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Section A. Sections 383.015, 383.016, 383.035, 383.037, and 383.206, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 383.006, 383.009, 383.015, 383.016, 383.018, 383.035, and 383.206, to read as follows: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, 2019, shall have one hundred eighty days following August 28, 2019, to come into compliance with the requirements of sections 383.005 to 383.040 as amended by the one-
383.015. 1. Any such group of persons desiring to provide malpractice insurance or indemnification for its members shall pay a license fee of one hundred dollars and shall file articles of association with the director of the department of insurance, financial institutions and professional registration. The articles shall be filed in accordance with the provisions of sections 375.201 to 375.236 and shall also include the names of persons initially associated, the method by which other persons may be admitted to the association as members, the purposes for which organized, the amount of the initial assessment which has been paid into the association, the method of assessment thereafter, and the maximum amount of any assessment which the association may make against any member. The articles of association shall provide for bylaws and for the amendment of the articles of association and bylaws.

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

3. The articles of association shall be accompanied by a copy of the initial bylaws of the association. The bylaws shall provide for a governing body for the association, a manner of election thereof, the manner in which assessments will be made, the specific kinds of insurance or indemnification which will be offered, the classes of membership which will be offered, and may provide that regular assessments of various amounts for particular classes of membership may be made. All regular assessments shall be uniform within classes. The bylaws may 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 created under the provisions of sections 383.010 to 383.040 shall:

(1) Specify [and define] the types of assessments, [including but not limited to initial,] which shall include at a minimum regular[, operating, special, any other assessment to cover losses and expenses incurred in the operation of the association, or any other assessment to maintain or restore the association's assets, solvency, or surplus] assessments and special
assessments;
(2) Specify [by type of assessment the] that special assessments [that]
shall apply to [members, former members, or] both members and former members
of the association; [and]
(3) With respect to [any assessment to cover losses and expenses incurred
in the operation of the association and any assessment to maintain or restore the
association's assets, solvency, or surplus] special assessments and any
operating assessments, specify:
(a) The exact method and criteria by which the amounts of each type of
assessment are to be determined;
(b) The time in which the assessments must be paid;
(c) That such assessments shall be made without limitation as to
time frequency; and
(d) The maximum amount of any single assessment; [and
(e)]
(4) With respect to special assessments, specify how such
assessments apply to members and former members. Special assessments
made by an association after the fifth anniversary of the termination
date of a former member's coverage under the association's policy shall
not apply to the former member.

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

383.035. 1. Any association licensed pursuant to the provisions of sections
383.010 to 383.040 shall be subject to the provisions of the following provisions
of the revised statutes of Missouri:
(1) Sections 374.010, 374.040, 374.046 to 374.049, 374.110, 374.115,
374.122, 374.170, 374.190, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250
and 374.280, relating to the general authority of the director of the department
of insurance, financial institutions and professional registration;
(2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039,
relating to dealings with licensed agents and brokers;
(3) Sections 375.041 and 379.105, relating to annual statements;
(4) Section 375.163, relating to the competence of managing officers;
(5) Section 375.246, relating to reinsurance requirements, except that no
association shall be required to maintain reinsurance, and for insurance issued
to members who joined the association on or before January 1, 1993, an
association shall be allowed credit, as an asset or as a deduction from liability,
for reinsurance which is payable to the ceding association's insured by the
assuming insurer on the basis of the liability of the ceding association under
contracts reinsured without diminution because of the insolvency of the ceding
association;
(6) Section 375.390, relating to the use of funds by officers for private
gain;
(7) Section 375.445, relating to insurers operating fraudulently;
(8) Section 379.080, relating to permissible investments, except that
limitations in such section shall apply only to assets equal to such positive
surplus as is actually maintained by the association;
(9) Section 379.102, relating to the maintenance of unearned premium and
loss reserves as liabilities, except that any such loss reserves may be discounted
in accordance with reasonable actuarial assumptions;
(10) Sections 383.100 to 383.125 relating to reports from medical
malpractice insurers;
(11) Sections 383.200 to 383.209 and 383.225 relating to notification, data
reporting, and rating requirements;
(12) Sections 375.1025, 375.1030, 375.1032, and sections 375.1035
to 375.1062 relating to audit by an independent certified public
accountant.
2. Any association licensed pursuant to the provisions of sections 383.010
to 383.040 shall file with its annual statement a certification by a fellow or an
associate of the Casualty Actuarial Society. Such certification shall conform to
the National Association of Insurance Commissioners annual statement
instructions unless otherwise provided by the director.
3. The director shall have authority in accordance with section 374.045
to make all reasonable rules and regulations to accomplish the purpose of sections
383.010 to 383.040, including the extent to which insurance provided by an
association may be extended to provide payment to a covered person resulting
from a specific illness possessed by such covered person]; except that no rule or
regulation may place limitations or restrictions on the amount of premium an
association may write or on the amount of insurance or limit of liability an
association may provide].
4. Other than as provided in this section, no other insurance law of the
state of Missouri shall apply to an association licensed pursuant to the provisions
of this chapter, unless such law shall expressly state it is applicable to such
associations.

5. [If, after its second full calendar year of operation, any association
licensed under the provisions of sections 383.010 to 383.040 shall file an annual
statement which shows a surplus as regards policyholders of less than zero
dollars, or if the director has other conclusive and credible evidence more recent
than the last annual statement indicating the surplus as regards policyholders
of an association is less than zero dollars, the director may order such association
to submit, within ninety days following such order, a voluntary plan under which
the association will restore its surplus as regards policyholders to at least zero
dollars. The director may monitor the performance of the association's plan and
may order modifications thereto, including assessments or rate or premium
increases, if the association fails to meet any targets proposed in such plan for
three consecutive quarters.] An assessable association shall maintain a
policyholder's surplus of at least six hundred thousand
dollars. Notwithstanding any provision in this section to the contrary,
an assessable association licensed under sections 383.010 to 383.040 as
of December 1, 2018, may renew its license, if all other conditions have
been met, by maintaining a policyholder's surplus in at least the
amount specified in the following provisions:

(1) On and after December 31, 2019, two hundred thousand
dollars;

(2) On and after December 31, 2020, four hundred thousand
dollars;

(3) On and after December 31, 2021, six hundred thousand
dollars.

6. [If the director issues an order in accordance with subsection 5 of this
section, the association may, in accordance with chapter 536, file a petition for
review of such order. Any association subject to an order issued in accordance
with subsection 5 of this section shall be allowed a period of three years, or such
longer period as the director may allow, to accomplish its plan to restore its
surplus as regards policyholders to at least zero dollars. If at the end of the
authorized period of time the association has failed to restore its surplus to at
least zero dollars, or if the director has ordered modifications of the voluntary
plan and the association's surplus has failed to increase within three consecutive
quarters after such modification, the director may allow an additional time for the implementation of the voluntary plan or may exercise the director's powers to take charge of the association as the director would a mutual casualty company pursuant to sections 375.1150 to 375.1246. Sections 375.1150 to 375.1246 shall apply to associations licensed pursuant to sections 383.010 to 383.040 only after the conditions set forth in this section are met. When the surplus as regards policyholders of an association subject to subsection 5 of this section has been restored to at least zero dollars, the authority and jurisdiction of the director under subsections 5 and 6 of this section shall terminate, but this subsection may again thereafter apply to such association if the conditions set forth in subsection 5 of this section for its application are again satisfied. Any association licensed under sections 383.010 to 383.040 shall not cause the ratio of its net written premiums to its policyholders' surplus to exceed three to one without the approval of the director. Notwithstanding any provision of this section, an association licensed under sections 383.010 to 383.040 on December 1, 2018, may renew its license, if all other conditions have been met, by not causing the ratio of its net written premiums to its policyholders' surplus to exceed the ratio specified in the following provisions:

(1) On and after December 31, 2019, four to one;
(2) On and after December 31, 2020, three and one-half to one;
(3) On and after December 31, 2021, three to one.

7. Any assessable association that cedes reinsurance in compliance with section 375.246, for the term of all policies written by the association and with an annual cap of not less than two hundred and fifty percent of the association's annual net written premium, shall be exempt from the provisions of subsections 5 and 6 of this section, if such reinsurance covers the association's per claim risk on such policies in at least the percentages set forth below that correspond to the association's surplus:

<table>
<thead>
<tr>
<th>Surplus</th>
<th>Per Claim Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 to $999,999</td>
<td>80%</td>
</tr>
<tr>
<td>$1,000,000 to $2,999,999</td>
<td>70%</td>
</tr>
<tr>
<td>$3,000,000 to $5,999,999</td>
<td>60%</td>
</tr>
<tr>
<td>$6,000,000 to $10,000,000</td>
<td>50%</td>
</tr>
</tbody>
</table>

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

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

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

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

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

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

[(3)] (2) No rate shall be held to be inadequate unless such rate is
unreasonably low for the insurance provided with respect to the classification to
which such rate is applicable;
[(4)] (3) To the extent Missouri loss experience is available, rates and projected losses shall be based on Missouri loss experience and not the insurance company's or the insurance industry's loss experiences in states other than Missouri unless the failure to do so jeopardizes the financial stability of the insurer; provided however, that loss experiences relating to the specific proposed insured occurring outside the state of Missouri may be considered in allowing a surcharge to such insured's premium rate;

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

[(6)] (5) The locale in which the health care practice is occurring;

[(7)] (6) Inflation;

[(8)] (7) Reasonable administrative costs of the insurer;

[(9)] (8) Reasonable costs of defense of claims against Missouri health care providers;

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

[(11)] (10) Any other reasonable factors may be considered in the disapproval of the rate request.

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

4. If actuarially supported and included in a filed rate, rating plan, rule, manual, or rating system, an insurer may charge an additional premium or grant a discount rate to any health care provider based on criteria as it relates to a specified insured health care provider or other specific health care providers within the specific insured's employ or business entity. Such criteria may include:
(1) Loss experiences;
(2) Training and experience;
(3) Number of employees of the insured entity;
(4) Availability of equipment, capital, or hospital privileges;
(5) Loss prevention measures taken by the insured;
(6) The number and extent of claims not resulting in losses;
(7) The specialty or subspecialty of the health care provider;
(8) Access to equipment and hospital privileges; and
(9) Any other reasonable criteria identified by the insurer and filed with the department of insurance, financial institutions and professional registration.

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

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

[383.037. The rates made by each association licensed pursuant to sections 383.010 to 383.040 shall be subject to the following provisions:
(1) Rates shall not be excessive or inadequate, nor shall they be unfairly discriminatory;
(2) No rate shall be held to be excessive unless such rate is unreasonably high for the insurance provided with respect to the classification to which such rate is applicable;
(3) No rate shall be held to be inadequate unless such rate is unreasonably low for the insurance provided with respect to the classification to which such rate is applicable.]