

SS SCS HCS HB 1837 -- MEDICAL MALPRACTICE INSURANCE AND
ENFORCEMENT POWERS OF THE DEPARTMENT OF INSURANCE

This bill changes the laws regarding medical malpractice insurance and the enforcement powers of the Department of Insurance.

MEDICAL MALPRACTICE INSURANCE

The bill:

- (1) Allows limited liability companies, corporations, limited liability partnerships, partnerships, and other entities formed for the practice of law or medicine to become members of an association providing malpractice insurance to its members;
- (2) Requires the malpractice association's articles of association and bylaws to specify and define the types of assessments its members and former members might have to pay to cover losses and expenses incurred by the association;
- (3) Makes associations writing malpractice insurance subject to reporting, notification, and rating requirements;
- (4) Requires the Director of the Department of Insurance to establish risk reporting categories and reporting standards for insurers to annually report medical malpractice insurance premiums, losses, exposures, and other information the director may require. The director will compile this information in a manner appropriate for assisting medical malpractice insurers in developing future base rates, schedule rating, or individual risk rating factors and other aspects of their rating plans;
- (5) Requires the director to annually establish and publish a market rate reflecting the mean of the actual rates charged for each risk reporting category and publish comparisons of the base rates charged by each insurer;
- (6) Allows the director to issue administrative orders and seek other remedies specified in the bill to assure compliance for violations of the provisions relating to reporting medical malpractice information;
- (7) Prohibits medical malpractice insurers from charging rates that are excessive, inadequate, or unfairly discriminatory. Rates will be based upon Missouri loss experience if available, not experience from other states unless the failure to do so will jeopardize the financial stability of the insurer;
- (8) Prohibits an insurer from increasing malpractice insurance

rates by more than 15% or refusing to renew a policy without at least 60 days' written notification unless requested by the insured or due to changes in the insured's practice or risk characteristics. Insurers cannot cease issuing policies in this state without 180 days' written notice to the insured and the director. If an insurer fails to give notice, the policyholder has the right to continue coverage under the policy; and

(9) Creates the Health Care Stabilization Fund Feasibility Board within the department to analyze medical malpractice data to determine whether a health care stabilization fund should be established in Missouri. The board will consist of 10 members including the department director, a medical doctor, a doctor of osteopathy, a licensed nurse, a representative of Missouri's hospitals, a family physician, and two members each from the Senate and House of Representatives. As part of its duties, the board will conduct a comprehensive study on whether a health care stabilization fund is feasible within Missouri, or specified geographic regions thereof, or for specific medical specialties. If the board determines that a fund is feasible, it will recommend to the General Assembly the structure, design, and funding. The director will appoint the members of the board, other than the General Assembly members, no later than January 1, 2007. The board will meet at least quarterly submitting annual reports on its progress with a final report and recommendations to the Governor and General Assembly by December 31, 2010, when the board expires.

ENFORCEMENT POWERS OF THE DEPARTMENT OF INSURANCE

The bill:

(1) Allows the Director of the Department of Insurance, upon determining that a person has violated or attempted to violate provisions of the insurance laws, to order the following relief:

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

(b) A curative order or order directing the person to take other action necessary to comply with the insurance laws;

(c) Order a civil penalty or forfeiture; and

(d) Award reasonable costs of the investigation;

(2) Authorizes fines of up to \$100,000 and imprisonment of up to 10 years if a person violates a cease and desist order. Currently, a person may be punished by a maximum \$1,000 fine and up to one year in jail;

(3) Allows the director to suspend or revoke a corporation's or insurer's certificate of authority for violating insurance laws or for a felony or misdemeanor conviction. The director must provide 30 days' notice and a hearing, if requested, before revocation;

(4) Allows the director to seek redress in county circuit courts. The court can issue injunctions, freeze assets, or take other action as specified. A consumer restitution fund is created for preserving and distributing disgorgement or restitution funds obtained through enforcement procedures to aggrieved consumers; and

(5) Classifies various violations of insurance laws into five categories from level one through level five. Maximum fines are established at each level with level one being the least and level five the highest. All fines collected will go to fund public schools as required by Article IX, Section 7, of the Missouri Constitution.