

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NOS. 905 & 910**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Insurance Policy May 5, 2006 with recommendation that House Committee Substitute for Senate Committee Substitute for Senate Bill Nos. 905 & 910 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4389L.08C

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**AN ACT**

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

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

Section A. Sections 383.010, 383.035, and 383.105, RSMo, are repealed and fourteen  
2 new sections enacted in lieu thereof, to be known as sections 383.005, 383.010, 383.016,  
3 383.035, 383.105, 383.106, 383.107, 383.108, 383.124, 383.196, 383.197, 383.198, 383.199, and  
4 383.450, to read as follows:

**383.005. As used in this chapter, "director" means the director of the department**  
2 **of insurance.**

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

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.

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 **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 shall apply to members and former members.**

18           383.035. 1. Any association licensed pursuant to the provisions of sections 383.010 to  
19 383.040 shall be subject to the provisions of the following provisions of the revised statutes of  
20 Missouri:

21           (1) Sections 374.010, 374.040, 374.046, 374.110, 374.115, 374.122, 374.170, 374.210,  
22 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, RSMo, relating to the general  
23 authority of the director [of the department of insurance];

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

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

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

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

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

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

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

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

42           **(10) Sections 383.100 to 383.125 relating to reports from medical malpractice**  
43 **insurers;**

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

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

49           3.] Any association licensed pursuant to the provisions of sections 383.010 to 383.040  
50 shall file with its annual statement a certification by a fellow or an associate of the Casualty  
51 Actuarial Society. Such certification shall conform to the National Association of Insurance

52 Commissioners annual statement instructions unless otherwise provided by the director [of the  
53 department of insurance].

54 [4.] 3. The director [of the department of insurance] shall have authority in accordance  
55 with section 374.045, RSMo, to make all reasonable rules and regulations to accomplish the  
56 purpose of sections 383.010 to 383.040, including the extent to which insurance provided by an  
57 association may be extended to provide payment to a covered person resulting from a specific  
58 illness possessed by such covered person; except that no rule or regulation may place limitations  
59 or restrictions on the amount of premium an association may write or on the amount of insurance  
60 or limit of liability an association may provide.

61 [5.] 4. Other than as provided in this section, no other insurance law of the state of  
62 Missouri shall apply to an association licensed pursuant to the provisions of this chapter, unless  
63 such law shall expressly state it is applicable to such associations.

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

75 [7.] 6. If the director [of the department of insurance] issues an order in accordance with  
76 subsection [6] 5 of this section, the association may, in accordance with chapter 536, RSMo, file  
77 a petition for review of such order. Any association subject to an order issued in accordance with  
78 subsection 6 of this section shall be allowed a period of three years, or such longer period as the  
79 director may allow, to accomplish its plan to restore its surplus as regards policyholders to at  
80 least zero dollars. If at the end of the authorized period of time the association has failed to  
81 restore its surplus to at least zero dollars, or if the director [of the department of insurance] has  
82 ordered modifications of the voluntary plan and the association's surplus has failed to increase  
83 within three consecutive quarters after such modification, the director [of the department of  
84 insurance] may allow an additional time for the implementation of the voluntary plan or may  
85 exercise [his] **the director's** powers to take charge of the association as [he] **the director** would  
86 a mutual casualty company pursuant to sections 375.1150 to 375.1246, RSMo. Sections  
87 375.1150 to 375.1246, RSMo, shall apply to associations licensed pursuant to sections 383.010

88 to 383.040 only after the conditions set forth in this section are met. When the surplus as regards  
89 policyholders of an association subject to subsection [6] **5** of this section has been restored to at  
90 least zero dollars, the authority and jurisdiction of the director of the department of insurance  
91 under subsections **5 and 6** [and 7] of this section shall terminate, but this subsection may again  
92 thereafter apply to such association if the conditions set forth in subsection [6] **5** of this section  
93 for its application are again satisfied.

94 [8.] **7.** Any association licensed pursuant to the provisions of sections 383.010 to  
95 383.040 shall place on file with the director [of the department of insurance], except as to excess  
96 liability risks which by general custom are not written according to manual rates or rating plans,  
97 a copy of every manual of classifications, rules, underwriting rules and rates, every rating plan  
98 and every modification of the foregoing which it uses. Filing with the director [of the department  
99 of insurance] within ten days after such manuals, rating plans or modifications thereof are  
100 effective shall be sufficient compliance with this subsection. Any rates, rating plans, rules,  
101 classifications or systems in effect or in use by an association on August 28, 1992, may continue  
102 to be used by the association. Upon written application of a member of an association, stating  
103 his **or her** reasons therefor, filed with the association, a rate in excess of that provided by a filing  
104 otherwise applicable may be used by the association for that member.

105 383.105. 1. Every insurer providing medical malpractice insurance to a Missouri health  
106 care provider and every health care provider who maintains professional liability coverage  
107 through a plan of self-insurance shall submit to the director [of the department of insurance] a  
108 report of all claims, both open claims filed during the reporting period and closed claims filed  
109 during the reporting period, for medical malpractice made against any of its Missouri insureds  
110 during the preceding three-month period.

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

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

114 (2) Specialty coverage of the insured;

115 (3) Insured's policy number;

116 (4) Nature and substance of the claim;

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

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

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

121 (8) Expenses incurred; and

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

123           3. As used in [this section] **sections 383.100 to 383.125**, "insurer" includes every  
124 insurance company authorized to transact insurance business in this state, every unauthorized  
125 insurance company transacting business pursuant to chapter 384, RSMo, every risk retention  
126 group, every insurance company issuing insurance to or through a purchasing group, **every entity**  
127 **operating under this chapter**, and any other person providing insurance coverage in this state[.  
128 With respect to any insurer transacting business pursuant to chapter 384, RSMo, filing the report  
129 required by this section shall be the obligation of the surplus lines broker or licensee originating  
130 or accepting the insurance] , **including self-insured health care providers**.

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

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

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

20           **4. All insurers with regards to medical malpractice insurance, as defined in section**  
21 **383.150, shall provide to the director beginning June 1, 2008, and at least annually**  
22 **thereafter an accurate report as to the actual rates, including assessments levied against**  
23 **members, charged by such company for such insurance for each of the risk reporting**  
24 **categories established under this section.**

**383.107. Not later than December 31, 2009, and at least annually thereafter, the**  
2 **director shall, utilizing the information provided under section 383.106, establish and**  
3 **publish a market rate reflecting the mean of the actual rates charged for each of the risk**

4 reporting categories for the preceding year by all insurers which are certified to have rates  
5 which are not inadequate by an actuary 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 or is engaging in  
2 a violation of sections 383.100 to 383.125 or a rule adopted or order issued thereunder, or  
3 that a person has materially aided or is materially aiding an act, practice, omission, or  
4 course of business constituting a violation of sections 383.100 to 383.125 or a rule adopted  
5 or order issued thereunder, the director may issue such administrative orders as  
6 authorized under section 374.046, RSMo. A violation of any provision under sections  
7 383.100 to 383.125 is a level two violation under section 374.049, RSMo. The director may  
8 also suspend or revoke the license or certificate of authority of any person for any such  
9 willful violation as authorized under section 374.047, RSMo.

10 2. If the director believes that a person has engaged or is engaging in a violation of  
11 sections 383.100 to 383.125 or a rule adopted or order issued thereunder, or that a person  
12 has materially aided or is materially aiding an act, practice, omission, or course of business  
13 constituting a violation of sections 383.100 to 383.125 or a rule adopted or order issued  
14 thereunder, the director may maintain a civil action for relief authorized under section  
15 374.048, RSMo. A violation of any provision under sections 383.100 to 383.125 is a level  
16 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 insurer shall not mean any  
7 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.

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

8           **3. All rates, rating plan, rule, manual, or rating system shall, as soon as filed, be**  
9 **open to public inspection at any reasonable time. Copies may be obtained by any person**  
10 **on 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 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 may**  
10 **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 provided 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 rate**  
41 **is excessive, inadequate, or unfairly discriminatory may be based on any subcategory or**  
42 **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 shall promulgate rules for the administration and enforcement of**  
63 **this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
64 **that is created under the authority delegated in this section shall become effective only if**  
65 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
66 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**  
67 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**  
68 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**

69 held unconstitutional, then the grant of rulemaking authority and any rule proposed or  
70 adopted after August 28, 2006, shall be invalid and 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 under chapter 384, RSMo, every risk retention group, every insurance  
4 company issuing policies or providing benefits to or through a purchasing group, and any  
5 other person providing medical malpractice insurance coverage in this state.

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

8 (1) 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 in  
20 accordance with the provisions of subdivision (2) of subsection 6 of section 379.321, RSMo.

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