

SECOND REGULAR SESSION

# HOUSE BILL NO. 2071

## 103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PHELPS.

4823H.01I

JOSEPH ENGLER, Chief Clerk

### AN ACT

To repeal section 383.155, RSMo, and to enact in lieu thereof one new section relating to the medical malpractice joint underwriting association.

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

Section A. Section 383.155, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 383.155, to read as follows:

383.155. 1. A joint underwriting association may be created, **or directed to resume operations**, upon determination by the director after a public hearing that medical malpractice liability insurance is not reasonably available for health care providers in the voluntary market. The association shall contain as members all companies authorized to write and engaged in writing, on a direct basis, any insurance or benefit, the premium for which is included under the definition of "net direct premiums". Membership in the association shall be a condition of continued authority to do business in this state.

2. A plan of operation shall be adopted to be effective concurrently with the effective date of the association.

3. The association shall, pursuant to the provisions of sections 383.150 to 383.195 and the plan of operation, with respect to medical malpractice insurance, have the authority on behalf of its members:

(1) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limits as specified in the plan of operation but not to exceed one million dollars for each claimant under one policy and three million dollars for all claimants under one policy in any one policy year;

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17           (2) To underwrite such insurance and to adjust and pay losses with respect thereto, or  
18 to appoint a service company to perform those functions;

19           (3) To assume reinsurance from its members; and

20           (4) To cede reinsurance.

21           4. Within forty-five days following the creation of the association, the directors of the  
22 association shall submit to the director for his or her review, a proposed plan of operation,  
23 consistent with the provisions of sections 383.150 to 383.195.

24           5. The plan of operation shall provide for economic, fair and nondiscriminatory  
25 administration and for the prompt and efficient distribution of medical malpractice insurance,  
26 and shall contain other provisions including, but not limited to, preliminary assessment of all  
27 members for initial expenses to commence operations, establishment of necessary facilities,  
28 management of the association, assessment of members to defray losses and expenses,  
29 reasonable and objective underwriting standards, acceptance and cession of reinsurance,  
30 appointment of a servicing company and procedures for determining amounts of insurance to  
31 be provided by the association. The preliminary assessment shall be an advance to be  
32 recouped under the provisions of subsection 5 of section 383.160.

33           6. The composition of the board and the terms of directors of the board shall be  
34 established by the plan of operation.

35           7. The plan of operation shall be subject to approval by the director after consultation  
36 with the members of the association, representatives of the public and other affected  
37 individuals and organizations. If the director disapproves all or any part of the proposed plan  
38 of operation, the directors shall within fifteen days submit for review a revised plan of  
39 operation. If the directors fail to do so, the director shall promulgate a plan of operation or  
40 part thereof, as the case may be. The plan of operation approved or promulgated by the  
41 director shall become effective and operational upon his or her order.

42           8. Amendments to the plan of operation may be made by the directors of the  
43 association, subject to the approval of the director or shall be made at his direction.

44           9. There shall be no liability imposed on the part of and no cause of action of any  
45 nature shall arise against any member insurer or any member of the board of directors for any  
46 omission or action taken by them in the performance of their powers and duties under sections  
47 383.150 to 383.195.

48           **10. (1) A majority of the directors of the board may suspend the operations of**  
49 **an association created under this section if the board of directors determine that**  
50 **medical malpractice insurance is reasonably available to health care providers in the**  
51 **voluntary market and there are two or fewer individual physicians insured annually by**  
52 **the association for at least two consecutive years.**

53           **(2) Suspension of operations of the association shall be in accordance with the**  
54 **association's plan of operation, or any amendment thereto. The association's plan of**  
55 **operation shall establish the process for suspension of operations and include provisions**  
56 **for the administration of association funds until the director determines either to**  
57 **resume operations under subsection 1 of this section or to terminate operations in**  
58 **compliance with section 383.195.**

59           **(3) During any period of suspension, the association shall not collect dues or fees**  
60 **from its members unless and until the director authorizes an assessment or authorizes**  
61 **the resumption of operations under this section.**

62           **11. As used in this section, "reasonably available" shall mean that medical**  
63 **malpractice insurance products are offered to health care providers in the voluntary**  
64 **market by insurance carriers in the ordinary course of business.**

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