

FIRST REGULAR SESSION

SENATE BILL NO. 551

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR YECKEL.

Read 1st time February 20, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1833S.011

AN ACT

To repeal sections 383.150, 383.155, 383.160, 383.170, 383.175, 383.180, 383.185, and 383.195, RSMo, and to enact in lieu thereof nine new sections relating to medical malpractice insurance.

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

Section A. Sections 383.150, 383.155, 383.160, 383.170, 383.175, 383.180, 383.185, and 383.195, RSMo, are repealed and nine new sections enacted in lieu thereof, to be known as sections 383.150, 383.155, 383.157, 383.160, 383.170, 383.175, 383.180, 383.185, and 383.195, to read as follows:

383.150. As used in sections 383.150 to 383.195, the following terms shall mean:

(1) "Association" [means], the **Missouri medical malpractice** joint underwriting association established pursuant to the provisions of sections 383.150 to 383.195;

(2) "Board", the board of directors of the **Missouri medical malpractice joint underwriting association**;

[(2)] (3) "Director" [means], the director of the department of insurance;

[(3)] (4) "Health care provider" includes physicians, dentists, clinical psychologists, pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical technicians, hospitals, nursing homes and extended care facilities; but shall not include any nursing service or nursing facility conducted by and for those who rely upon treatment by spiritual means alone in accordance with the creed or tenets of any well-recognized church or religious denomination;

[(4)] (5) "Medical malpractice insurance" [means], insurance coverage against the legal

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

liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of the negligence or malpractice in rendering professional service by any health care provider;

[(5)] **(6)** "Net direct premiums" [means], gross direct premiums written on casualty insurance in the state of Missouri by companies authorized to write casualty insurance [under] **pursuant to** chapter 379, RSMo [1969], in the state of Missouri, less return premiums thereon and dividends paid or credited to policyholders on such direct business.

383.155. 1. [A joint underwriting association may be created 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 Missouri medical malpractice joint underwriting association is created as an independent public corporation for the purpose of insuring Missouri health care providers against medical malpractice claims. The association shall be organized and operated as a domestic mutual insurance company and it shall not be a state agency. The association shall have the powers granted a general not-for-profit corporation pursuant to chapter 355, RSMo, to the extent the provisions of such chapter do not conflict with the provisions of sections 383.150 to 383.195. The association shall be licensed pursuant to section 383.015. The association shall be established pursuant to the provisions of sections 383.150 to 383.195. 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. The association shall use flexibility and experimentation in the development of types of policies and coverages offered to health care providers, subject to the approval of the director of the department of insurance.**

2. **There is created a board of directors for the association. The board shall be appointed by January 1, 2004, and shall consist of five members appointed or selected as provided in this section. The governor shall appoint the initial five members of the board with the advice and consent of the senate. Each director shall serve a five-year term. Terms shall be staggered so that no more than one director's term expires each year on the first day of July. The five directors initially appointed by the governor shall determine their initial terms by lot. At the expiration of the term of any member of the board, the association's policyholders shall elect a new director in accordance with provisions determined by the board. The board shall annually elect a chairman and any other officers it deems necessary for the performance of its duties. Board committees and subcommittees may also be formed.**

3. **The board is vested with full power, authority and jurisdiction over the**

association. The board may perform all acts necessary or convenient in the administration of the association or in connection with the insurance business to be carried on by the association. In this regard, the board is empowered to function in all aspects as a governing body of a private insurance carrier.

[2.] 4. A plan of operation shall be adopted [to be effective concurrently with the effective date of the association] **by March 1, 2004.**

[3.] 5. 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;

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

(3) To assume reinsurance from its members; and

(4) To cede reinsurance.

[4.] 6. Within forty-five days following the creation of the association, the directors of the association shall submit to the director for his review, a proposed plan of operation, consistent with the provisions of sections 383.150 to 383.195.

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

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

[7.] 9. Amendments to the plan of operation may be made by the directors of the

association, subject to the approval of the director or shall be made at his direction.

383.157. 1. By March 1, 2004, the board shall hire an administrator who shall serve at the pleasure of the board and the association shall be fully prepared to be operational by March 1, 2004, and assume its responsibilities pursuant to sections 383.150 to 383.195. The administrator shall receive compensation as established by the board and must have proven successful experience as an executive at the general management level in the insurance business.

2. The administrator of the association shall act as the association's chief executive officer. The administrator shall be in charge of the day-to-day operations and management of the association.

3. Before entering the duties of office, the administrator shall give an official bond in an amount and with sureties approved by the board. The premium for the bond shall be paid by the association.

4. The administrator shall be the custodian of the moneys of the association and all premiums, deposits or other moneys paid thereto shall be deposited with a financial institution as designated by the administrator.

5. No board member, officer or employee of the association is liable in a private capacity for any act performed or obligation entered into when done in good faith, without intent to defraud, and in an official capacity in connection with the administration, management, or conduct of the company or affairs relating to it.

383.160. 1. All association policies of insurance shall be written so as to apply to injury which results from acts or omissions occurring during the policy period. No policy form shall be used by the association unless it has been filed with the director and approved or thirty days have elapsed and [he] **the director** has not delivered to the board written disapproval of it as misleading or not in the public interest. The director shall have the power to disapprove any policy form previously approved if found by [him after hearing] **the director** to be misleading or not in the public interest.

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

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

4. In the event sufficient funds are not available for the sound financial operation of the association, additional funds shall be raised by making an assessment on all member

companies. Assessments shall be made against members in the proportion that the net direct premiums for the preceding calendar year of each member for each line of insurance requiring it to participate in said plan bear to the net direct premiums for the preceding calendar year of all members for such line of insurance; provided that, assessments made pursuant to sections 383.150 to 383.195 shall not exceed in any calendar year one percent of each member's net direct premiums attributable to the line or lines of insurance the writing of which requires it to be a member.

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

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

383.170. 1. Any health care provider shall be entitled to apply to the association for medical malpractice liability insurance. Such application may be made on behalf of an applicant by a broker or agent **or producer** authorized by the applicant.

2. If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, then the association, upon receipt of the premium, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical malpractice liability insurance.

383.175. [The association shall be governed by a board of eight directors, to be appointed by the director for the terms specified in the plan of operation. Two directors shall represent insurers which write bodily injury insurance in Missouri and are members of the National Association of Independent Insurers, two shall represent insurers which write bodily injury insurance in Missouri and are members of the American Mutual Insurance Alliance, two shall represent insurers which write bodily injury insurance in Missouri and are members of the American Insurance Association, and two shall represent insurers which write bodily injury insurance in Missouri but are not members of any of the foregoing trade associations. The directors shall be reimbursed out of the administrative funds of the association only for necessary and actual expenses incurred for attending meetings of the governing board.] **The administrator shall formulate, implement, and monitor a risk management program for all policyholders. This program shall include, but not be limited to: investigation and analysis of frequency, severity, and causes of adverse medical injuries; development of measures to control these injuries; systematic reporting of medical**

incidents; investigation and analysis of patient complaints; and auditing of association members to assure implementation of this program. The plan may refuse to insure any insured who refuses or fails to comply with the risk management program implemented by the association. Prior to cancellation or refusal to renew an insured, the association shall provide the insured with a sixty-day notice of intent to cancel or nonrenew and shall further notify the insured of any action which must be taken to be in compliance with the risk management program.

383.180. 1. The association shall file in the office of the director annually on or before the first day of April, a statement which shall contain information with respect to its transactions, condition, operations and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the director. The director may, at any time, require the association to furnish additional information with respect to its transactions, condition or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation and experience of the association.

2. The director or his or her designee shall obtain complete statistical data in respect to medical malpractice losses as well as all other costs or expenses which underlie or are related to medical malpractice liability insurance. The director shall promulgate any statistical plan the director considers necessary for the purpose of gathering data referable to loss and loss adjustment expense experience and other expense experience. When a statistical plan is promulgated all members of the association shall adopt and use it. The director or his or her designee shall also obtain statistical data in respect to the costs of compensating or rehabilitating victims of medical malpractice without respect to insurance for purposes of studying the feasibility or desirability of alternative medical malpractice compensation systems and estimating the impact of medical malpractice loss and insurance costs upon other compensation and insurance systems such as workers' compensation and accident and health insurance. The director may require from any person obtaining insurance through the association loss, claim, or expense data. This information or data is confidential and the physician-patient privilege must be preserved.

383.185. [The director shall make an examination into the affairs of the association at least annually. The expenses of every such examination shall be borne and paid by the association.] 1. The board shall cause an annual audit of the books of accounts, funds, and securities of the association to be made by a competent and independent firm of certified public accountants, the cost of the audit to be charged against the association. A copy of the audit report shall be filed with the director of the department of insurance and the administrator. The audit shall be open to the public for inspection.

2. The board shall submit an annual independently audited report in accordance with procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business done by the company during the previous year and contain a statement of the resources and liabilities of the company.

3. The administrator shall annually submit to the board for its approval an estimated budget of the entire expense of administering the company for the succeeding calendar year having due regard to the business interests and contract obligations of the company.

4. The department of insurance shall conduct an examination of the association in the manner and under the conditions provided by the statutes of the insurance code for the examination of insurance carriers. The board shall pay the cost of the examination as an expense of the association. The company is subject to all provisions of the statutes which relate to private insurance carriers and to the jurisdiction of the department of insurance in the same manner as private insurance carriers, except as provided by the director.

5. Every health care provider provided insurance coverage by the association, upon complying with the underwriting standards adopted by the company, and upon completing the application form prescribed by the company, shall be furnished with a policy showing the date on which the insurance becomes effective.

383.195. [Termination of any plan created pursuant to the authority of sections 383.150 to 383.195 shall be by the director pursuant to a public hearing in which it is determined that medical malpractice liability insurance is reasonably available to health care providers in the voluntary market.] Any insurance agent, broker, or producer licensed to sell medical malpractice insurance in this state shall be authorized to sell insurance policies for the association in compliance with the bylaws adopted by the association. The board shall establish a schedule of commissions to pay for the services of the agent, producer, or broker.