

SECOND REGULAR SESSION

HOUSE BILL NO. 1837

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES YATES (Sponsor), SCHAAF, THRELKELD, COOPER (155), FLOOK, ERVIN, DEMPSEY, JETTON, PRATT, DUSENBERG, KRAUS, PORTWOOD, WILSON (130), FISHER, CUNNINGHAM (86), SMITH (118), AVERY, MUNZLINGER, HUNTER, SMITH (14), SILVEY, STEVENSON, MEINERS, McGHEE, PARKER, PHILLIPS AND JOHNSON (47) (Co-sponsors).

Read 1st time February 21, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5239L.01I

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-eight 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Section A. Sections 383.010, 383.035, 383.079, 383.105, 383.110, 383.115, 383.125, 2 383.160, and 383.165, RSMo, are repealed and twenty-eight new sections enacted in lieu thereof, 3 to be known as sections 383.010, 383.035, 383.079, 383.104, 383.105, 383.110, 383.112, 4 383.115,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, 383.314, 383.325, 383.326, 383.330, 383.335, 507.091, 1, 2, and 3, to read 6 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 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

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.

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, **long-**
13 **term care facilities licensed under chapter 198, RSMo**, professional corporations [formed
14 under the provisions of chapter 356, RSMo, for the practice of law and corporations,
15 copartnerships or associations licensed under the provisions of chapter 339, RSMo], **and limited**
16 **liability companies, corporations, limited liability partnerships, partnerships, and other**
17 **similar entities formed for the practice of law or medicine** may also become members of any
18 such 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 383.300 to 383.314 relating to notification, data reporting, and rating**
28 **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 December 31, 2007, and annually thereafter, the director shall submit to the**
4 **general assembly an accurate report as to the actual and base rates, as defined in section**
5 **383.308, charged for malpractice insurance and any changes to such rates from the**
6 **previous year.**

383.104. 1. In addition to the reporting requirements under section 383.105, every
2 insurer providing medical malpractice insurance to a Missouri health care provider and
3 every health care provider who maintains professional liability coverage through a plan
4 of self-insurance shall submit an annual report on or before March thirty-first of each year
5 to the director of the department of insurance containing the following information specific
6 to the state of Missouri for the immediately preceding calendar year ending December
7 thirty-first:

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

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

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

- 18 (a) The number of claims pending at the beginning of the year;
- 19 (b) The number of claims pending at the end of the year;
- 20 (c) The number of claims paid;
- 21 (d) The number of claims closed with no payment;
- 22 (e) The number and amounts of claims in which a judgment was paid, including

23 an identification of the following:

- 24 a. Highest amount;
- 25 b. Lowest amount;
- 26 c. Average amount; and
- 27 d. Median amount;

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

30 a. Highest amount;

31 b. Lowest amount;

32 c. Average amount; and

33 d. Median amount;

34 (g) The total premium collected;

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

36 (i) The total loss adjustment expenses paid.

37 2. No later than June thirtieth of each year, the director of insurance shall prepare
38 a report for the previous calendar year ending December thirty-first based upon the
39 information provided under subdivision (1) of subsection 1 of this section. The report shall
40 be submitted to the governor, the speaker of the house of representatives, and the president
41 pro tempore of the senate. The report shall:

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

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

46 (3) Inform the general assembly and Missouri insurance consumers whether
47 insurance rates, underwriting practices, and claims administration are just, adequate, and
48 reasonable, and not excessive or unfairly discriminatory; and

49 (4) Protect the proprietary information of the insurer by redacting the name of the
50 insurer in compiling the report.

51 3. All information submitted under subdivision (2) of subsection 1 of this section
52 and subsection 3 of section 383.105 shall be confidential and shall not subject to disclosure
53 under chapter 610, RSMo. Nothing in this subsection shall prohibit the director from
54 using or utilizing such information for the purpose of conducting actuarial or market
55 analysis so long as such use or analysis is performed in a manner which does not identify,
56 either directly or by reference to other publicly available information, the case, parties, or
57 sums involved in any payment or 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 thirty 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
2 which results from acts or omissions occurring during the policy period. No policy form shall
3 be used by the association unless it has been filed with the director and approved [or thirty days

4 have elapsed and he has not delivered to the board written disapproval of it as misleading or not
5 in the public interest]. The director shall have the power to disapprove any policy form
6 previously approved if found by him after hearing to be misleading or not in the public interest.

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

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

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

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

25 6. Any funds which result from policyholder premiums and other revenues received in
26 excess of those funds required for reserves, loss payments and expenses incurred and accrued
27 at the end of any calendar year shall be paid proportionately to the general fund to the extent that
28 credit against premium tax liability has been granted pursuant to subsection 5 of this section and
29 to members which have been assessed but have not received tax credits as provided in subsection
30 5 of this section.

383.165. Each policyholder shall pay to the association in the first policy year, in
2 addition to the premium payment due for insurance through the association, an amount equal to
3 said premium payment. Such charge shall be separately stated in the policy. **Such charge shall**
4 **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
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 unless the rates for such policy**
5 **are approved by the director of the department of insurance.**

6 **2. The director of the department of insurance shall review and approve or reject**
7 **rates under subsection 1 of this section based on the following factors:**

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

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

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

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

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

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

27 **(7) Inflation;**

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

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

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

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

36 **3. Rate approval requests may be approved or denied based on any subcategory**
37 **or subspecialty of the health care industry that the director determines to be reasonable.**

38 **4. The insurer may charge any reasonable additional premium or grant any**
39 **reasonable discount rate to any health care provider based on the following criteria as it**
40 **relates to a specified insured health care provider or other specific health care providers**
41 **within the specific insured's employ or business entity:**

- 42 (1) Loss experiences;
43 (2) Training and experience;
44 (3) Number of employees of the insured entity;
45 (4) Availability of equipment, capital, or hospital privileges;
46 (5) Loss prevention measures taken by the insured;
47 (6) The number and extent of claims not resulting in losses;
48 (7) The specialty or subspecialty of the health care provider;
49 (8) Access to equipment and hospital privileges; and
50 (9) Any other factors determined to be reasonable by the director.

51 **5. Any rate application shall be deemed approved if not rejected within sixty days,**
52 **unless the director extends such period due to the applicant's failure to timely provide**
53 **requested information.**

54 **6. The director of the department of insurance shall annually submit a report to the**
55 **governor and the general assembly as to the rate increases or decreases of the rates**
56 **approved under this section and the number of requests disapproved under this section.**

57 **7. As used in this section, "insurer" includes every insurance company authorized**
58 **to transact business in this state, every unauthorized insurance company transacting**
59 **business under chapter 384, RSMo, every risk retention group, every insurance company**
60 **issuing policies or providing benefits to or through a purchasing group, and any other**
61 **person providing medical malpractice insurance coverage in this state.**

62 **8. The director of the department of insurance shall promulgate rules for the**
63 **enforcement of this section. Any rule or portion of a rule, as that term is defined in section**
64 **536.010, RSMo, that is created under the authority delegated in this section shall become**
65 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
66 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
67 **nonseverable and if any of the powers vested with the general assembly pursuant to**
68 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
69 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
70 **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 medicine in**
5 **the state of Missouri, against claims for malpractice or professional negligence; provided,**
6 **however, that the term "insurer" or "insurers" shall not mean any surplus lines insurer**

7 operating under chapter 384, RSMo, or any entity to the extent it is self-insuring its
8 exposure to 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) Charge an assessment or increase the base rate charge by more than twenty-five
12 percent for such insurance without first providing written notice by United States mail to
13 the insured at least sixty days prior to the effective date of such actions; provided, however,
14 such notice is not required if the base rate change is due to the request of the insured;

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

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

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

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

6 **383.308.** For purposes of sections 383.300 to 383.314, the following terms mean:

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

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

14 **383.310.** The department of insurance may establish reporting standards for
15 insurers by which the insurers shall annually report the total amount of premiums received
16 for each of the health care provider classifications designated by the department and the
17 total number of policies in each category. Such information shall be considered
18 confidential and shall be a closed record under chapter 610, RSMo.

19 **383.312. 1.** The department of insurance shall establish reporting standards for
20 insurers by which the insurers, or an advisory organization designated by the department,
21 shall annually report such Missouri medical malpractice insurance actual premium, actual
22 premium deviation from the base rate, loss, exposure, and other information as the
23 department may require for the purpose of compiling a Missouri medical malpractice
24 ratemaking database. The reports shall be in a format determined by the department.
25 Such information shall be considered confidential information and shall be a closed record
26 under chapter 610, RSMo.

27 **2.** The department shall collect the information required in subsection 1 of this
28 section and compile it in a manner appropriate for assisting Missouri medical malpractice
29 insurers in developing their future base rates, schedule rating or individual risk rating
30 factors, and other aspects of their rating plans. In compiling the information and making
31 it available to Missouri insurers and the public, the department shall remove any
32 individualized information that identifies a particular insurer or provider as the source or
33 subject of the information. The department may combine such information with similar
34 information obtained through insurer examinations so as to cover periods of more than one
35 year.

383.314. With regards to medical malpractice insurance as defined in section 2 383.150, to any rate increase or decrease of more than twenty-five percent shall be 3 considered unreasonable.

383.325. 1. If the director determines that a person has engaged, is engaging, or is 2 about to engage in a violation of sections 383.100 to 383.125 or sections 383.300 to 383.314, 3 or a rule adopted or order issued thereunder, or that a person has materially aided, is 4 materially aiding, or is about to materially aid an act, practice, omission, or course of 5 business constituting a violation of sections 383.100 to 383.125 or sections 383.300 to 6 383.314, or a rule adopted or order issued thereunder, the director may issue such 7 administrative orders as authorized under section 374.046, RSMo. A violation of any 8 provision under sections 383.100 to 383.125 or sections 383.300 to 383.314 is a level two 9 violation under section 3 of this act. The director of insurance may also suspend or revoke 10 the license or certificate of authority of any person for any willful violation as authorized 11 under section 1 of this act.

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 sections 383.300 to 383.314, or a rule 14 adopted or order issued thereunder, or that a person has materially aided, is materially 15 aiding, or is about to materially aid an act, practice, omission, or course of business 16 constituting a violation of sections 383.100 to 383.125 or sections 383.300 to 383.314 or a 17 rule adopted or order issued thereunder, the director shall maintain a civil action for relief 18 authorized under section 2 of this act. A violation of any provision under sections 383.100 19 to 383.125 or sections 383.300 to 383.314 is a level two violation under section 3 of this act.

383.326. Notwithstanding any other provision of law to the contrary, no domestic, 2 foreign, or alien insurer authorized to write medical malpractice insurance in this state 3 shall issue policies for medical malpractice insurance by incorporating other states' claims 4 experience in setting higher rates for this state than Missouri's claims experience would 5 justify.

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.

507.091. 1. When a civil action is filed in the courts of this state and an insurer may
2 be obligated to provide a defense to such action or indemnity for any judgment rendered
3 therein, such insurer shall have the right to intervene in such action and request the court
4 to determine the extent of the insurer's coverage obligations, while reserving the insurer's
5 rights with regard to providing coverage for the claims in the underlying civil action.

6 2. If an insurer does intervene, the court shall finally determine the extent of
7 coverage before preceding with the merits of the underlying action. The judgment of the
8 court as to coverage shall be immediately appealable, notwithstanding issues relating to the
9 underlying action remaining unresolved. When a judgment on the issues of coverage
10 becomes final, the insurer shall be dismissed from the underlying action. If the insurer
11 previously has undertaken the defense of the person named as a defendant in the
12 underlying action and the final judgment on the coverage issues determines that the
13 insurer has no obligation to provide such defense, the insurer may withdraw such defense.

14 3. Notwithstanding any other provision of law to the contrary, if an insurer
15 proceeds in the manner prescribed in this section, the insurer's action shall not constitute
16 a breach, either present or anticipatory, of any contract of insurance.

Section 1. 1. If the director of insurance determines, based on substantial and
2 competent evidence, that a corporation or insurer with a certificate of authority under the
3 laws 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 chapters 374 to 385, RSMo, or been convicted of any felony or
6 misdemeanor under any state or federal law, the director may, after hearing, issue an
7 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.**

Section 2. 1. If the director of insurance believes that a person has engaged, is
2 **engaging, or is about to engage in an act, practice, omission, or course of business**
3 **constituting a violation of the laws of this state relating to insurance in chapters 374 to 385,**
4 **RSMo, or a rule adopted or order issued thereunder or that a person has, is, or is about**
5 **to engage in an act, practice, omission, or course of business that materially aids a violation**
6 **of the laws of this state relating to insurance in chapters 374 to 385, RSMo, or a rule**
7 **adopted or order issued thereunder, the director may maintain an action in the circuit**
8 **court of any county of the state or any city not within a county to enjoin the act, practice,**
9 **omission, or course of business and to enforce compliance with the laws of this state**
10 **relating to insurance or a rule adopted or order issued by the director.**

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

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

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

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

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

21 **(c) Imposing a civil penalty or forfeiture as provided in section 3 of this act;**

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

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

27 **(f) Ordering reasonable costs of investigation and prosecution; and**

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

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

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

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

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

42 **6. If the director determines it to be in the public interest, the director is authorized**
43 **to enter into a consent injunction and judgment in the settlement of any proceeding under**
44 **the laws of this state relating to insurance in chapters 374 to 385, RSMo.**

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

Section 3. 1. Violations of the laws of this state relating to insurance in chapters
2 **374 to 385, RSMo, or a rule adopted or order issued by the director, are classified for the**
3 **purpose of civil penalties and forfeitures into the following five categories:**

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

9 **2. An order to impose a civil penalty or forfeiture, when imposed by the director**
10 **in an administrative proceeding under section 374.046, RSMo, on a person for any**
11 **violation of the laws of this state relating to insurance in chapters 374 to 385, RSMo, or a**
12 **rule adopted or order issued by the director, shall be an order to pay an amount not**
13 **exceeding the following:**

- 14 **(1) No civil penalty or forfeiture for a level one violation;**

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

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

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

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

25 3. An order to impose a civil penalty or forfeiture, when imposed by the court in
26 an enforcement proceeding under section 2 of this act on a person for any violation of the
27 laws of this state relating to insurance in chapters 374 to 385, RSMo, or a rule adopted or
28 order issued by the director, shall be an order to pay an amount not exceeding the
29 following:

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

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

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

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

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

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

41 5. Any violation of the laws of this state relating to insurance in chapters 374 to 385,
42 RSMo, which is not classified or does not authorize a specific range for a civil penalty or
43 forfeiture for violations shall be classified as a level one violation. In bringing an action
44 to enforce a rule adopted by the director, unless the conduct that violates the rule also
45 violates the enabling statute, the violation shall be classified as a level one violation.

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

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

55 **8. In any enforcement proceeding, the court, or director in administrative**
56 **enforcement, may enhance the civil penalty or forfeiture with a one classification step**
57 **increase under this section if the violations resulted in actual financial loss or injury to**
58 **consumers.**

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

65 **10. Any civil penalty or forfeiture recovered by the director shall be paid to the**
66 **treasurer and then distributed to the public schools as required by Article IX, section 7 of**
67 **the Missouri Constitution.**

68 **11. The penalties and forfeitures authorized by this section govern all actions and**
69 **proceedings that are instituted on the basis of conduct occurring after August 31, 2006.**

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