

SECOND REGULAR SESSION

SENATE BILL NO. 440

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 1, 2011, and ordered printed.

TERRY L. SPIELER, Secretary.

4161S.011

AN ACT

To repeal sections 383.015, 383.016, 383.035, 383.037, and 383.206, RSMo, and to enact in lieu thereof seven new sections relating to malpractice insurance.

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

Section A. Sections 383.015, 383.016, 383.035, 383.037, and 383.206, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 383.006, 383.009, 383.015, 383.016, 383.018, 383.035, and 383.206, to read as follows:

383.006. As used in sections 383.005 to 383.040, unless otherwise clearly indicated by the context, the following words mean:

- (1) "Assessable association", an association formed and operating under sections 383.005 to 383.040;**
- (2) "Initial assessment", sums assessed by an assessable association to be admitted as a member of the assessable association;**
- (3) "Operating assessment", sums irregularly assessed by an assessable association to cover the operating costs of the assessable association;**
- (4) "Regular assessment", sums regularly assessed by an assessable association for a malpractice insurance policy;**
- (5) "Special assessment", sums irregularly assessed by an assessable association to protect the assets, solvency, or surplus of the assessable association.**

383.009. Assessable associations operating under sections 383.005 to 383.040 prior to August 28, 2012, shall have one hundred eighty days following August 28, 2012, to come into compliance with the

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

4 requirements of sections 383.005 to 383.040 as amended by the general
5 assembly in 2012 and to file their articles of association and bylaws
6 conforming to sections 383.005 to 383.040 as amended by the general
7 assembly in 2012 or the director may suspend the assessable
8 association's certificate of authority or issue a cease and desist order
9 prohibiting the assessable association from writing new business.

383.015. 1. Any such group of persons desiring to provide malpractice
2 insurance or indemnification for its members shall pay a license fee of one
3 hundred dollars and shall file articles of association with the director of the
4 department of insurance, financial institutions and professional registration. The
5 articles shall be filed in accordance with the provisions of sections 375.201 to
6 375.236 and shall also include the names of persons initially associated, the
7 method by which other persons may be admitted to the association as members,
8 the purposes for which organized, the amount of the initial assessment which has
9 been paid into the association, the method of assessment thereafter, and the
10 maximum amount of any assessment which the association may make against any
11 member. The articles of association shall provide for bylaws and for the
12 amendment of the articles of association and bylaws.

13 2. Each association shall designate and maintain a registered agent
14 within this state, and service upon the agent shall be service upon the association
15 and each of its members.

16 3. The articles of association shall be accompanied by a copy of the initial
17 bylaws of the association. The bylaws shall provide for a governing body for the
18 association, a manner of election thereof, the manner in which assessments will
19 be made, the specific kinds of insurance or indemnification which will be offered,
20 the classes of membership which will be offered, and may provide that **regular**
21 assessments of various amounts for particular classes of membership may be
22 made. All **regular** assessments shall be uniform within classes. The bylaws may
23 provide for the transfer of risks to other insurance companies or for reinsurance.

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

3 (1) Specify [and define] the types of assessments, [including but not
4 limited to initial,] **which shall include at a minimum** regular[, operating,
5 special, any other assessment to cover losses and expenses incurred in the
6 operation of the association, or any other assessment to maintain or restore the
7 association's assets, solvency, or surplus] **assessments and special**

8 **assessments;**

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

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

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

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

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

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

22 [(e)] **(4) With respect to special assessments specify** how such
23 assessments apply to members and former members. **Special assessments**
24 **made by an association after the fifth anniversary of the termination**
25 **date of a former member's coverage under the association's policy shall**
26 **not apply to the former member.**

383.018. A copy of the articles of association and bylaws, as
2 **approved by the director, shall be attached to the policy when issued**
3 **by an assessable association.**

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

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

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

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

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

12 (5) Section 375.246, relating to reinsurance requirements, except that no
13 association shall be required to maintain reinsurance, and for insurance issued
14 to members who joined the association on or before January 1, 1993, an

15 association shall be allowed credit, as an asset or as a deduction from liability,
16 for reinsurance which is payable to the ceding association's insured by the
17 assuming insurer on the basis of the liability of the ceding association under
18 contracts reinsured without diminution because of the insolvency of the ceding
19 association;

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

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

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

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

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

31 (11) Sections 383.200 to 383.209 and 383.225 relating to notification, data
32 reporting, and rating requirements;

33 **(12) Sections 375.1025, 375.1030, 375.1032, and sections 375.1035**
34 **to 375.1062 relating to audit by an independent certified public**
35 **accountant.**

36 2. Any association licensed pursuant to the provisions of sections 383.010
37 to 383.040 shall file with its annual statement a certification by a fellow or an
38 associate of the Casualty Actuarial Society. Such certification shall conform to
39 the National Association of Insurance Commissioners annual statement
40 instructions unless otherwise provided by the director.

41 3. The director shall have authority in accordance with section 374.045
42 to make all reasonable rules and regulations to accomplish the purpose of sections
43 383.010 to 383.040, including the extent to which insurance provided by an
44 association may be extended to provide payment to a covered person resulting
45 from a specific illness possessed by such covered person[; except that no rule or
46 regulation may place limitations or restrictions on the amount of premium an
47 association may write or on the amount of insurance or limit of liability an
48 association may provide].

49 4. Other than as provided in this section, no other insurance law of the
50 state of Missouri shall apply to an association licensed pursuant to the provisions

51 of this chapter, unless such law shall expressly state it is applicable to such
52 associations.

53 5. [If, after its second full calendar year of operation, any association
54 licensed under the provisions of sections 383.010 to 383.040 shall file an annual
55 statement which shows a surplus as regards policyholders of less than zero
56 dollars, or if the director has other conclusive and credible evidence more recent
57 than the last annual statement indicating the surplus as regards policyholders
58 of an association is less than zero dollars, the director may order such association
59 to submit, within ninety days following such order, a voluntary plan under which
60 the association will restore its surplus as regards policyholders to at least zero
61 dollars. The director may monitor the performance of the association's plan and
62 may order modifications thereto, including assessments or rate or premium
63 increases, if the association fails to meet any targets proposed in such plan for
64 three consecutive quarters.] **An assessable association shall maintain a**
65 **policyholder's surplus of at least six hundred thousand**
66 **dollars. Notwithstanding any provision in this section to the contrary,**
67 **an assessable association licensed under sections 383.010 to 383.040 as**
68 **of February 9, 2012, may renew its license, if all other conditions have**
69 **been met, by maintaining a policyholder's surplus in at least the**
70 **amount specified in the following provisions:**

71 (1) **On and after December 31, 2012, two hundred thousand**
72 **dollars;**

73 (2) **On and after December 31, 2013, four hundred thousand**
74 **dollars;**

75 (3) **On and after December 31, 2014, six hundred thousand**
76 **dollars.**

77 6. [If the director issues an order in accordance with subsection 5 of this
78 section, the association may, in accordance with chapter 536, file a petition for
79 review of such order. Any association subject to an order issued in accordance
80 with subsection 5 of this section shall be allowed a period of three years, or such
81 longer period as the director may allow, to accomplish its plan to restore its
82 surplus as regards policyholders to at least zero dollars. If at the end of the
83 authorized period of time the association has failed to restore its surplus to at
84 least zero dollars, or if the director has ordered modifications of the voluntary
85 plan and the association's surplus has failed to increase within three consecutive
86 quarters after such modification, the director may allow an additional time for the

87 implementation of the voluntary plan or may exercise the director's powers to
88 take charge of the association as the director would a mutual casualty company
89 pursuant to sections 375.1150 to 375.1246. Sections 375.1150 to 375.1246 shall
90 apply to associations licensed pursuant to sections 383.010 to 383.040 only after
91 the conditions set forth in this section are met. When the surplus as regards
92 policyholders of an association subject to subsection 5 of this section has been
93 restored to at least zero dollars, the authority and jurisdiction of the director
94 under subsections 5 and 6 of this section shall terminate, but this subsection may
95 again thereafter apply to such association if the conditions set forth in subsection
96 5 of this section for its application are again satisfied.] **Any association**
97 **licensed under sections 383.010 to 383.040 shall not cause the ratio of**
98 **its net written premiums to its policyholders' surplus to exceed three**
99 **to one without the approval of the director. Notwithstanding any**
100 **provision of this section, an association licensed under sections 383.010**
101 **to 383.040 on February 9, 2012, may renew its license, if all other**
102 **conditions have been met, by not causing the ration of its net written**
103 **premiums to its policyholders' surplus to exceed the ratio specified in**
104 **the following provisions:**

105 **(1) On and after December 31, 2012, four to one;**

106 **(2) On and after December 31, 2013, three and one-half to one;**

107 **(3) On and after December 31, 2014, three to one.**

108 **7. Violation of any of the provisions in subsections 5 or 6 of this**
109 **section by any assessable association is grounds for the revocation of**
110 **its license to conduct business by the director.**

111 **8. Any association licensed pursuant to the provisions of sections 383.010**
112 **to 383.040 shall place on file with the director, except as to excess liability risks**
113 **which by general custom are not written according to manual rates or rating**
114 **plans, a copy of every manual of classifications, rules, underwriting rules and**
115 **rates, every rating plan and every modification of the foregoing which it**
116 **uses. Filing with the director within ten days after such manuals, rating plans**
117 **or modifications thereof are effective shall be sufficient compliance with this**
118 **subsection. Any rates, rating plans, rules, classifications or systems in effect or**
119 **in use by an association on August 28, 1992, may continue to be used by the**
120 **association. Upon written application of a member of an association, stating his**
121 **or her reasons therefor, filed with the association, a rate in excess of that**
122 **provided by a filing otherwise applicable may be used by the association for that**

123 member.

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

11 2. In making a determination under subsection 1 of this section, the
12 director of the department of insurance, financial institutions and professional
13 registration may use the following factors:

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

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

19 [(3)] **(2)** No rate shall be held to be inadequate unless such rate is
20 unreasonably low for the insurance provided with respect to the classification to
21 which such rate is applicable;

22 [(4)] **(3)** To the extent Missouri loss experience is available, rates and
23 projected losses shall be based on Missouri loss experience and not the insurance
24 company's or the insurance industry's loss experiences in states other than
25 Missouri unless the failure to do so jeopardizes the financial stability of the
26 insurer; provided however, that loss experiences relating to the specific proposed
27 insured occurring outside the state of Missouri may be considered in allowing a
28 surcharge to such insured's premium rate;

29 [(5)] **(4)** Investment income or investment losses of the insurance
30 company for the ten-year period prior to the request for rate approval may be
31 considered in reviewing rates. Investment income or investment losses for a
32 period of less than ten years shall not be considered in reviewing
33 rates. Industrywide investment income or investment losses for the ten-year
34 period prior to the request for rate approval may be considered for any insurance
35 company that has not been authorized to issue insurance for more than ten years;

36 [(6)] (5) The locale in which the health care practice is occurring;
37 [(7)] (6) Inflation;
38 [(8)] (7) Reasonable administrative costs of the insurer;
39 [(9)] (8) Reasonable costs of defense of claims against Missouri health
40 care providers;
41 [(10)] (9) A reasonable rate of return on investment for the owners or
42 shareholders of the insurer when compared to other similar investments at the
43 time of the rate request; except that, such factor shall not be used to offset losses
44 in other states or in activities of the insurer other than the sale of policies of
45 insurance to Missouri health care providers; and
46 [(11)] (10) Any other reasonable factors may be considered in the
47 disapproval of the rate request.

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

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

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

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

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

 [383.037. The rates made by each association licensed
2 pursuant to sections 383.010 to 383.040 shall be subject to the
3 following provisions:

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

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

9 (3) No rate shall be held to be inadequate unless such rate
10 is unreasonably low for the insurance provided with respect to the
11 classification to which such rate is applicable.]

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