

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1837
93RD GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, May 4, 2006, with recommendation that the Senate Committee Substitute do pass.

5239S.07C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 383.010, 383.035, 383.105, and 383.110, RSMo, and to enact in lieu thereof thirteen 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, 383.105, and 383.110, RSMo, are
2 repealed and thirteen new sections enacted in lieu thereof, to be known as
3 sections 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, and 383.450, to read as follows:

383.010. 1. Notwithstanding any direct or implied prohibitions in chapter
2 375, 377, or 379, RSMo, any three or more persons, residents of this state, being
3 licensed under the provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339,
4 RSMo, or under rule 8 of the supreme court of Missouri or architects licensed
5 pursuant to chapter 327, RSMo, may, as provided in sections 383.010 to 383.040,
6 form a business entity for the purpose of providing malpractice insurance or
7 indemnification for such persons upon the assessment plan, and upon compliance
8 with section 379.260, RSMo, liability and automobile insurance as defined in
9 subdivisions (1) and (3) of section 379.230, RSMo, may be provided upon the
10 assessment plan to those persons licensed pursuant to chapter 197, RSMo, and
11 for whom medical malpractice insurance is provided under this section, except
12 that automobile insurance shall be provided only for ambulances as defined in
13 section 190.100, RSMo. [Hospitals, public or private, whether incorporated or
14 not, as defined in chapter 197, RSMo, if licensed by the state of Missouri,] Any
15 entity licensed under chapter 197, RSMo, professional corporations [formed

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

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

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

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

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

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

9 (2) Specify by type of assessment the assessments that shall
10 apply to members, former members, or both members and former
11 members of the association; and

12 (3) With respect to any assessment to cover losses and expenses
13 incurred in the operation of the association and any assessment to
14 maintain or restore the association's assets, solvency, or surplus
15 specify:

16 (a) The exact method and criteria by which the amounts of each

17 type of assessment are to be determined;

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

19 (c) That such assessments shall be made without limitation as to
20 frequency;

21 (d) The maximum amount of any single assessment;

22 (e) That such assessments shall apply to members and former
23 members; and

24 (f) That as to former members such assessments may be tiered
25 with decreasing assessments for a period of time of up to six years.

383.035. 1. Any association licensed pursuant to the provisions of sections
2 383.010 to 383.040 shall be subject to the provisions of the following provisions
3 of the revised statutes of Missouri:

4 (1) Sections 374.010, 374.040, 374.046 to 374.049, 374.110, 374.115,
5 374.122, 374.170, 374.190, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250
6 and 374.280, RSMo, relating to the general authority of the director of the
7 department of insurance;

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

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

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

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

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

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

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

27 (9) Section 379.102, RSMo, relating to the maintenance of unearned

28 premium and loss reserves as liabilities, except that any such loss reserves may
29 be discounted in accordance with reasonable actuarial assumptions;

30 (10) Sections 383.100 to 383.125 relating to reports from medical
31 malpractice insurers;

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

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

38 3.] Any association licensed pursuant to the provisions of sections 383.010
39 to 383.040 shall file with its annual statement a certification by a fellow or an
40 associate of the Casualty Actuarial Society. Such certification shall conform to
41 the National Association of Insurance Commissioners annual statement
42 instructions unless otherwise provided by the director [of the department of
43 insurance].

44 [4.] 3. The director [of the department of insurance] shall have authority
45 in accordance with section 374.045, RSMo, to make all reasonable rules and
46 regulations to accomplish the purpose of sections 383.010 to 383.040, including
47 the extent to which insurance provided by an association may be extended to
48 provide payment to a covered person resulting from a specific illness possessed
49 by such covered person; except that no rule or regulation may place limitations
50 or restrictions on the amount of premium an association may write or on the
51 amount of insurance or limit of liability an association may provide.

52 [5.] 4. Other than as provided in this section, no other insurance law of
53 the state of Missouri shall apply to an association licensed pursuant to the
54 provisions of this chapter, unless such law shall expressly state it is applicable
55 to such associations.

56 [6.] 5. If, [after August 28, 1992, and] after its second full calendar year
57 of operation, any association licensed under the provisions of sections 383.010 to
58 383.040 shall file an annual statement which shows a surplus as regards
59 policyholders of less than zero dollars, or if the director [of the department of
60 insurance] has other conclusive and credible evidence more recent than the last
61 annual statement indicating the surplus as regards policyholders of an
62 association is less than zero dollars, the director [of the department of insurance]
63 may order such association to submit, within ninety days following such order,

64 a voluntary plan under which the association will restore its surplus as regards
65 policyholders to at least zero dollars. The director [of the department of
66 insurance] may monitor the performance of the association's plan and may order
67 modifications thereto, including assessments or rate or premium increases, if the
68 association fails to meet any targets proposed in such plan for three consecutive
69 quarters.

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

93 [8.] 7. Any association licensed pursuant to the provisions of sections
94 383.010 to 383.040 shall place on file with the director [of the department of
95 insurance], except as to excess liability risks which by general custom are not
96 written according to manual rates or rating plans, a copy of every manual of
97 classifications, rules, underwriting rules and rates, every rating plan and every
98 modification of the foregoing which it uses. Filing with the director [of the
99 department of insurance] within ten days after such manuals, rating plans or

100 modifications thereof are effective shall be sufficient compliance with this
101 subsection. Any rates, rating plans, rules, classifications or systems in effect or
102 in use by an association on August 28, 1992, may continue to be used by the
103 association. Upon written application of a member of an association, stating his
104 or her reasons therefor, filed with the association, a rate in excess of that
105 provided by a filing otherwise applicable may be used by the association for that
106 member.

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

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

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

12 (2) Specialty coverage of the insured;

13 (3) Insured's policy number;

14 (4) Nature and substance of the claim;

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

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

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

20 (8) Expenses incurred; and

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

22 3. As used in [this section], "insurer" includes every insurance company
23 authorized to transact insurance business in this state, every unauthorized
24 insurance company transacting business pursuant to chapter 384, RSMo, every
25 risk retention group, every insurance company issuing insurance to or through
26 a purchasing group, every entity operating under this chapter, and any
27 other person providing insurance coverage in this state[. With respect to any
28 insurer transacting business pursuant to chapter 384, RSMo, filing the report
29 required by this section shall be the obligation of the surplus lines broker or

30 licensee originating or accepting the insurance], including self-insured health
31 care providers.

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

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

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

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

383.107. Not later than December 31, 2009, and at least annually
2 thereafter, the director shall, utilizing the information provided
3 pursuant to section 383.106, establish and publish a market rate
4 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

6 a three percent market share of the medical malpractice insurance
7 market as of December thirty-first of the prior year, which are certified
8 to have rates which are not inadequate by an actuary selected and
9 approved by the director.

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

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

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

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

9 it is self-insuring its exposure to medical malpractice liability.

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

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

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

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

12 2. In making a determination under subsection 1 of this section,
13 the director of the department of insurance may use the following
14 factors:

15 (1) Rates shall not be excessive or inadequate, nor shall they be
16 unfairly discriminatory;

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

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

23 (4) To the extent Missouri loss experience is available, rates and
24 projected losses shall be based on Missouri loss experience and not the
25 insurance company's or the insurance industry's loss experiences in

26 states other than Missouri unless the failure to do so jeopardizes the
27 financial stability of the insurer; provided however, that loss
28 experiences relating to the specific proposed insured occurring outside
29 the state of Missouri may be considered in allowing a surcharge to such
30 insured's premium rate;

31 (5) Investment income or investment losses of the insurance
32 company for the ten-year period prior to the request for rate approval
33 may be considered in reviewing rates. Investment income or
34 investment losses for a period of less than ten years shall not be
35 considered in reviewing rates. Industry-wide investment income or
36 investment losses for the ten-year period prior to the request for rate
37 approval may be considered for any insurance company that has not
38 been authorized to issue insurance for more than ten years;

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

40 (7) Inflation;

41 (8) Reasonable administrative costs of the insurer;

42 (9) Reasonable costs of defense of claims against Missouri health
43 care providers;

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

50 (11) Any other reasonable factors may be considered in the
51 disapproval of the rate request.

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

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

62 (1) Loss experiences;

63 (2) Training and experience;
64 (3) Number of employees of the insured entity;
65 (4) Availability of equipment, capital, or hospital privileges;
66 (5) Loss prevention measures taken by the insured;
67 (6) The number and extent of claims not resulting in losses;
68 (7) The specialty or subspecialty of the health care provider;
69 (8) Access to equipment and hospital privileges; and
70 (9) Any other reasonable criteria identified by the insurer and
71 filed with the department of insurance.

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

77 6. The director of the department of insurance shall promulgate
78 rules for the administration and enforcement of this section. Any rule
79 or portion of a rule, as that term is defined in section 536.010, RSMo,
80 that is created under the authority delegated in this section shall
81 become effective only if it complies with and is subject to all of the
82 provisions of chapter 536, RSMo, and, if applicable, section 536.028,
83 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
84 of the powers vested with the general assembly pursuant to chapter
85 536, RSMo, to review, to delay the effective date, or to disapprove and
86 annul a rule are subsequently held unconstitutional, then the grant of
87 rulemaking authority and any rule proposed or adopted after August
88 28, 2006, shall be invalid and void.

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

383.450. 1. As used in this section, "insurer" includes every
2 insurance company authorized to transact business in this state, every
3 unauthorized insurance company transacting business pursuant to

4 chapter 384, RSMo, every risk retention group, every insurance
5 company issuing policies or providing benefits to or through a
6 purchasing group, and any other person providing medical malpractice
7 insurance coverage in this state.

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

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

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

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

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