

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILLS NOS. 905 & 910

## 93RD GENERAL ASSEMBLY

---

---

Reported from the Committee on Small Business, Insurance and Industrial Relations, March 16, 2006, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4389S.05C

### AN ACT

To repeal section 383.105, RSMo, and to enact in lieu thereof ten new sections relating to medical malpractice insurance, with an expiration date for certain sections.

---

---

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

Section A. Section 383.105, RSMo, is repealed and ten new sections  
2 enacted in lieu thereof, to be known as sections 383.105, 383.106, 383.107,  
3 383.108, 383.124, 383.196, 383.197, 383.198, 383.199, and 383.450, to read as  
4 follows:

383.105. 1. Every insurer providing medical malpractice insurance to a  
2 Missouri health care provider and every health care provider who maintains  
3 professional liability coverage through a plan of self-insurance shall submit to the  
4 director of the department of insurance a report of all claims, both open claims  
5 filed during the reporting period and closed claims filed during the reporting  
6 period, for medical malpractice made against any of its Missouri insureds during  
7 the preceding three-month period.

8 2. The report shall be in writing and contain the following information:

9 (1) Name and address of the insured and the person working for the  
10 insured who rendered the service which gave rise to the claim, if the two are  
11 different;

12 (2) Specialty coverage of the insured;

13 (3) Insured's policy number;

14 (4) Nature and substance of the claim;

15 (5) Date and place in which the claim arose;

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

16 (6) Name, address and age of the claimant or plaintiff;

17 (7) Within six months after final disposition of the claim, the amounts  
18 paid, if any, and the date and manner of disposition (judgment, settlement or  
19 otherwise);

20 (8) Expenses incurred; and

21 (9) Such additional information as the director may require.

22 3. As used in [this section] **sections 383.100 to 383.125**, "insurer"  
23 includes every insurance company authorized to transact insurance business in  
24 this state, every unauthorized insurance company transacting business pursuant  
25 to chapter 384, RSMo, every risk retention group, every insurance company  
26 issuing insurance to or through a purchasing group, **every entity operating**  
27 **under this chapter**, and any other person providing insurance coverage in this  
28 state[. With respect to any insurer transacting business pursuant to chapter 384,  
29 RSMo, filing the report required by this section shall be the obligation of the  
30 surplus lines broker or licensee originating or accepting the insurance],  
31 **including self-insured health care providers.**

**383.106. 1. To effectively monitor the insurance marketplace,**  
2 **rates, financial solvency, and affordability and availability of medical**  
3 **malpractice coverage, the director shall establish by rule or order**  
4 **reporting standards for insurers by which the insurers, or an advisory**  
5 **organization designated by the director, shall annually report such**  
6 **Missouri medical malpractice insurance premium, loss, exposure, and**  
7 **other information as the director may require.**

8 2. The director shall, prior to May 30, 2007, establish risk  
9 reporting categories for medical malpractice insurance, as defined in  
10 section 383.150, and shall establish regulations for the reporting of all  
11 base rates and premiums charged in those categories as determined by  
12 the director. The director shall consider the history of prior court  
13 judgments for claims under chapter 383 in each county of the state in  
14 establishing the risk reporting categories.

15 3. The director shall collect the information required in this  
16 section and compile it in a manner appropriate for assisting Missouri  
17 medical malpractice insurers in developing their future base rates,  
18 schedule rating, or individual risk rating factors and other aspects of  
19 their rating plans. In compiling the information and making it  
20 available to Missouri insurers and the public, the director shall remove

21 any individualized information that identifies a particular insurer as  
22 the source of the information. The director may combine such  
23 information with similar information obtained through insurer  
24 examinations so as to cover periods of more than one year.

25 4. All insurers, including self-insured health care providers, with  
26 regards to medical malpractice insurance as defined in section 383.150,  
27 shall provide to the director, beginning on June 1, 2008, and not less  
28 than annually thereafter, an accurate report as to the actual rates,  
29 including assessments levied against members, charged by such  
30 company for such insurance, for each of the risk reporting categories  
31 established under this section.

383.107. Not later than December 31, 2009, and at least annually  
2 thereafter, the director shall, utilizing the information provided  
3 pursuant to section 383.106, establish and publish a market rate  
4 reflecting the median of the actual rates charged for each of the risk  
5 reporting categories for the preceding year by all insurers with at least  
6 a three percent market share of the medical malpractice insurance  
7 market as of December thirty-first of the prior year.

383.108. The director shall, utilizing the information provided  
2 under section 383.106, publish comparisons of the base rates charged  
3 by each insurer actively writing medical malpractice insurance.

383.124. 1. If the director determines that a person has engaged,  
2 is engaging, or is about to engage in a violation of sections 383.100 to  
3 383.125 or a rule adopted or order issued pursuant thereto, or that a  
4 person has materially aided, is materially aiding, or is about to  
5 materially aid an act, practice, omission, or course of business  
6 constituting a violation of sections 383.100 to 383.125 or a rule adopted  
7 or order issued pursuant thereto, the director may issue such  
8 administrative orders as authorized under section 374.046, RSMo. A  
9 violation of any provisions under these sections is a level two violation  
10 under section 374.049, RSMo. The director of insurance may also  
11 suspend or revoke the license or certificate of authority of any person  
12 for any such willful violation as authorized under section 374.047,  
13 RSMo.

14 2. If the director believes that a person has engaged, is engaging,  
15 or is about to engage in a violation of sections 383.100 to 383.125 or a  
16 rule adopted or order issued pursuant thereto, or that a person has

17 materially aided, is materially aiding, or is about to materially aid an  
18 act, practice, omission, or course of business constituting a violation of  
19 sections 383.100 to 383.125 or a rule adopted or order issued pursuant  
20 thereto, the director may maintain a civil action for relief authorized  
21 under section 374.048, RSMo. A violation of any provision under these  
22 sections is a level two violation under section 374.049, RSMo.

383.196. 1. As used in sections 383.196 to 383.199, "insurer"  
2 includes every insurance company authorized to transact insurance  
3 business in this state and every entity operating under this chapter,  
4 except unauthorized insurance companies transacting business  
5 pursuant to chapter 384, RSMo, risk retention groups, and insurance  
6 companies issuing insurance to or through a purchasing group.

7 2. Notwithstanding the provisions of sections 383.037 and 383.160,  
8 every insurer shall file with the director every manual, minimum  
9 premium, class rate, rating schedule or rating plan, and every other  
10 rating rule, and every modification of any of the foregoing for any  
11 policy insuring a health care provider, as defined in section 538.205,  
12 RSMo, for damages for personal injury or death arising out of the  
13 rendering or failure to render health care services, which it proposes  
14 to use. Every such filing shall state the proposed effective date thereof,  
15 and shall indicate the character and extent of the coverage  
16 contemplated.

17 3. Rates shall not be excessive, inadequate, or unfairly  
18 discriminatory. Rates are excessive if they are likely to produce a long-  
19 run profit that is unreasonably high for the insurance provided or if  
20 expenses are unreasonably high in relation to services rendered. Rates  
21 are inadequate when they are clearly insufficient to sustain projected  
22 losses and expenses and the use of such rates, if continued, will tend  
23 substantially lessen competition or create a monopoly in the  
24 market. The following factors may be considered:

25 (1) A rate is not excessive unless such rate is unreasonably high  
26 for the insurance provided with respect to classification to which the  
27 rate is applicable;

28 (2) A rate is not inadequate unless such rate is unreasonably low  
29 for the insurance provided with respect to classification which the rate  
30 is applicable;

31 (3) To the extent Missouri loss experience is available, rates

32 should be based on this experience and not on the insurer's or  
33 industry's loss experience in other states, unless failure to do so  
34 jeopardizes the financial stability of the insurer; provided however,  
35 that loss experiences relating to the specific proposed insured  
36 occurring outside the state may be considered in allowing a surcharge  
37 to such insured's premium rate;

38 (4) To the extent that such information is available, investment  
39 income or investment losses of the insurance company for the ten-year  
40 period prior to the rate approval may be considered; and

41 (5) To the extent that such information is available and impacts  
42 losses, the locale in which the health care practice is occurring.

43 4. Unfair discrimination exists if, after allowing for practical  
44 limitations, price differentials fail to reflect equitably the differences  
45 in expected losses and expenses. A rate is not unfairly discriminatory  
46 because different premiums result for policyholders with like loss  
47 exposures but different expenses, or like expenses but different loss  
48 exposures, so long as the rate reflects the differences with reasonable  
49 accuracy.

50 5. Due consideration shall be given to past and prospective loss  
51 and expense experience within and outside of this state, to catastrophe  
52 hazards and contingencies, to events or trends within and outside of  
53 this states, and to all other relevant factors, including judgment.

54 6. Rates may contain a provision for contingencies and an  
55 allowance permitting a reasonable profit. In determining the  
56 reasonableness of profit, consideration should be given to all  
57 investment income attributable to premiums and reserves.

58 7. The director, under section 374.045, RSMo, shall promulgate  
59 rules for the administration and enforcement of sections 383.196 to  
60 383.199. Any rule or portion of a rule, as that term is defined in section  
61 536.010, RSMo, that is created under the authority delegated in this  
62 section shall become effective only if it complies with and is subject to  
63 all of the provisions of chapter 536, RSMo, and, if applicable, section  
64 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable  
65 and if any of the powers vested with the general assembly pursuant to  
66 chapter 536, RSMo, to review, to delay the effective date, or to  
67 disapprove and annul a rule are subsequently held unconstitutional,  
68 then the grant of rulemaking authority and any rule proposed or

69 adopted after August 28, 2006, shall be invalid and void.

70 8. The provisions of sections 383.196 to 383.199 shall expire on  
71 December 31, 2010.

383.197. 1. Every insurer shall file with the director all rates and  
2 supplementary rate information which is to be used in this state. Such  
3 rates and supplementary rate information and supporting information  
4 required by the director shall be filed at least ninety days before the  
5 effective date. Upon application by the filer, the director may  
6 authorize an earlier effective date.

7 2. Rates filed pursuant to this section shall be filed in such form  
8 and manner as prescribed by the director. Whenever a filing is not  
9 accompanied by such information as the director has required under  
10 this section, the director shall so inform the insurer within thirty days  
11 and the filing shall not be deemed to be made until the information is  
12 furnished or the insurer certifies that the additional information is not  
13 maintained or it cannot reasonably be provided.

14 3. The director shall make a determination of whether or not to  
15 approve a rate within sixty days of the filing being made under this  
16 section, but notwithstanding this requirement, if the director fails to  
17 make an approval or disapproval determination within that sixty-day  
18 period, a rate application shall be deemed approved.

19 4. All rates, supplementary rate information and any supporting  
20 information shall, as soon as filed, be open to public inspection at any  
21 reasonable time. Copies may be obtained by any person on request and  
22 upon payment of a reasonable charge.

383.198. 1. The director may disapprove a rate if the director  
2 finds that the rate is inadequate, excessive or unfairly discriminatory  
3 under section 383.196.

4 2. The director may disapprove, without hearing, rates prefiled  
5 pursuant to section 383.196 that have not become effective; however,  
6 the insurer whose rates have been disapproved shall be given a hearing  
7 upon a written request made within thirty days after the disapproval  
8 order.

9 3. Notwithstanding a prior approval under section 383.197, a rate  
10 may be disapproved at any time subsequent to the effective date;  
11 however, the director may disapprove rates that have become effective  
12 only after the insurer has been provided a hearing thereon.

13           4. Whenever an insurer has no legally effective rates as a result  
14 of the director's disapproval of rates or other act, the director shall on  
15 request of the insurer specify interim rates for the insurer that are  
16 high enough to protect the interests of all parties and may order that  
17 a specified portion of the premiums be placed in an escrow account  
18 approved by the director. When new rates become legally effective, the  
19 director shall order the escrowed funds or any overcharge in the  
20 interim rates to be distributed appropriately, except that refunds of  
21 less than ten dollars per policyholder shall not be required.

          383.199. Notwithstanding any other provision of law, no insurer  
2 shall, with regards to medical malpractice insurance, as defined in  
3 section 383.150, implement any rate increase without first providing  
4 clear and conspicuous written notice by United States mail to the  
5 insured at least thirty days prior to implementation of the rate  
6 increase.

          383.450. 1. As used in this section, "insurer" includes every  
2 insurance company authorized to transact business in this state, every  
3 unauthorized insurance company transacting business pursuant to  
4 chapter 384, RSMo, every risk retention group, every insurance  
5 company issuing policies or providing benefits to or through a  
6 purchasing group, and any other person providing medical malpractice  
7 insurance coverage in this state.

8           2. Notwithstanding any other provision of law, no insurer shall,  
9 with regards to medical malpractice insurance, as defined in section  
10 383.150:

11           (1) Fail or refuse to renew the insurance without first providing  
12 written notice by certified United States mail to the insured at least  
13 sixty days prior to the effective date of such actions, unless such failure  
14 or refusal to renew is based upon a failure to pay sums due or a  
15 termination or suspension of the health care provider's license to  
16 practice medicine in the state of Missouri, termination of the insurer's  
17 reinsurance program, or a material change in the nature of the  
18 insured's health care practice; or

19           (2) Cease the issuance of such policies of insurance in the state  
20 of Missouri without first providing written notice by certified United  
21 States mail to the insured and to the Missouri department of insurance  
22 at least one hundred eighty days prior to the effective date of such

23 **actions.**

24 **3. Any insurer that fails to provide the notice required under**  
25 **subdivision (2) of subsection 2 of this section shall, at the option of the**  
26 **insured, continue the coverage in accordance with the provisions of**  
27 **subdivision (2) of subsection 6 of section 379.321, RSMo.**

✓

Unofficial

Bill

Copy