

SENATE SUBSTITUTE  
FOR  
SENATE COMMITTEE SUBSTITUTE  
FOR  
HOUSE COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 1837  
AN ACT

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

---

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,  
AS FOLLOWS:

1       Section A. Sections 374.046, 383.010, 383.035, and 383.105,  
2 RSMo, are repealed and eighteen new sections enacted in lieu  
3 thereof, to be known as sections 374.046, 374.047, 374.048,  
4 374.049, 383.010, 383.016, 383.035, 383.105, 383.106, 383.107,  
5 383.108, 383.124, 383.196, 383.197, 383.198, 383.199, 383.450,  
6 and 383.515, to read as follows:

7       374.046. 1. [(1) The director may issue cease and desist  
8 orders whenever it appears to him upon competent and substantial  
9 evidence that any person is acting in violation of any law of  
10 this state or any rule or regulation promulgated by the director  
11 relating to the business of insurance. Before any cease and  
12 desist order shall be issued, a copy of the proposed order  
13 together with an order to show cause why such cease and desist  
14 order should not be issued shall be served either personally or

1 by certified mail on any person named therein.

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

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

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

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

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

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

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

7 2.] If the director determines based upon substantial and  
8 competent evidence that a person has engaged, is engaging in or  
9 has taken a substantial step toward engaging in an act, practice,  
10 omission, or course of business constituting a violation of the  
11 laws of this state relating to insurance in this chapter, chapter  
12 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or  
13 order issued pursuant thereto or that a person has materially  
14 aided or is materially aiding an act, practice, omission, or  
15 course of business constituting a violation of the laws of this  
16 state relating to insurance in this chapter, chapter 354, RSMo,  
17 and chapters 375 to 385, RSMo, or a rule adopted or order issued  
18 pursuant thereto, the director may order the following relief:

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

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

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

26 (4) Award reasonable costs of the investigation.

27 2. In determining any relief sought, the director shall  
28 consider, among other factors, whether:

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

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

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

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

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

23       4. If the director determines that sections 375.014,  
24 375.144, or 375.310, RSMo, are being violated and consumers are  
25 being aggrieved by the violations, the order issued under  
26 subdivision (1) of subsection 1 of this section may be summary  
27 and be effective on the date of issuance. Upon issuance of the  
28 order, the director shall promptly serve each person subject to

1 the order with a copy of the order and a notice that the order  
2 has been entered.

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

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

25 7. In a final order under subsection 6 of this section, the  
26 director may impose a civil penalty or forfeiture as provided in  
27 section 374.049. No civil penalty or forfeiture may be imposed  
28 against a person unless the person has engaged in the act,

1 practice, omission, or course of business constituting the  
2 violation.

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

9 9. The director is authorized to issue subpoenas, compel  
10 attendance of witnesses, administer oaths, hear testimony of  
11 witnesses, receive evidence, and require the production of books,  
12 papers, records, correspondence, and all other written  
13 instruments or documents relevant to the proceeding and  
14 authorized in contested cases under the provisions of chapter  
15 536, RSMo, and procedural rules promulgated by the director.

16 10. Statements of charges, notices, orders, and other  
17 processes of the director may be served by anyone duly authorized  
18 by the director either in the manner provided by law for service  
19 of process in civil actions, or by registering or certifying and  
20 mailing a copy thereof to the person affected by such statement,  
21 notice, order, or other process at his or its residence or  
22 principal office or place of business. The verified return by  
23 the person so serving such statement, notice, order, or other  
24 process setting forth the manner of such service shall be proof  
25 of the same, and the return postcard receipt for such statement,  
26 notice, order, or other process, registered and mailed as  
27 aforsaid, shall be proof of the service of the same.

28 11. If a petition for judicial review of a final order is

1 not filed in accordance with section 374.055, the director may  
2 file a certified copy of the final order with the clerk of a  
3 court of competent jurisdiction. The order so filed has the same  
4 effect as a judgment of the court and may be recorded, enforced,  
5 or satisfied in the same manner as a judgment of the court.

6 12. If a person violates or does not comply with an order  
7 under this section, the director may under section 374.048  
8 petition a court of competent jurisdiction to enforce the order.  
9 The court may not require the director to post a bond in an  
10 action or proceeding under this section. If the court finds,  
11 after service and opportunity for hearing, that the person was  
12 not in compliance with the order, the court may, in addition to  
13 relief authorized in section 374.048, adjudge the person in civil  
14 contempt of the order. A violation of or failure to comply with  
15 an order under this section is a level three violation under  
16 section 374.049. The court may impose a further civil penalty  
17 against the person for contempt in an amount not less than five  
18 thousand dollars but not greater than one hundred thousand  
19 dollars for each violation and may grant any other relief the  
20 court determines is just and proper in the circumstances.

21 13. Until the expiration of the time allowed under section  
22 374.055 for filing a petition for judicial review, if no such  
23 petition has been duly filed within such time or if a petition  
24 for review has been filed within such time, then until the  
25 transcript of the record in the proceeding has been filed in the  
26 circuit court of Cole County, the director may at any time, upon  
27 such notice and in such manner as he shall deem proper, modify or  
28 set aside in whole or in part any order issued by him under this

1 section.

2 14. The enforcement authority of the director under this  
3 section is cumulative to any other statutory authority of the  
4 director.

5 15. The director is authorized to issue administrative  
6 consent orders in the public interest as complete or partial  
7 settlement of any investigation, examination, or other  
8 proceeding, which curative orders may contain any provision  
9 necessary or appropriate to assure compliance with the insurance  
10 laws of this state, require payment of restitution to be  
11 distributed directly or by the director to any aggrieved  
12 consumers, civil penalties, or voluntary forfeiture,  
13 reimbursement for costs of investigation or examination, or any  
14 other relief deemed by the director to be necessary and  
15 appropriate. Any remaining matters not addressed in settlement  
16 may be submitted to the director through a contested proceeding  
17 under this section.

18 16. (1) Any person willfully violating any provision of  
19 any cease and desist order of the director after it becomes  
20 final, while the same is in force, upon conviction thereof shall  
21 be punished by a fine of not more than one hundred thousand  
22 dollars [or one year in jail], by imprisonment of up to ten  
23 years, or by both such fine and [jail sentence] imprisonment.

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



1           [3. (1) When it appears to the director that there is a  
2 violation of the laws of this state or any rule or regulation  
3 promulgated by the director relating to the business of  
4 insurance, and that the continuance of the acts or actions of any  
5 person as herein defined would produce injury to the insuring  
6 public or to any other person in this state, or when it appears  
7 that a person is doing or threatening to do some act in violation  
8 of the laws of this state relating to insurance, the director may  
9 file a petition for injunction in the circuit court of Cole  
10 County, Missouri, in which he may ask for a temporary injunction  
11 or restraining order as well as a permanent injunction to  
12 restrain the act or threatened act. In the event the temporary  
13 injunction or restraining order or a permanent injunction is  
14 issued by the circuit court of Cole County, Missouri, no person  
15 against whom the temporary injunction or restraining order or  
16 permanent injunction is granted shall do or continue to do any of  
17 the acts or actions complained of in the petition for injunction,  
18 unless and until the temporary injunction or restraining order or  
19 permanent injunction is vacated, dismissed or otherwise  
20 terminated.

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

1           4.] 17. The term "person" as used in this [section] chapter  
2 shall include any individual, partnership, corporation,  
3 association or trust, or any other legal entity.

4           18. The term "order" as used in this chapter shall include  
5 a formal administrative direction or command of the director  
6 issued under this section or in any contested case subject to the  
7 provisions of section 536.063, RSMo, or any lawful administrative  
8 proceeding subject to judicial review, but shall not include  
9 department bulletins, no-action letters, advisory opinions, or  
10 any other statement of general applicability that should be  
11 adopted by rule.

12           374.047. 1. If the director determines, based on  
13 substantial and competent evidence, that a corporation or insurer  
14 with a certificate of authority under the laws relating to  
15 insurance willfully has engaged in an act, practice, omission, or  
16 course of business constituting a level three, four, or five  
17 violation of the laws of this state relating to insurance in this  
18 chapter, chapter 354 and chapters 375 to 385, RSMo, or been  
19 convicted of any felony or misdemeanor under any state or federal  
20 law, the director may, after hearing, issue an order suspending  
21 or revoking the certificate of authority.

22           2. Prior to issuance of the order under this section, the  
23 director shall give at least thirty days' notice with a statement  
24 of reasons for the action and afford such corporation or insurer  
25 the opportunity for a hearing upon written request. If such  
26 corporation or insurer requests a hearing in writing, a final  
27 order of suspension or revocation may not be issued unless the  
28 director makes findings of fact and conclusions of law in a

1 record in accordance with the contested case provisions of  
2 chapter 536, RSMo, and procedural rules promulgated by the  
3 director.

4 3. The enforcement authority of the director under this  
5 section is cumulative to any other statutory authority of the  
6 director.

7 374.048. 1. If the director believes that a person has  
8 engaged, is engaging in or has taken a substantial step toward  
9 engaging in an act, practice, omission, or course of business  
10 constituting a violation of the laws of this state relating to  
11 insurance in this chapter, chapter 354 and chapters 375 to 385,  
12 RSMo, or a rule adopted or order issued pursuant thereto or that  
13 a person has or is engaging in an act, practice, omission, or  
14 course of business that materially aids a violation of the laws  
15 of this state relating to insurance in this chapter, chapter 354  
16 and chapters 375 to 385, RSMo, or a rule adopted or order issued  
17 pursuant thereto, the director may maintain an action in the  
18 circuit court of any county of the state or any city not within a  
19 county to enjoin the act, practice, omission, or course of  
20 business and to enforce compliance with the laws of this state  
21 relating to insurance or a rule adopted or order issued by the  
22 director.

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

25 (1) Issue a permanent or temporary injunction, restraining  
26 order, or declaratory judgment;

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

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

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

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

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

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

18    (f) Ordering reasonable costs of investigation and  
19    prosecution; and

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

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

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

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

6       5. The enforcement authority of the director under this  
7       section is cumulative to any other authority of the director to  
8       impose orders under other provisions of the laws relating to  
9       insurance in this state.

10       6. If the director determines it to be in the public  
11       interest, the director is authorized to enter into a consent  
12       injunction and judgment in the settlement of any proceeding under  
13       the laws of this state relating to insurance in this chapter,  
14       chapter 354 and chapters 375 to 385, RSMo.

15       7. A "Consumer Restitution Fund" shall be created for the  
16       purpose of preserving and distributing to aggrieved consumers  
17       disgorgement or restitution funds obtained through enforcement  
18       proceedings brought by the director. In addition to the  
19       equitable powers of the court authorized above, the court may  
20       order that such funds be paid into the consumer restitution fund  
21       for distribution to aggrieved consumers. It shall be the duty of  
22       the director to distribute such funds to those persons injured by  
23       the unlawful acts, practices, omissions, or courses of business  
24       by the subject of the proceeding. Notwithstanding the provisions  
25       of section 33.080, RSMo, any funds remaining in the director's  
26       consumer restitution fund at the end of any biennium shall not be  
27       transferred to the general revenue fund, but if the director is  
28       unable with reasonable efforts to ascertain the aggrieved

1 consumers, then the funds may be transferred to the insurance  
2 dedicated fund to be used for consumer education.

3 374.049. 1. Violations of the laws of this state relating  
4 to insurance in this chapter, chapter 354 and chapters 375 to  
5 385, RSMo, or a rule adopted or order issued by the director, are  
6 classified for the purpose of civil penalties and forfeitures  
7 into the following five classifications:

8 (1) Level one violations;

9 (2) Level two violations;

10 (3) Level three violations;

11 (4) Level four violations; and

12 (5) Level five violations.

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

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

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

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

28 (4) Ten thousand dollars per each level four violation, up

1 to an aggregate civil penalty or forfeiture of two hundred fifty  
2 thousand dollars per annum for multiple violations;

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

6 3. An order to impose a civil penalty or forfeiture, when  
7 imposed by the court in an enforcement proceeding under section  
8 374.048 on a person for any violation of the laws of this state  
9 relating to insurance in this chapter, chapter 354 and chapters  
10 375 to 385, RSMo, or a rule adopted or order issued by the  
11 director, shall be an order to pay an amount not exceeding the  
12 following:

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

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

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

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

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

27 4. No civil penalty or forfeiture may be imposed against a  
28 person, unless the person has engaged in the act, practice,

1 omission or course of business constituting the violation.

2 5. Any violation of the laws of this state relating to  
3 insurance in this chapter, chapter 354 and chapters 375 to 385,  
4 RSMo, which is not classified or does not authorize a specific  
5 range for a civil penalty or forfeiture for violations, shall be  
6 classified as a level one violation. In bringing an action to  
7 enforce a rule adopted by the director, unless the conduct that  
8 violates the rule also violates the enabling statute, the  
9 violation shall be classified as a level one violation and shall  
10 not be subject to any provision in this section regarding the  
11 enhancement of a civil penalty or forfeiture.

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

18 7. In any enforcement proceeding, the court, or director in  
19 administrative enforcement, may enhance the civil penalty or  
20 forfeiture with a one classification step increase under this  
21 section, if the violation was knowing. The court, or director in  
22 administrative enforcement, may enhance the civil penalty or  
23 forfeiture with a two level increase if the violation was  
24 knowingly committed in conscious disregard of the law.

25 8. In any enforcement proceeding, the court, or director in  
26 administrative enforcement, may, after consideration of the  
27 factors specified in subsection 2 of section 374.046, enhance the  
28 civil penalty or forfeiture with a one classification step



1 increase under this section, if the violations resulted in actual  
2 financial loss to consumers.

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

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

16 11. Any civil penalty or forfeiture recovered by the  
17 director shall be paid to the treasurer and then distributed to  
18 the public schools as required by Article IX, section 7 of the  
19 Missouri Constitution.

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

23 383.010. 1. Notwithstanding any direct or implied  
24 prohibitions in chapter 375, 377, or 379, RSMo, any three or more  
25 persons, residents of this state, being licensed under the  
26 provisions of chapter 330, 331, 332, 334, 335, 336, 338 or 339,  
27 RSMo, or under rule 8 of the supreme court of Missouri or  
28 architects licensed pursuant to chapter 327, RSMo, may, as

1 provided in sections 383.010 to 383.040, form a business entity  
2 for the purpose of providing malpractice insurance or  
3 indemnification for such persons upon the assessment plan, and  
4 upon compliance with section 379.260, RSMo, liability and  
5 automobile insurance as defined in subdivisions (1) and (3) of  
6 section 379.230, RSMo, may be provided upon the assessment plan  
7 to those persons licensed pursuant to chapter 197, RSMo, and for  
8 whom medical malpractice insurance is provided under this  
9 section, except that automobile insurance shall be provided only  
10 for ambulances as defined in section 190.100, RSMo. [Hospitals,  
11 public or private, whether incorporated or not, as defined in  
12 chapter 197, RSMo, if licensed by the state of Missouri,] Any  
13 entity licensed under chapter 197, RSMo, professional  
14 corporations [formed under the provisions of chapter 356, RSMo,  
15 for the practice of law and corporations, copartnerships or  
16 associations licensed under the provisions of chapter 339, RSMo],  
17 and limited liability companies, corporations, limited liability  
18 partnerships, partnerships, and other similar entities formed for  
19 the practice of law or medicine may also become members of any  
20 such entity. The term "persons" as used in sections 383.010 to  
21 383.040 includes such hospitals, professional corporations and  
22 real estate business entities.

23 2. Anything in this section to the contrary  
24 notwithstanding, any persons duly licensed under the provisions  
25 of the laws of any other state who, if licensed under any similar  
26 provisions of the laws of this state, would be eligible to become  
27 members and insureds of an entity created under the authority of  
28 this section, may become members and insureds of such an entity,

1     irrespective of whether such persons are residents of this state;  
2     provided, however, that any such persons must be employed by, or  
3     be a partner, shareholder or member of, a professional  
4     corporation, corporation, copartnership or association insured by  
5     or to be insured by such an entity.

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

11            383.016. The articles of association and the bylaws of any  
12    association created under the provisions of sections 383.010 to  
13    383.040 shall:

14            (1) Specify and define the types of assessments, including  
15    but not limited to initial, regular, operating, special, any  
16    other assessment to cover losses and expenses incurred in the  
17    operation of the association, or any other assessment to maintain  
18    or restore the association's assets, solvency, or surplus;

19            (2) Specify by type of assessment the assessments that  
20    shall apply to members, former members, or both members and  
21    former members of the association; and

22            (3) With respect to any assessment to cover losses and  
23    expenses incurred in the operation of the association and any  
24    assessment to maintain or restore the association's assets,  
25    solvency, or surplus specify:

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

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

1       (c) That such assessments shall be made without limitation  
2       as to frequency;

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

4       (e) That such assessments shall apply to members and former  
5       members; and

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

9           383.035. 1. Any association licensed pursuant to the  
10       provisions of sections 383.010 to 383.040 shall be subject to the  
11       provisions of the following provisions of the revised statutes of  
12       Missouri:

13           (1) Sections 374.010, 374.040, 374.046 to 374.049, 374.110,  
14       374.115, 374.122, 374.170, 374.190, 374.210, 374.215, 374.216,  
15       374.230, 374.240, 374.250 and 374.280, RSMo, relating to the  
16       general authority of the director of the department of insurance;

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

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

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

24           (5) Section 375.246, RSMo, relating to reinsurance  
25       requirements, except that no association shall be required to  
26       maintain reinsurance, and for insurance issued to members who  
27       joined the association on or before January 1, 1993, an  
28       association shall be allowed credit, as an asset or as a

1 deduction from liability, for reinsurance which is payable to the  
2 ceding association's insured by the assuming insurer on the basis  
3 of the liability of the ceding association under contracts  
4 reinsured without diminution because of the insolvency of the  
5 ceding association;

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

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

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

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

18 (10) Sections 383.100 to 383.125 relating to reports from  
19 medical malpractice insurers;

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

22 2. [Any association which was licensed pursuant to the  
23 provisions of sections 383.010 to 383.040 on or before January 1,  
24 1992, shall be allowed until December 31, 1995, to comply with  
25 the provisions of this section as they relate to investments,  
26 reserves and reinsurance.

27 3.] Any association licensed pursuant to the provisions of  
28 sections 383.010 to 383.040 shall file with its annual statement

1 a certification by a fellow or an associate of the Casualty  
2 Actuarial Society. Such certification shall conform to the  
3 National Association of Insurance Commissioners annual statement  
4 instructions unless otherwise provided by the director [of the  
5 department of insurance].

6 [4.] 3. The director [of the department of insurance] shall  
7 have authority in accordance with section 374.045, RSMo, to make  
8 all reasonable rules and regulations to accomplish the purpose of  
9 sections 383.010 to 383.040, including the extent to which  
10 insurance provided by an association may be extended to provide  
11 payment to a covered person resulting from a specific illness  
12 possessed by such covered person; except that no rule or  
13 regulation may place limitations or restrictions on the amount of  
14 premium an association may write or on the amount of insurance or  
15 limit of liability an association may provide.

16 [5.] 4. Other than as provided in this section, no other  
17 insurance law of the state of Missouri shall apply to an  
18 association licensed pursuant to the provisions of this chapter,  
19 unless such law shall expressly state it is applicable to such  
20 associations.

21 [6.] 5. If, [after August 28, 1992, and] after its second  
22 full calendar year of operation, any association licensed under  
23 the provisions of sections 383.010 to 383.040 shall file an  
24 annual statement which shows a surplus as regards policyholders  
25 of less than zero dollars, or if the director [of the department  
26 of insurance] has other conclusive and credible evidence more  
27 recent than the last annual statement indicating the surplus as  
28 regards policyholders of an association is less than zero

1 dollars, the director [of the department of insurance] may order  
2 such association to submit, within ninety days following such  
3 order, a voluntary plan under which the association will restore  
4 its surplus as regards policyholders to at least zero dollars.  
5 The director [of the department of insurance] may monitor the  
6 performance of the association's plan and may order modifications  
7 thereto, including assessments or rate or premium increases, if  
8 the association fails to meet any targets proposed in such plan  
9 for three consecutive quarters.

10 [7.] 6. If the director [of the department of insurance]  
11 issues an order in accordance with subsection [6] 5 of this  
12 section, the association may, in accordance with chapter 536,  
13 RSMo, file a petition for review of such order. Any association  
14 subject to an order issued in accordance with subsection [6] 5 of  
15 this section shall be allowed a period of three years, or such  
16 longer period as the director may allow, to accomplish its plan  
17 to restore its surplus as regards policyholders to at least zero  
18 dollars. If at the end of the authorized period of time the  
19 association has failed to restore its surplus to at least zero  
20 dollars, or if the director [of the department of insurance] has  
21 ordered modifications of the voluntary plan and the association's  
22 surplus has failed to increase within three consecutive quarters  
23 after such modification, the director [of the department of  
24 insurance] may allow an additional time for the implementation of  
25 the voluntary plan or may exercise [his] the director's powers to  
26 take charge of the association as [he] the director would a  
27 mutual casualty company pursuant to sections 375.1150 to  
28 375.1246, RSMo. Sections 375.1150 to 375.1246, RSMo, shall apply

1 to associations licensed pursuant to sections 383.010 to 383.040  
2 only after the conditions set forth in this section are met.  
3 When the surplus as regards policyholders of an association  
4 subject to subsection [6] 5 of this section has been restored to  
5 at least zero dollars, the authority and jurisdiction of the  
6 director [of the department of insurance] under subsections 5 and  
7 6 [and 7] of this section shall terminate, but this subsection  
8 may again thereafter apply to such association if the conditions  
9 set forth in subsection [6] 5 of this section for its application  
10 are again satisfied.

11 [8.] 7. Any association licensed pursuant to the provisions  
12 of sections 383.010 to 383.040 shall place on file with the  
13 director [of the department of insurance], except as to excess  
14 liability risks which by general custom are not written according  
15 to manual rates or rating plans, a copy of every manual of  
16 classifications, rules, underwriting rules and rates, every  
17 rating plan and every modification of the foregoing which it  
18 uses. Filing with the director [of the department of insurance]  
19 within ten days after such manuals, rating plans or modifications  
20 thereof are effective shall be sufficient compliance with this  
21 subsection. Any rates, rating plans, rules, classifications or  
22 systems in effect or in use by an association on August 28, 1992,  
23 may continue to be used by the association. Upon written  
24 application of a member of an association, stating his or her  
25 reasons therefor, filed with the association, a rate in excess of  
26 that provided by a filing otherwise applicable may be used by the  
27 association for that member.

28 383.105. 1. Every insurer providing medical malpractice



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

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

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

14 (2) Specialty coverage of the insured;

15 (3) Insured's policy number;

16 (4) Nature and substance of the claim;

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

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

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

22 (8) Expenses incurred; and

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

25 3. As used in [this section] sections 383.100 to 383.125,  
26 "insurer" includes every insurance company authorized to transact  
27 insurance business in this state, every unauthorized insurance  
28 company transacting business pursuant to chapter 384, RSMo, every

1 risk retention group, every insurance company issuing insurance  
2 to or through a purchasing group, every entity operating under  
3 this chapter, and any other person providing insurance coverage  
4 in this state[. With respect to any insurer transacting business  
5 pursuant to chapter 384, RSMo, filing the report required by this  
6 section shall be the obligation of the surplus lines broker or  
7 licensee originating or accepting the insurance], including self-  
8 insured health care providers.

9       383.106. 1. To effectively monitor the insurance  
10 marketplace, rates, financial solvency, and affordability and  
11 availability of medical malpractice coverage, the director shall  
12 establish by rule or order reporting standards for insurers by  
13 which the insurers, or an advisory organization designated by the  
14 director, shall annually report such Missouri medical malpractice  
15 insurance premium, loss, exposure, and other information as the  
16 director may require.

17       2. The director shall, prior to May 30, 2007, establish  
18 risk reporting categories for medical malpractice insurance, as  
19 defined in section 383.150, and shall establish regulations for  
20 the reporting of all base rates and premiums charged in those  
21 categories as determined by the director. The director shall  
22 consider the history of prior court judgments for claims under  
23 this chapter in each county of the state in establishing the risk  
24 reporting categories.

25       3. The director shall collect the information required in  
26 this section and compile it in a manner appropriate for assisting  
27 Missouri medical malpractice insurers in developing their future  
28 base rates, schedule rating, or individual risk rating factors

1 and other aspects of their rating plans. In compiling the  
2 information and making it available to Missouri insurers and the  
3 public, the director shall remove any individualized information  
4 that identifies a particular insurer as the source of the  
5 information. The director may combine such information with  
6 similar information obtained through insurer examinations so as  
7 to cover periods of more than one year.

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

15 383.107. Not later than December 31, 2009, and at least  
16 annually thereafter, the director shall, utilizing the  
17 information provided pursuant to section 383.106, establish and  
18 publish a market rate reflecting the median of the actual rates  
19 charged for each of the risk reporting categories for the  
20 preceding year by all insurers with at least a three percent  
21 market share of the medical malpractice insurance market as of  
22 December thirty-first of the prior year, which are certified to  
23 have rates which are not inadequate by an actuary selected and  
24 approved by the director.

25 383.108. The director shall, utilizing the information  
26 provided under section 383.106, publish comparisons of the base  
27 rates charged by each insurer actively writing medical  
28 malpractice insurance.

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

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

26       383.196. As used in sections 383.196 to 383.199, "insurer"  
27 includes any insurance company, mutual insurance company, medical  
28 malpractice association, any entity created under this chapter,

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

8 383.197. 1. Every insurer shall file with the director all  
9 rates and supplementary rate information which is to be used in  
10 this state. Such rates and supplementary rate information shall  
11 be filed before use.

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

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

21 383.198. 1. Notwithstanding the provisions of sections  
22 383.037 and 383.160, no insurer shall issue or sell in the state  
23 of Missouri a policy insuring a health care provider, as defined  
24 in section 538.205, RSMo, for damages for personal injury or  
25 death arising out of the rendering of or failure to render health  
26 care services if the director finds, based upon competent and  
27 compelling evidence, that the base rates of such insurer are  
28 excessive, inadequate, or unfairly discriminatory. A rate may be

1 used by an insurer immediately after it has been filed with the  
2 director, until or unless the director has determined under this  
3 section that a rate is excessive, inadequate, or unfairly  
4 discriminatory.

5 2. In making a determination under subsection 1 of this  
6 section, the director of the department of insurance may use the  
7 following factors:

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

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

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

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

25 (5) Investment income or investment losses of the insurance  
26 company for the ten-year period prior to the request for rate  
27 approval may be considered in reviewing rates. Investment income  
28 or investment losses for a period of less than ten years shall

not be considered in reviewing rates. Industry-wide investment income or investment losses for the ten-year period prior to the request for rate approval may be considered for any insurance company that has not been authorized to issue insurance for more than ten years;

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

(7) Inflation;

(8) Reasonable administrative costs of the insurer;

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

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

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

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

4. If actuarially supported and included in a filed rate, rating plan, rule, manual, or rating system, an insurer may charge an additional premium or grant a discount rate to any health care provider based on criteria as it relates to a

specified insured health care provider or other specific health care providers within the specific insured's employ or business entity. Such criteria may include:

\_\_\_\_\_ (1) Loss experiences;

\_\_\_\_\_ (2) Training and experience;

\_\_\_\_\_ (3) Number of employees of the insured entity;

\_\_\_\_\_ (4) Availability of equipment, capital, or hospital privileges;

\_\_\_\_\_ (5) Loss prevention measures taken by the insured;

\_\_\_\_\_ (6) The number and extent of claims not resulting in losses;

\_\_\_\_\_ (7) The specialty or subspecialty of the health care provider;

\_\_\_\_\_ (8) Access to equipment and hospital privileges; and

\_\_\_\_\_ (9) Any other reasonable criteria identified by the insurer and filed with the department of insurance.

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

6. The director of the department of insurance shall promulgate rules for the administration and enforcement of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This



1 section and chapter 536, RSMo, are nonseverable and if any of the  
2 powers vested with the general assembly pursuant to chapter 536,  
3 RSMo, to review, to delay the effective date, or to disapprove  
4 and annul a rule are subsequently held unconstitutional, then the  
5 grant of rulemaking authority and any rule proposed or adopted  
6 after August 28, 2006, shall be invalid and void.

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

16 383.450. 1. As used in this section, "insurer" includes  
17 every insurance company authorized to transact business in this  
18 state, every unauthorized insurance company transacting business  
19 pursuant to chapter 384, RSMo, every risk retention group, every  
20 insurance company issuing policies or providing benefits to or  
21 through a purchasing group, and any other person providing  
22 medical malpractice insurance coverage in this state.

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

26 (1) Fail or refuse to renew the insurance without first  
27 providing written notice by certified United States mail to the  
28 insured at least sixty days prior to the effective date of such

1 actions, unless such failure or refusal to renew is based upon a  
2 failure to pay sums due or a termination or suspension of the  
3 health care provider's license to practice medicine in the state  
4 of Missouri, termination of the insurer's reinsurance program, or  
5 a material change in the nature of the insured's health care  
6 practice; or

7 \_\_\_\_\_ (2) Cease the issuance of such policies of insurance in the  
8 state of Missouri without first providing written notice by  
9 certified United States mail to the insured and to the Missouri  
10 department of insurance at least one hundred eighty days prior to  
11 the effective date of such actions.

12 \_\_\_\_\_ 3. Any insurer that fails to provide the notice required  
13 under subdivision (1) of subsection 2 of this section shall, at  
14 the option of the insured, continue the coverage for the  
15 remainder of the notice period plus an additional thirty days at  
16 the premium rate of the existing policy.

17 383.515. 1. There is hereby created within the department  
18 of insurance the "Health Care Stabilization Fund Feasibility  
19 Board". The primary duty of the board is to determine whether a  
20 health care stabilization fund should be established in Missouri  
21 to provide excess medical malpractice insurance coverage for  
22 health care providers. As part of its duties, the board shall  
23 develop a comprehensive study detailing whether a health care  
24 stabilization fund is feasible within Missouri, or specified  
25 geographic regions thereof, or whether a health care  
26 stabilization fund would be feasible for specific medical  
27 specialties. The board shall analyze medical malpractice  
28 insurance data collected by the department of insurance under

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

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

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

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

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

27 (4) One member who is licensed to practice medicine as a  
28 medical doctor who is on a list of nominees submitted to the

director by an organization representing Missouri's medical society;

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

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

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

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

3. The director shall appoint the members of the board, other than the general assembly members, no later than January 1, 2007. Once appointed, the board shall meet at least quarterly, and shall submit its final report and recommendations regarding the feasibility of a health care stabilization fund to the governor and the general assembly no later than December 31, 2010. The board shall also submit annual interim reports to the general assembly regarding the status of its progress.

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

5. The director of the department of insurance shall provide and coordinate staff and equipment services to the board

1 to facilitate the board's duties.

2 6. Board members shall receive no additional compensation  
3 but shall be eligible for reimbursement for expenses directly  
4 related to the performance of their duties.

5 7. The provisions of this section shall expire December 31,  
6 2010.