, and 383.515, to read as follows:

374.046. 1. [(1) The director may issue cease and desist orders whenever it appears to
2 him upon competent and substantial evidence that any person is acting in violation of any law
3 of this state or any rule or regulation promulgated by the director relating to the business of
4 insurance. Before any cease and desist order shall be issued, a copy of the proposed order
5 together with an order to show cause why such cease and desist order should not be issued shall
6 be served either personally or by certified mail on any person named therein.

7 (2) (a) Upon issuing any order to show cause the director shall notify the person named
8 therein that the person is entitled to a public hearing before the director if a request for a hearing
9 is made in writing to the director within fifteen days from the day of the service of the order to
10 show cause why the cease and desist order should not be issued.

11 (b) The cease and desist order shall be issued fifteen days after the service of the order
12 to show cause if no request for a public hearing is made as above provided.

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.

13 (c) Upon receipt of a request for a hearing the director shall set a time and place for the
14 hearing which shall not be less than ten days or more than fifteen days from the receipt of the
15 request or as otherwise agreed upon by the parties. Notice of the time and place shall be given
16 by the director not less than five days before the hearing.

17 (d) At the hearing the person may be represented by counsel and shall be entitled to be
18 advised of the nature and source of any adverse evidence procured by the director and shall be
19 given the opportunity to submit any relevant written or oral evidence in his behalf to show cause
20 why the cease and desist order should not be issued.

21 (e) At the hearing the director shall have such powers as are conferred upon him in
22 section 374.190.

23 (f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue
24 the cease and desist order as proposed or as subsequently modified or notify the person that no
25 order shall be issued.

26 (g) The circuit court of Cole County shall have jurisdiction to review any cease and
27 desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if
28 any person against whom an order is issued fails to request judicial review, or if, after judicial
29 review, the director's cease and desist order is upheld, the order shall become final.

30 **2.] If the director determines based upon substantial and competent evidence that**
31 **a person has engaged, is engaging in or has taken a substantial step toward engaging in an**
32 **act, practice, omission, or course of business constituting a violation of the laws of this state**
33 **relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo,**
34 **or a rule adopted or order issued pursuant thereto or that a person has materially aided**
35 **or is materially aiding an act, practice, omission, or course of business constituting a**
36 **violation of the laws of this state relating to insurance in this chapter, chapter 354, RSMo,**
37 **and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the**
38 **director may order the following relief:**

39 (1) An order directing the person to cease and desist from engaging in the act,
40 practice, omission, or course of business;

41 (2) A curative order or order directing the person to take other action necessary
42 or appropriate to comply with the insurance laws of this state;

43 (3) Order a civil penalty or forfeiture as provided in section 374.049; and

44 (4) Award reasonable costs of the investigation.

45 **2. In determining any relief sought, the director shall consider, among other**
46 **factors, whether:**

47 (1) The violations are likely to continue or reoccur;

48 (2) Actual financial loss was sustained by consumers and restitution has been made;

(3) The act, practice, omission, or course of business was detected as part of a self-audit or internal compliance program and immediately reported to the director; and

(4) The act, practice, omission, or course of business had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

3. Unless the director determines that a summary order is appropriate under subsection 4 of this section, the director shall provide notice of the intent to initiate administrative enforcement by serving a statement of the reasons for the action upon any person subject to the proceedings. A statement of reasons, together with an order to show cause why a cease and desist order and other relief should not be issued, shall be served either personally or by certified mail on any person named therein. The director shall schedule a time and place at least ten days thereafter, for hearing, and after notice of and opportunity for hearing to each person subject to the order, the director may issue a final order under subsection 6 of this section.

4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are being violated and consumers are being aggrieved by the violations, the order issued under subdivision (1) of subsection 1 of this section may be summary and be effective on the date of issuance. Upon issuance of the order, the director shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered.

5. A summary order issued under subsection 4 of this section must include a statement of the reasons for the order, notice within five days after receipt of a request in a record from the person that the matter will be scheduled for a hearing, and a statement whether the department is seeking a civil penalty or costs of the investigation. If a person subject to the order does not request a hearing and none is ordered by the director within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

6. If a hearing is requested or ordered pursuant to subsection 3 or subsection 5 of this section, a hearing before the director or a hearing officer designated by the director must be provided. A final order may not be issued unless the director makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the director. The final order may make final, vacate, or modify the order issued under subsection 5 of this section.

7. In a final order under subsection 6 of this section, the director may impose a civil penalty or forfeiture as provided in section 374.049. No civil penalty or forfeiture may be

84 imposed against a person unless the person has engaged in the act, practice, omission, or
85 course of business constituting the violation.

86 8. In a final order under subsection 6 of this section, the director may charge the
87 actual cost of an investigation or proceeding for a violation of the insurance laws of this
88 state or a rule adopted or order issued pursuant thereto. These funds shall be paid to the
89 director to the credit of the insurance dedicated fund.

90 9. The director is authorized to issue subpoenas, compel attendance of witnesses,
91 administer oaths, hear testimony of witnesses, receive evidence, and require the production
92 of books, papers, records, correspondence, and all other written instruments or documents
93 relevant to the proceeding and authorized in contested cases under the provisions of
94 chapter 536, RSMo, and procedural rules promulgated by the director.

95 10. Statements of charges, notices, orders, and other processes of the director may
96 be served by anyone duly authorized by the director either in the manner provided by law
97 for service of process in civil actions, or by registering or certifying and mailing a copy
98 thereof to the person affected by such statement, notice, order, or other process at his or
99 its residence or principal office or place of business. The verified return by the person so
100 serving such statement, notice, order, or other process setting forth the manner of such
101 service shall be proof of the same, and the return postcard receipt for such statement,
102 notice, order, or other process, registered and mailed as aforesaid, shall be proof of the
103 service of the same.

104 11. If a petition for judicial review of a final order is not filed in accordance with
105 section 374.055, the director may file a certified copy of the final order with the clerk of a
106 court of competent jurisdiction. The order so filed has the same effect as a judgment of the
107 court and may be recorded, enforced, or satisfied in the same manner as a judgment of the
108 court.

109 12. If a person violates or does not comply with an order under this section, the
110 director may under section 374.048 petition a court of competent jurisdiction to enforce the
111 order. The court may not require the director to post a bond in an action or proceeding
112 under this section. If the court finds, after service and opportunity for hearing, that the
113 person was not in compliance with the order, the court may, in addition to relief authorized
114 in section 374.048, adjudge the person in civil contempt of the order. A violation of or
115 failure to comply with an order under this section is a level three violation under section
116 374.049. The court may impose a further civil penalty against the person for contempt in
117 an amount not less than five thousand dollars but not greater than one hundred thousand
118 dollars for each violation and may grant any other relief the court determines is just and
119 proper in the circumstances.

120 **13. Until the expiration of the time allowed under section 374.055 for filing a**
121 **petition for judicial review, if no such petition has been duly filed within such time or if a**
122 **petition for review has been filed within such time, then until the transcript of the record**
123 **in the proceeding has been filed in the circuit court of Cole County, the director may at any**
124 **time, upon such notice and in such manner as he shall deem proper, modify or set aside in**
125 **whole or in part any order issued by him under this section.**

126 **14. The enforcement authority of the director under this section is cumulative to**
127 **any other statutory authority of the director.**

128 **15. The director is authorized to issue administrative consent orders in the public**
129 **interest as complete or partial settlement of any investigation, examination, or other**
130 **proceeding, which curative orders may contain any provision necessary or appropriate to**
131 **assure compliance with the insurance laws of this state, require payment of restitution to**
132 **be distributed directly or by the director to any aggrieved consumers, civil penalties, or**
133 **voluntary forfeiture, reimbursement for costs of investigation or examination, or any other**
134 **relief deemed by the director to be necessary and appropriate. Any remaining matters not**
135 **addressed in settlement may be submitted to the director through a contested proceeding**
136 **under this section.**

137 **16. (1) Any person willfully violating any provision of any cease and desist order of the**
138 **director after it becomes final, while the same is in force, upon conviction thereof shall be**
139 **punished by a fine of not more than one hundred thousand dollars [or one year in jail] , by**
140 **imprisonment of up to ten years, or by both such fine and [jail sentence] imprisonment.**

141 **(2) In addition to any other penalty provided, violation of any cease and desist order shall**
142 **subject the violator to suspension or revocation of any certificate of authority or license as may**
143 **be applicable under the laws of this state relating to the business of insurance.**

144 **[3. (1) When it appears to the director that there is a violation of the laws of this state**
145 **or any rule or regulation promulgated by the director relating to the business of insurance, and**
146 **that the continuance of the acts or actions of any person as herein defined would produce injury**
147 **to the insuring public or to any other person in this state, or when it appears that a person is doing**
148 **or threatening to do some act in violation of the laws of this state relating to insurance, the**
149 **director may file a petition for injunction in the circuit court of Cole County, Missouri, in which**
150 **he may ask for a temporary injunction or restraining order as well as a permanent injunction to**
151 **restrain the act or threatened act. In the event the temporary injunction or restraining order or**
152 **a permanent injunction is issued by the circuit court of Cole County, Missouri, no person against**
153 **whom the temporary injunction or restraining order or permanent injunction is granted shall do**
154 **or continue to do any of the acts or actions complained of in the petition for injunction, unless**

155 and until the temporary injunction or restraining order or permanent injunction is vacated,
156 dismissed or otherwise terminated.

157 (2) Any writ of injunction issued under this law may be served and enforced as provided
158 by law in injunctions issued in other cases, but the director of the insurance department shall not
159 be required to give any bond as preliminary to or in the course of any proceedings to which he
160 is a party as director under this section, either for costs or for any injunction, or in case of appeal
161 to either the supreme court or to any appellate court.

162 4.] 17. The term "person" as used in this [section] **chapter** shall include any individual,
163 partnership, corporation, association or trust, or any other legal entity.

164 **18. The term "order" as used in this chapter shall include a formal administrative**
165 **direction or command of the director issued under this section or in any contested case**
166 **subject to the provisions of section 536.063, RSMo, or any lawful administrative**
167 **proceeding subject to judicial review, but shall not include department bulletins, no-action**
168 **letters, advisory opinions, or any other statement of general applicability that should be**
169 **adopted by rule.**

374.047. 1. If the director determines, based on substantial and competent
2 **evidence, that a corporation or insurer with a certificate of authority under the laws**
3 **relating to insurance willfully has engaged in an act, practice, omission, or course of**
4 **business constituting a level three, four, or five violation of the laws of this state relating**
5 **to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or been convicted**
6 **of any felony or misdemeanor under any state or federal law, the director may, after**
7 **hearing, issue an order suspending or revoking the certificate of authority.**

8 **2. Prior to issuance of the order under this section, the director shall give at least**
9 **thirty days' notice with a statement of reasons for the action and afford such corporation**
10 **or insurer the opportunity for a hearing upon written request. If such corporation or**
11 **insurer requests a hearing in writing, a final order of suspension or revocation may not be**
12 **issued unless the director makes findings of fact and conclusions of law in a record in**
13 **accordance with the contested case provisions of chapter 536, RSMo, and procedural rules**
14 **promulgated by the director.**

15 **3. The enforcement authority of the director under this section is cumulative to any**
16 **other statutory authority of the director.**

374.048. 1. If the director believes that a person has engaged, is engaging in or has
2 **taken a substantial step toward engaging in an act, practice, omission, or course of business**
3 **constituting a violation of the laws of this state relating to insurance in this chapter,**
4 **chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant**
5 **thereto or that a person has or is engaging in an act, practice, omission, or course of**

6 business that materially aids a violation of the laws of this state relating to insurance in this
7 chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued
8 pursuant thereto, the director may maintain an action in the circuit court of any county
9 of the state or any city not within a county to enjoin the act, practice, omission, or course
10 of business and to enforce compliance with the laws of this state relating to insurance or
11 a rule adopted or order issued by the director.

12 2. In an action under this section and on a proper showing, the court may:

13 (1) Issue a permanent or temporary injunction, restraining order, or declaratory
14 judgment;

15 (2) Order other appropriate or ancillary relief, which may include:

16 (a) An asset freeze, accounting, writ of attachment, writ of general or specific
17 execution, and appointment of a receiver or conservator, which may be the director, for
18 the defendant or the defendant's assets;

19 (b) Ordering the director to take charge and control of a defendant's property,
20 including accounts in a depository institution, rents, and profits; to collect debts; and to
21 acquire and dispose of property;

22 (c) Imposing a civil penalty or forfeiture as provided in section 374.049;

23 (d) Upon showing financial loss, injury, or harm to identifiable consumers,
24 imposing an order of restitution or disgorgement directed to a person who has engaged in
25 an act, practice, omission, or course of business in violation of the laws or rules relating to
26 insurance;

27 (e) Ordering the payment of prejudgment and post-judgment interest;

28 (f) Ordering reasonable costs of investigation and prosecution; and

29 (g) Ordering the payment to the insurance dedicated fund an additional amount
30 equal to ten percent of the total restitution or disgorgement ordered, or such other amount
31 as awarded by the court, which shall be appropriated to an insurance consumer education
32 program administered by the director; or

33 (3) Order such other relief as the court considers necessary or appropriate.

34 3. The director may not be required to post a bond in an action or proceeding
35 under this section.

36 4. The case may be brought in the circuit court of Cole County, any county or city
37 not within a county in which a violation has occurred, or any county or city not within a
38 county, which has venue of an action against the person, partnership, or corporation under
39 other provisions of law.

40 **5. The enforcement authority of the director under this section is cumulative to any**
41 **other authority of the director to impose orders under other provisions of the laws relating**
42 **to insurance in this state.**

43 **6. If the director determines it to be in the public interest, the director is authorized**
44 **to enter into a consent injunction and judgment in the settlement of any proceeding under**
45 **the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to**
46 **385, RSMo.**

47 **7. A "Consumer Restitution Fund" shall be created for the purpose of preserving**
48 **and distributing to aggrieved consumers disgorgement or restitution funds obtained**
49 **through enforcement proceedings brought by the director. In addition to the equitable**
50 **powers of the court authorized above, the court may order that such funds be paid into the**
51 **consumer restitution fund for distribution to aggrieved consumers. It shall be the duty of**
52 **the director to distribute such funds to those persons injured by the unlawful acts,**
53 **practices, omissions, or courses of business by the subject of the proceeding.**
54 **Notwithstanding the provisions of section 33.080, RSMo, any funds remaining in the**
55 **director's consumer restitution fund at the end of any biennium shall not be transferred**
56 **to the general revenue fund, but if the director is unable with reasonable efforts to**
57 **ascertain the aggrieved consumers, then the funds may be transferred to the insurance**
58 **dedicated fund to be used for consumer education.**

374.049. 1. Violations of the laws of this state relating to insurance in this chapter,
2 **chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the**
3 **director, are classified for the purpose of civil penalties and forfeitures into the following**
4 **five classifications:**

- 5 **(1) Level one violations;**
- 6 **(2) Level two violations;**
- 7 **(3) Level three violations;**
- 8 **(4) Level four violations; and**
- 9 **(5) Level five violations.**

10 **2. An order to impose a civil penalty or forfeiture, when imposed by the director**
11 **in an administrative proceeding under section 374.046 on a person for any violation of the**
12 **laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385,**
13 **RSMo, or a rule adopted or order issued by the director, shall be an order to pay an**
14 **amount not exceeding the following:**

- 15 **(1) No civil penalty or forfeiture for a level one violation;**
- 16 **(2) One thousand dollars per each level two violation, up to an aggregate civil**
17 **penalty or forfeiture of fifty thousand dollars per annum for multiple violations;**

18 (3) Five thousand dollars per each level three violation, up to an aggregate civil
19 penalty or forfeiture of one hundred thousand dollars per annum for multiple violations;

20 (4) Ten thousand dollars per each level four violation, up to an aggregate civil
21 penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple
22 violations;

23 (5) Fifty thousand dollars per each level five violation, up to an aggregate civil
24 penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple
25 violations.

26 3. An order to impose a civil penalty or forfeiture, when imposed by the court in
27 an enforcement proceeding under section 374.048 on a person for any violation of the laws
28 of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385,
29 RSMo, or a rule adopted or order issued by the director, shall be an order to pay an
30 amount not exceeding the following:

31 (1) No civil penalty or forfeiture for a level one violation;

32 (2) One thousand dollars per each level two violation, up to an aggregate civil
33 penalty or forfeiture of fifty thousand dollars per annum for multiple violations;

34 (3) Five thousand dollars per each level three violation, up to an aggregate civil
35 penalty or forfeiture of two hundred thousand dollars per annum for multiple violations;

36 (4) Twenty thousand dollars per each level four violation, up to an aggregate civil
37 penalty or forfeiture of one million dollars per annum for multiple violations;

38 (5) One million dollars per each level five violation, with no limit to civil penalties
39 or forfeitures for multiple violations;

40 4. No civil penalty or forfeiture may be imposed against a person, unless the person
41 has engaged in the act, practice, omission or course of business constituting the violation.

42 5. Any violation of the laws of this state relating to insurance in this chapter,
43 chapter 354 and chapters 375 to 385, RSMo, which is not classified or does not authorize
44 a specific range for a civil penalty or forfeiture for violations, shall be classified as a level
45 one violation. In bringing an action to enforce a rule adopted by the director, unless the
46 conduct that violates the rule also violates the enabling statute, the violation shall be
47 classified as a level one violation and shall not be subject to any provision in this section
48 regarding the enhancement of a civil penalty or forfeiture.

49 6. The civil penalties or forfeitures set forth in this section establish a maximum
50 range. The court, or the director in administrative enforcement, shall consider all of the
51 circumstances, including the nature of violations to determine whether, and to any extent,
52 a civil penalty or forfeiture is justified.

53 **7. In any enforcement proceeding, the court, or director in administrative**
54 **enforcement, may enhance the civil penalty or forfeiture with a one classification step**
55 **increase under this section, if the violation was knowing. The court, or director in**
56 **administrative enforcement, may enhance the civil penalty or forfeiture with a two level**
57 **increase if the violation was knowingly committed in conscious disregard of the law.**

58 **8. In any enforcement proceeding, the court, or director in administrative**
59 **enforcement, may, after consideration of the factors specified in subsection 2 of section**
60 **374.046, enhance the civil penalty or forfeiture with a one classification step increase under**
61 **this section, if the violations resulted in actual financial loss to consumers.**

62 **9. In any enforcement proceeding, the court, or director in administrative**
63 **enforcement, shall reduce the civil penalty or forfeiture on that person with up to a two**
64 **classification step reduction under this section, if prior to receiving notice of the violation**
65 **from the department, the person detects the violation through a self-audit or internal**
66 **compliance program reasonably designed to detect and prevent insurance law violations**
67 **and immediately reports the violation to the director.**

68 **10. If more than one error is caused by a single act or omission in the use of data**
69 **processing equipment and such errors are not known by the violator at the time the error**
70 **occurs, then any such errors shall be regarded as a single violation under this section.**

71 **11. Any civil penalty or forfeiture recovered by the director shall be paid to the**
72 **treasurer and then distributed to the public schools as required by Article IX, section 7 of**
73 **the Missouri Constitution.**

74 **12. The penalties and forfeitures authorized by this section govern all actions and**
75 **proceedings that are instituted on the basis of conduct occurring after August 28, 2006.**

 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.] **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.

**383.016. The articles of association and the bylaws of any association created under
2 the provisions of sections 383.010 to 383.040 shall:**

3 (1) **Specify and define the types of assessments, including but not limited to initial,**
4 **regular, operating, special, any other assessment to cover losses and expenses incurred in**
5 **the operation of the association, or any other assessment to maintain or restore the**
6 **association's assets, solvency, or surplus;**

7 (2) **Specify by type of assessment the assessments that shall apply to members,**
8 **former members, or both members and former members of the association; and**

9 (3) **With respect to any assessment to cover losses and expenses incurred in the**
10 **operation of the association and any assessment to maintain or restore the association's**
11 **assets, solvency, or surplus specify:**

12 (a) **The exact method and criteria by which the amounts of each type of assessment**
13 **are to be determined;**

14 (b) **The time in which the assessments must be paid;**

15 (c) **That such assessments shall be made without limitation as to frequency;**

16 (d) **The maximum amount of any single assessment; and**

17 (e) **How such assessments apply to members and former members.**

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 to **374.049**, 374.110, 374.115, 374.122, 374.170, **374.190**, 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 383.100 to 383.125 relating to reports from medical malpractice insurers;

(11) Sections 383.196 to 383.199 and 383.450 relating to notification, data reporting, and rating requirements.

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].

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.

383.105. 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] a
4 report of all claims, both open claims filed during the reporting period and closed claims filed
5 during the reporting period, for medical malpractice made against any of its Missouri insureds
6 during the preceding three-month period.

7 2. The report shall be in writing and contain the following information:

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

10 (2) Specialty coverage of the insured;

11 (3) Insured's policy number;

12 (4) Nature and substance of the claim;

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

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

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

17 (8) Expenses incurred; and

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

19 3. As used in [this section] **sections 383.100 to 383.125**, "insurer" includes every
20 insurance company authorized to transact insurance business in this state, every unauthorized
21 insurance company transacting business pursuant to chapter 384, RSMo, every risk retention

22 group, every insurance company issuing insurance to or through a purchasing group, **every entity**
23 **operating under this chapter**, and any other person providing insurance coverage in this state[.
24 With respect to any insurer transacting business pursuant to chapter 384, RSMo, filing the report
25 required by this section shall be the obligation of the surplus lines broker or licensee originating
26 or accepting the insurance] , **including self-insured health care providers.**

2 **383.106. 1. To effectively monitor the insurance marketplace, rates, financial**
3 **solvency, and affordability and availability of medical malpractice coverage, the director**
4 **shall establish by rule or order reporting standards for insurers by which the insurers, or**
5 **an advisory organization designated by the director, shall annually report such Missouri**
6 **medical malpractice insurance premium, loss, exposure, and other information as the**
7 **director may require.**

8 **2. The director shall, prior to May 30, 2007, establish risk reporting categories for**
9 **medical malpractice insurance, as defined in section 383.150, and shall establish**
10 **regulations for the reporting of all base rates and premiums charged in those categories**
11 **as determined by the director. The director shall consider the history of prior court**
12 **judgments for claims under this chapter in each county of the state in establishing the risk**
13 **reporting categories.**

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

22 **4. All insurers with regards to medical malpractice insurance as defined in section**
23 **383.150, shall provide to the director, beginning on June 1, 2008, and not less than annually**
24 **thereafter, an accurate report as to the actual rates, including assessments levied against**
25 **members, charged by such company for such insurance, for each of the risk reporting**
categories established under this section.

2 **383.107. Not later than December 31, 2009, and at least annually thereafter, the**
3 **director shall, utilizing the information provided pursuant to section 383.106, establish and**
4 **publish a market rate reflecting the median of the actual rates charged for each of the risk**
5 **reporting categories for the preceding year by all insurers with at least a three percent**
market share of the medical malpractice insurance market as of December thirty-first of

6 the prior year, which are certified to have rates which are not inadequate by an actuary
7 selected and approved by the director.

2 383.108. The director shall, utilizing the information provided under section
3 383.106, publish comparisons of the base rates charged by each insurer actively writing
3 medical malpractice insurance.

2 383.124. 1. If the director determines that a person has engaged, is engaging, or is
3 about to engage in a violation of sections 383.100 to 383.125 or a rule adopted or order
4 issued pursuant thereto, or that a person has materially aided, is materially aiding, or is
5 about to materially aid an act, practice, omission, or course of business constituting a
6 violation of sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto,
7 the director may issue such administrative orders as authorized under section 374.046,
8 RSMo. A violation of any provisions under these sections is a level two violation under
9 section 374.049, RSMo. The director of insurance may also suspend or revoke the license
10 or certificate of authority of any person for any such willful violation as authorized under
11 section 374.047, RSMo.

12 2. If the director believes that a person has engaged, is engaging, or is about to
13 engage in a violation of sections 383.100 to 383.125 or a rule adopted or order issued
14 pursuant thereto, or that a person has materially aided, is materially aiding, or is about to
15 materially aid an act, practice, omission, or course of business constituting a violation of
16 sections 383.100 to 383.125 or a rule adopted or order issued pursuant thereto, the director
17 may maintain a civil action for relief authorized under section 374.048, RSMo. A violation
of any provision under these sections is a level two violation under section 374.049, RSMo.

2 383.196. As used in sections 383.196 to 383.199, "insurer" includes any insurance
3 company, mutual insurance company, medical malpractice association, any entity created
4 under this chapter, or other entity providing any insurance to any health care provider,
5 as defined in section 538.205, RSMo, practicing in the state of Missouri, against claims for
6 malpractice or professional negligence; provided, however, that the term "insurer" or
7 "insurers" shall not mean any surplus lines insurer operating under chapter 384, RSMo,
or any entity to the extent it is self-insuring its exposure to medical malpractice liability.

2 383.197. 1. Every insurer shall file with the director all rates and supplementary
3 rate information which is to be used in this state. Such rates and supplementary rate
4 information shall be filed before use.

5 2. Rates filed pursuant to this section shall be filed in such form and manner as
6 prescribed by the director. Whenever a filing is not accompanied by such information as
7 the director has required under this section, the director shall so inform the insurer within
thirty days.

8 **3. All rates and supplementary rate information shall, as soon as filed, be open to**
9 **public inspection at any reasonable time. Copies may be obtained by any person on**
10 **request and upon payment of a reasonable charge.**

383.198. 1. Notwithstanding the provisions of sections 383.037 and 383.160, no
2 **insurer shall issue or sell in the state of Missouri a policy insuring a health care provider,**
3 **as defined in section 538.205, RSMo, for damages for personal injury or death arising out**
4 **of the rendering of or failure to render health care services if the director finds, based upon**
5 **competent and compelling evidence, that the base rates of such insurer are excessive,**
6 **inadequate, or unfairly discriminatory. A rate may be used by an insurer immediately**
7 **after it has been filed with the director, until or unless the director has determined under**
8 **this section that a rate is excessive, inadequate, or unfairly discriminatory.**

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

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

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

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

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

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

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

31 **(7) Inflation;**

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

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

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

38 **(11) Any other reasonable factors may be considered in the disapproval of the rate**
39 **request.**

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

43 **4. If actuarially supported and included in a filed rate, rating plan, rule, manual,**
44 **or rating system, an insurer may charge an additional premium or grant a discount rate**
45 **to any health care provider based on criteria as it relates to a specified insured health care**
46 **provider or other specific health care providers within the specific insured's employ or**
47 **business entity. Such criteria may include:**

48 **(1) Loss experiences;**

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

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

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

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

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

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

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

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

58 **5. Supporting actuarial data shall be filed in support of a rate, rating plan, or**
59 **rating system filing, when requested by the director to determine whether rates should be**
60 **disapproved as excessive, inadequate, or unfairly discriminatory, whether or not the**
61 **insurer has begun using the rate.**

62 **6. The director of the department of insurance shall promulgate rules for the**
63 **administration and enforcement of this section. Any rule or portion of a rule, as that term**
64 **is defined in section 536.010, RSMo, that is created under the authority delegated in this**
65 **section shall become effective only if it complies with and is subject to all of the provisions**
66 **of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter**
67 **536, RSMo, are nonseverable and if any of the powers vested with the general assembly**
68 **pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and**
69 **annul a rule are subsequently held unconstitutional, then the grant of rulemaking**

70 authority and any rule proposed or adopted after August 28, 2006, shall be invalid and
71 void.

383.199. Notwithstanding any other provision of law, no insurer shall, with regards
2 to medical malpractice insurance, as defined in section 383.150, implement any rate
3 increase of more than fifteen percent without first providing clear and conspicuous written
4 notice by United States mail to the insured at least sixty days prior to implementation of
5 the rate increase, unless the increase is due to the request of the insured or due to a
6 material change in the nature of the insured's health care practice or individuals risk
7 characteristics.

383.450. 1. As used in this section, "insurer" includes every insurance company
2 authorized to transact business in this state, every unauthorized insurance company
3 transacting business pursuant to chapter 384, RSMo, every risk retention group, every
4 insurance company issuing policies or providing benefits to or through a purchasing group,
5 and any other person providing medical malpractice insurance coverage in this state.

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) Fail or refuse to renew the insurance without first providing written notice by
9 certified United States mail to the insured at least sixty days prior to the effective date of
10 such actions, unless such failure or refusal to renew is based upon a failure to pay sums due
11 or a termination or suspension of the health care provider's license to practice medicine
12 in the state of Missouri, termination of the insurer's reinsurance program, or a material
13 change in the nature of the insured's health care practice; or

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

18 3. Any insurer that fails to provide the notice required under subdivision (1) of
19 subsection 2 of this section shall, at the option of the insured, continue the coverage for the
20 remainder of the notice period plus an additional thirty days at the premium rate of the
21 existing policy.

383.515. 1. There is hereby created within the department of insurance the "Health
2 Care Stabilization Fund Feasibility Board". The primary duty of the board is to determine
3 whether a health care stabilization fund should be established in Missouri to provide excess
4 medical malpractice insurance coverage for health care providers. As part of its duties, the
5 board shall develop a comprehensive study detailing whether a health care stabilization
6 fund is feasible within Missouri, or specified geographic regions thereof, or whether a

7 health care stabilization fund would be feasible for specific medical specialties. The board
8 shall analyze medical malpractice insurance data collected by the department of insurance
9 under sections 383.105 to 383.106 and any other data the board deems necessary to its
10 mission. In addition to analyzing data collected from the Missouri medical malpractice
11 insurance market, the board may study the experience of other states that have established
12 health care stabilization funds or patient compensation funds. If a health care stabilization
13 fund is determined to be feasible within Missouri, the report shall also recommend to the
14 general assembly how the fund should be structured, designed, and funded. The report
15 may contain any other recommendations relevant to the establishment of a health care
16 stabilization fund, including but not limited to, specific recommendations for any statutory
17 or regulatory changes necessary for the establishment of a health care stabilization fund.

18 2. The board shall consist of ten members. Other than the director, the house
19 members and the senate members, the remainder of the board's members shall be
20 appointed by the director of the department of insurance as provided for in this subsection.
21 The board shall be composed of:

22 (1) The director of the department of insurance, or his or her designee;

23 (2) Two members of the Missouri senate appointed by the president pro tem of the
24 senate with no more than one from any political party;

25 (3) Two members of the Missouri house of representatives appointed by the speaker
26 of the house with no more than one member from any political party;

27 (4) One member who is licensed to practice medicine as a medical doctor who is
28 on a list of nominees submitted to the director by an organization representing Missouri's
29 medical society;

30 (5) One member who practices medicine as a doctor of osteopathy and who is on
31 a list of nominees submitted to the director by an organization representing Missouri
32 doctors of osteopathy;

33 (6) One member who is a licensed nurse in Missouri and who is on a list submitted
34 to the director by an organization representing Missouri nurses;

35 (7) One member who is a representative of Missouri hospitals and who is on a list
36 of nominees submitted to the director by an organization representing Missouri hospitals;
37 and

38 (8) One member who is a physician and who is on a list submitted to the director
39 by an organization representing family physicians in the state of Missouri.

40 3. The director shall appoint the members of the board, other than the general
41 assembly members, no later than January 1, 2007. Once appointed, the board shall meet
42 at least quarterly, and shall submit its final report and recommendations regarding the

43 **feasibility of a health care stabilization fund to the governor and the general assembly no**
44 **later than December 31, 2010. The board shall also submit annual interim reports to the**
45 **general assembly regarding the status of its progress.**

46 **4. The board shall have the authority to convene conferences and hold hearings.**
47 **All conferences and hearings shall be held in accordance with chapter 610, RSMo.**

48 **5. The director of the department of insurance shall provide and coordinate staff**
49 **and equipment services to the board to facilitate the board's duties.**

50 **6. Board members shall receive no additional compensation but shall be eligible for**
51 **reimbursement for expenses directly related to the performance of their duties.**

52 **7. The provisions of this section shall expire December 31, 2010.**

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