

# SENATE AMENDMENT NO. \_\_\_\_\_

Offered by \_\_\_\_\_ of \_\_\_\_\_

Amend \_\_\_\_\_ House Bill No. 112, Page 1, Section Title, Line 3,

2 by striking all of said line and inserting in lieu thereof the  
 3 following: "relating to medical malpractice"; and

4 Further amend said bill and page, section 1.010, line 13, by  
 5 inserting immediately after said line the following:

6 "383.206. 1. Notwithstanding the provisions of sections  
 7 383.037 and 383.160, no insurer shall issue or sell in the state  
 8 of Missouri a policy insuring a health care provider, as defined  
 9 in section 538.205, for damages for personal injury or death  
 10 arising out of the rendering of or failure to render health care  
 11 services [if the director finds, based upon competent and  
 12 compelling evidence, that the base rates of such insurer are  
 13 excessive, inadequate, or unfairly discriminatory. A rate may be  
 14 used by an insurer immediately after it has been filed with the  
 15 director, until or unless the director has determined under this  
 16 section that a rate is excessive, inadequate, or unfairly  
 17 discriminatory], unless the rates for such policy are approved by  
 18 the director of insurance, financial institutions and  
 19 professional registration.

20 2. [In making a determination under subsection 1 of this  
 21 section,] The director of the department of insurance, financial  
 22 institutions and professional registration [may use] shall review

1 and approve or reject rates pursuant to subsection 1 of this  
2 section based on the following factors:

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

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

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

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

20 (5) Investment income or investment losses of the insurance  
21 company for the ten-year period prior to the request for rate  
22 approval may be considered in reviewing rates. Investment income  
23 or investment losses for a period of less than ten years shall  
24 not be considered in reviewing rates. Industrywide investment  
25 income or investment losses for the ten-year period prior to the  
26 request for rate approval may be considered for any insurance  
27 company that has not been authorized to issue insurance for more  
28 than ten years;

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

1 occurring;

2 (7) Inflation;

3 (8) Reasonable administrative costs of the insurer;

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

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

12 (11) Any other reasonable factors may be considered in the  
13 ~~[disapproval]~~ approval or rejection of the rate request.

14 3. ~~[The director's determination under subsection 1 of this~~  
15 ~~section of whether a base rate is excessive, inadequate, or~~  
16 ~~unfairly discriminatory ]~~ Rate approval requests may be approved  
17 or denied based on any subcategory or subspecialty of the health  
18 care industry that the director determines to be reasonable.

19 4. ~~[If actuarially supported and included in a filed rate,~~  
20 ~~rating plan, rule, manual, or rating system, an]~~ The insurer may  
21 charge an additional premium or grant a discount rate to any  
22 health care provider based on criteria as it relates to a  
23 specified insured health care provider or other specific health  
24 care providers within the specific insured's employ or business  
25 entity~~[. Such criteria may include]~~:

26 (1) Loss experiences;

27 (2) Training and experience;

28 (3) Number of employees of the insured entity;

29 (4) Availability of equipment, capital, or hospital

1 privileges;

2 (5) Loss prevention measures taken by the insured;

3 (6) The number and extent of claims not resulting in  
4 losses;

5 (7) The specialty or subspecialty of the health care  
6 provider;

7 (8) Access to equipment and hospital privileges; and

8 (9) Any other factors determined to be reasonable [criteria  
9 identified by the insurer and filed with the department of  
10 insurance, financial institutions and professional registration]  
11 by the director.

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

17 6.] Any rate application shall be deemed approved if not  
18 rejected within sixty days, unless the director extends such  
19 period due to the applicant's failure to timely provide requested  
20 information.

21 6. The director of the department of insurance shall  
22 annually provide to the governor and the general assembly a  
23 report as to the rate increases or decreases of the rates  
24 approved pursuant to this section and the number of requests  
25 disapproved pursuant to this section.

26 7. As used in this section, the term "insurer" includes  
27 every insurance company authorized to transact business in this  
28 state, every unauthorized insurance company transacting business  
29 pursuant to chapter 384, every risk retention group, every

1 insurance company issuing policies or providing benefits to or  
2 through a purchasing group, and any other person providing  
3 insurance coverage in this state.

4       8. The director of the department of insurance, financial  
5 institutions and professional registration shall promulgate rules  
6 for the administration and enforcement of this section. Any rule  
7 or portion of a rule, as that term is defined in section 536.010,  
8 that is created under the authority delegated in this section  
9 shall become effective only if it complies with and is subject to  
10 all of the provisions of chapter 536 and, if applicable, section  
11 536.028. This section and chapter 536 are nonseverable and if  
12 any of the powers vested with the general assembly pursuant to  
13 chapter 536 to review, to delay the effective date, or to  
14 disapprove and annul a rule are subsequently held  
15 unconstitutional, then the grant of rulemaking authority and any  
16 rule proposed or adopted after August 28, 2006, shall be invalid  
17 and void.

18       383.300. As used in sections 383.300 to 383.321, the  
19 following terms mean:

20       (1) "Director", the director of the department of  
21 insurance;

22       (2) "Fund", the Missouri health care stabilization fund  
23 established pursuant to sections 383.300 to 383.321;

24       (3) "Health care provider", includes physicians, dentists,  
25 clinical psychologists, pharmacists, optometrists, podiatrists,  
26 registered nurses, physicians' assistants, chiropractors,  
27 physical therapists, nurse anesthetists, anesthetists, emergency  
28 medical technicians, hospitals, nursing homes, and extended care  
29 facilities; but shall not include any nursing service or nursing

1 facility conducted by and for those who rely upon treatment by  
2 spiritual means alone in accordance with the creed or tenets of  
3 any well-recognized church or religious denomination;

4 (4) "Insurer", any insurance company, association,  
5 exchange, or legal entity authorized to issue policies of medical  
6 malpractice insurance in this state;

7 (5) "Medical malpractice insurance", insurance coverage  
8 against the legal liability of the insured and against loss,  
9 damage, or expense incident to a claim arising out of the death  
10 or injury of any person as a result of the negligence or  
11 malpractice in rendering professional service by any health care  
12 provider.

13 383.303. 1. There is hereby created in the state treasury  
14 the "Missouri Health Care Stabilization Fund". Membership fees  
15 and premium surcharges collected pursuant to section 383.312  
16 shall be deposited in the fund. Notwithstanding the provisions  
17 of section 33.080, to the contrary, moneys in the Missouri health  
18 care stabilization fund shall not revert to the general revenue  
19 fund. Interest accruing to the fund shall be part of the fund.  
20 Moneys in the fund shall be invested and reinvested in the same  
21 manner as provided by law for the investment of other state funds  
22 in interest-bearing investments. All expenses of collecting,  
23 protecting, and administering the fund shall be paid from the  
24 fund.

25 2. The Missouri health care stabilization fund shall be  
26 used for the purpose of paying that portion of a medical  
27 malpractice claim, settlement, or judgment which is in excess of  
28 the limits expressed in section 383.318 or the maximum liability  
29 limits for which the health care provider is insured, whichever

1 limit is greater. The fund is liable only for payment of claims  
2 against licensed health care providers in compliance with the  
3 provisions of sections 383.300 to 383.321 and includes reasonable  
4 and necessary expenses incurred in payment of claims and the  
5 fund's administrative expense. The fund shall not be liable for  
6 damages for injury or death caused by an intentional crime  
7 committed by a health care provider or an employee of a health  
8 care provider, whether or not the criminal conduct is the basis  
9 for a medical malpractice claim. The fund shall have no  
10 obligation for the payment of punitive damages rendered in any  
11 judgment. The state shall not be responsible for any costs,  
12 expenses, liabilities, judgments, or other obligations of the  
13 fund.

14 3. The maximum amount recoverable under the Missouri health  
15 care stabilization fund for any single claim pursuant to sections  
16 383.300 to 383.321 shall not exceed eight hundred thousand  
17 dollars pursuant to any one judgment or settlement for any party  
18 against a health care provider, subject to an aggregate  
19 limitation for all judgments or settlements arising from all  
20 claims made in one year in an amount of two million four hundred  
21 thousand dollars for any health care provider.

22 383.306. 1. There is hereby created within the department  
23 of insurance the "Health Care Stabilization Board", which shall  
24 be composed of the director and nine members appointed by the  
25 governor with the advice and consent of the senate. The board  
26 shall be composed of:

27 (1) One member who is licensed to practice medicine and  
28 surgery in Missouri who is a doctor of medicine and who is on a  
29 list of nominees submitted to the director by an organization

1 representing Missouri's medical society;

2 (2) One member who is a doctor of osteopathy and who is on  
3 a list of nominees submitted to the director by an organization  
4 representing Missouri doctors of osteopathy;

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

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

11 (5) Two members who are insurance representatives and who  
12 are on a list of nominees submitted to the director by the  
13 insurance industry;

14 (6) Two members who are attorneys that handle medical  
15 malpractice and who are on a list of nominees submitted to the  
16 director by an organization representing Missouri attorneys;

17 (7) One member of the general public appointed by the  
18 governor who is unaffiliated with the insurance or health care  
19 industries or the medical or legal professions; and

20 (8) The director.

21 2. The board is created to manage and operate the Missouri  
22 health care stabilization fund. The appointed members shall  
23 serve for a term of six years. Each member shall serve until a  
24 successor is appointed and qualified. The board must meet at the  
25 call of the director or a majority of the members but in any  
26 event it must meet at least once a year. A majority of the board  
27 members shall constitute a quorum for the transaction of any  
28 business of the board. The affirmative vote by a majority of the  
29 quorum present at a duly called meeting after notice is required



1 to exercise any function of the board.

2 3. The board may promulgate any regulations necessary to  
3 carry out the provisions of sections 383.300 to 383.324. Any  
4 rule or portion of a rule, as that term is defined in section  
5 536.010, that is created under the authority delegated in this  
6 section shall become effective only if it complies with and is  
7 subject to all of the provisions of chapter 536, and, if  
8 applicable, section 536.028. This section and chapter 536 are  
9 nonseverable and if any of the powers vested with the general  
10 assembly pursuant to chapter 536 to review, to delay the  
11 effective date, or to disapprove and annul a rule are  
12 subsequently held unconstitutional, then the grant of rulemaking  
13 authority and any rule proposed or adopted after August 28, 2013,  
14 shall be invalid and void.

15 4. When a vacancy occurs in the membership of the board  
16 created by this section, the governor, with the advice and  
17 consent of the senate, shall appoint a successor of like  
18 qualifications from a list of three nominees submitted to the  
19 director by the professional society or association prescribed by  
20 this section. Whenever a vacancy occurs in the membership of the  
21 board created by this section for any reason other than the  
22 expiration of a member's term of office, the governor, with the  
23 advice and consent of the senate, shall appoint a successor of  
24 like qualifications to fill the unexpired term. In each case of  
25 a vacancy occurring in the membership of the board, the director  
26 shall notify the professional society or association required for  
27 the vacant position and request a list of three nominations from  
28 which to make the appointment.

29 5. The board shall develop a plan of operation for the

1 efficient administration of the fund consistent with the  
2 provisions of sections 383.300 to 383.321. The fund must operate  
3 pursuant to a plan of operation which shall provide for the  
4 economic, fair, and nondiscriminatory administration and for the  
5 prompt and efficient provision of excess medical malpractice  
6 insurance and which may contain other provisions including, but  
7 not limited to, assessment of all members for expenses, deficits,  
8 losses, commissions arrangements, reasonable underwriting  
9 standards, acceptance and cession of reinsurance appointment of  
10 servicing carriers, and procedures for determining the amounts of  
11 insurance to be provided by the Missouri health care  
12 stabilization fund. The plan of operation and any amendments to  
13 the plan are subject to the approval of the director. If the  
14 board fails to develop a plan of operation within the time frame  
15 established by the director, the director or the director's  
16 designee shall develop the plan of operation for the fund.

17 6. The board may appoint such additional employees, and  
18 provide all office space, services, equipment, materials and  
19 supplies, and all budgeting, personnel, purchasing, and related  
20 management functions required by the board in the exercise of the  
21 powers, duties, and functions imposed or authorized by sections  
22 383.300 to 383.321.

23 7. The department of insurance shall:

24 (1) Provide technical and administrative assistance to the  
25 board with respect to administration of the fund upon request of  
26 the board; and

27 (2) Provide such expertise as the board may reasonably  
28 request with respect to evaluation of claims or potential claims.

29 383.309. All Missouri licensed health care providers shall

1 participate in the fund and shall remit to the board the  
2 appropriate membership fees and premium surcharges as are  
3 required by section 383.312 on or before the provider's  
4 membership anniversary date.

5 383.312. 1. All health care providers shall participate in  
6 the Missouri health care stabilization fund and shall pay annual  
7 membership fees. The board, by rule, shall set the membership  
8 fees. The rule shall provide that fees may be paid annually or  
9 in semiannual or quarterly installments.

10 2. In addition to the membership fees delineated in  
11 subsection 1 of this section, the board shall levy an annual  
12 premium surcharge on each participating health care provider who  
13 has obtained a policy meeting the requirements of section 383.315  
14 and upon each self-insurer. The surcharge shall be determined by  
15 the board based upon sound actuarial principles, using data  
16 obtained from Missouri experience if available. The amount of  
17 the surcharge shall be adequate for the payment of claims and  
18 expenses from the Missouri health care stabilization fund. The  
19 amount of the surcharge shall be reasonable and not unfairly  
20 discriminatory.

21 3. The surcharge shall be collected on the same basis as  
22 premiums by each insurer from the health care provider. The  
23 surcharge with accrued interest shall be due and payable within  
24 thirty days after the premiums for medical malpractice insurance  
25 have been received by the insurer from the health care provider  
26 in Missouri.

27 4. If the annual premium surcharge is collected but not  
28 paid within the time limit specified in subsection 3 of this  
29 section, the certificate of authority of the insurer, risk

1 manager, or surplus lines agents shall be suspended until the  
2 annual premium surcharge is paid.

3 5. Membership in the fund is contingent upon the  
4 participating member making timely payment of all membership fees  
5 and all premium surcharges.

6 6. Self-insureds shall be eligible for membership in the  
7 fund upon compliance with the requirements of the board and shall  
8 pay similar membership fees and premium surcharges as the  
9 members. The surcharge for self-insureds shall be in an amount  
10 determined by the board. The amount of the surcharge imposed on  
11 the self-insured shall be in an amount comparable to what a  
12 health care provider would be required to pay if the provider's  
13 surcharge was based upon a policy of medical malpractice  
14 insurance.

15 383.315. 1. All books, records, and audits of the fund are  
16 open for reasonable inspection to the general public.

17 2. On or before December thirty-first of each year the  
18 state auditor shall audit the records of the fund and shall  
19 furnish an audited financial report to all fund participants, the  
20 department of insurance, and the general assembly.

21 383.318. 1. All health care providers shall participate in  
22 the Missouri health care stabilization fund and shall either  
23 insure and keep insured the health care provider's liability by a  
24 policy of medical malpractice insurance issued by an insurer  
25 authorized to do business in this state or shall qualify as a  
26 self-insurer. Qualification as a self-insurer is subject to  
27 conditions established by the board. The board may establish  
28 conditions that permit a self-insurer to self-insure for claims  
29 that are against employees who are health care providers and that

1 are not covered by the fund.

2 2. The liability limits for a policy of medical malpractice  
3 insurance required by subsection 1 of this section shall not be  
4 less than two hundred thousand dollars per claim, and shall not  
5 be less than six hundred thousand dollars for all claims in any  
6 one reporting year.

7 3. Each insurance company issuing medical malpractice  
8 insurance policies that meet the requirements of this section  
9 shall, at the times prescribed by the director, file with the  
10 director in a form prescribed by the director, a certificate of  
11 insurance on behalf of the health care provider upon original  
12 issuance and each renewal.

13 4. Each self-insured health care provider furnishing  
14 coverage that meets the requirements of this section shall, at  
15 the time and in a form prescribed by the board, file with the  
16 board a certificate of self-insurance and a separate certificate  
17 of insurance for each additional health care provider covered by  
18 the self-insured plan.

19 383.321. 1. A person filing a claim may recover from the  
20 fund only if the health care provider or the employee of the  
21 health care provider has coverage under the fund, the fund is  
22 named as a party in the action, and the action against the fund  
23 is commenced within the same time limitation within which the  
24 action against the health care provider or employee of the health  
25 care provider must be commenced.

26 2. If, after reviewing the facts upon which the claim or  
27 action is based, it appears reasonably probable that damages paid  
28 will exceed the limits provided in section 383.318, the fund may  
29 appear and actively defend itself when named as a party in an

1 action against a health care provider, or an employee of a health  
2 care provider, that has coverage under the fund. In such action,  
3 the fund may retain counsel and pay out of the fund attorney fees  
4 and expenses including court costs incurred in defending the  
5 fund. The attorney or law firm retained to defend the fund shall  
6 not be retained or employed by the board to perform legal  
7 services for the board of other than those directly connected  
8 with the fund. Any judgment affecting the fund may be appealed  
9 as provided by law.

10 3. It shall be the responsibility of the insurer or self-  
11 insurer providing insurance or self-insurance for a health care  
12 provider who is also covered by the fund to provide an adequate  
13 defense of the fund on any claim filed that may potentially  
14 affect the fund with respect to such insurance contract or self-  
15 insurance contract. The insurer or self-insurer shall act in  
16 good faith and in a fiduciary relationship with respect to any  
17 claim affecting the fund. No settlement exceeding an amount  
18 which could require payment by the fund may be agreed to unless  
19 approved by the board.

20 4. A person who has recovered a final judgment or a  
21 settlement approved by the board against a health care provider,  
22 or an employee of a health care provider that has coverage under  
23 the fund, may file a claim with the board to recover that portion  
24 of such judgment or settlement which is in excess of the limits  
25 provided in section 383.318 or the maximum liability limit for  
26 which the health care provider is insured, whichever limit is  
27 greater. In no event, however, shall the amount recoverable from  
28 the fund exceed the amounts established under subsection 3 of  
29 section 383.303. Payments shall be made from money collected and

1 paid into the fund and from interest earned thereon.

2 5. Claims filed against the fund shall be paid in the order  
3 received within ninety days after filing unless appealed by the  
4 fund. If the amounts in the fund are not sufficient to pay all  
5 of the claims, claims received after the funds are exhausted  
6 shall be immediately payable the following year in the order in  
7 which they were received.

8 6. The board may bring an action against an insurer, self-  
9 insurer, or health care provider for failure to act in good faith  
10 or breach of fiduciary responsibility.

11 383.400. 1. As used in this section, the term "insurer" or  
12 "insurers" shall mean any insurance company, mutual insurance  
13 company, medical malpractice association, any entity created  
14 under this chapter, or other entity providing any insurance to  
15 any health care provider, as defined in section 538.205,  
16 practicing medicine in the state of Missouri, against claims for  
17 malpractice or professional negligence; provided, however, that  
18 the term "insurer" or "insurers" shall not mean any surplus lines  
19 insurer operating under chapter 384, or any entity to the extent  
20 it is self-insuring its exposure to medical malpractice  
21 liability.

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

25 (1) Charge an assessment or surcharge, or increase the  
26 premium charges, by more than ten percent for such insurance  
27 without first providing written notice by certified United States  
28 mail to the insured at least sixty days prior to the effective  
29 date of such actions; provided, however, such notice is not

1 required if the premium change is due to the request of the  
2 insured;

3 (2) Fail or refuse to renew the aforesaid insurance without  
4 first providing written notice by certified United States mail to  
5 the insured at least sixty days prior to the effective date of  
6 such actions, unless such failure or refusal to renew is based  
7 upon a failure to pay sums due or a termination or suspension of  
8 the health care provider's license to practice medicine in the  
9 state of Missouri, termination of the insurer's reinsurance  
10 program, or a material change in the nature of the insured's  
11 health care practice; or

12 (3) Cease the issuance of such policies of insurance in the  
13 state of Missouri without first providing written notice by  
14 certified United States mail to the insured and to the Missouri  
15 department of insurance at least one hundred eighty days prior to  
16 the effective date of such actions.

17 3. Any insurer that fails to provide the notice required  
18 under subdivisions (1) and (2) of subsection 2 of this section  
19 shall, at the option of the insured, continue the coverage in  
20 accordance with the provisions of subdivision (2) of subsection 6  
21 of section 379.321."; and

22 Further amend the title and enacting clause accordingly.  
23