

SECOND REGULAR SESSION

SENATE BILL NO. 905

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Read 1st time January 19, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4389S.011

AN ACT

To repeal section 383.105, RSMo, and to enact in lieu thereof eight new sections relating to medical malpractice insurance.

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

Section A. Section 383.105, RSMo, is repealed and eight new sections
2 enacted in lieu thereof, to be known as sections 383.105, 383.106, 383.107,
3 383.108, 383.124, 383.151, 383.198 and 383.450, to read as 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;

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

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

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 by such categories. The director
12 shall consider the history of prior court judgments for claims under
13 chapter 383 in each county of the state in establishing the risk
14 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. 1. The director shall establish reporting standards for
2 insurers by which the insurers shall report their base rates for the risk
3 reporting categories designated by the director, in whatever categories
4 the director determines to be actuarially appropriate.

5 2. The director shall collect the information required in
6 subsection 1 of this section and shall create a database to be made
7 available to the public that compares the base rates charged by each
8 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.

383.151. By January 1, 2008, the director shall determine whether
2 medical malpractice liability insurance is reasonably available for
3 health care providers in the voluntary market. If the director
4 determines that such insurance is not reasonably available, the director
5 shall establish a method for providing such insurance to such health
6 care providers. The director may:

7 (1) Establish a competitive bidding process under which insurers
8 may submit rates at which they agree to insure such health care
9 providers; or

10 (2) Establish any other method reasonably designed to provide
11 insurance to such health care providers.

383.198. 1. Notwithstanding the provisions of sections 383.037
2 and 383.160, no insurer shall issue or sell in the state of Missouri a
3 policy insuring a health care provider, as defined in section 538.205,
4 RSMo, for damages for personal injury or death arising out of the
5 rendering of or failure to render health care services, unless the rates
6 for such policy are approved by the director of the department of
7 insurance.

8 2. The director of the department of insurance shall review and
9 approve or reject rates pursuant to subsection 1 of this section based
10 on the following factors:

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

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

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

19 (4) Rates shall be based on Missouri loss experience and not the
20 insurance company's or the insurance industry's loss experiences in
21 states other than Missouri unless the failure to do so jeopardizes the
22 financial stability of the insurer; provided however, that loss
23 experiences relating to the specific proposed insured occurring outside
24 the state of Missouri may be considered in allowing a surcharge to such
25 insured's premium rate;

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

34 (6) The locale in which the health care practice is occurring;

35 (7) Inflation;

36 (8) Reasonable administrative costs of the insurer;

37 (9) Reasonable costs of defense of claims against Missouri health
38 care providers;

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

45 (11) Any other reasonable factors may be considered in the
46 approval or rejection of the rate request.

47 3. Rate approval requests may be approved or denied based on
48 any subcategory or subspecialty of the health care industry that the
49 director determines to be reasonable.

50 4. The insurer may charge any reasonable additional premium
51 or grant any reasonable discount rate to any health care provider
52 based on the following criteria as it relates to a specified insured
53 health care provider or other specific health care providers within the
54 specific insured's employ or business entity:

55 (1) Loss experiences;

- 56 **(2) Training and experience;**
57 **(3) Number of employees of the insured entity;**
58 **(4) Availability of equipment, capital, or hospital privileges;**
59 **(5) Loss prevention measures taken by the insured;**
60 **(6) The number and extent of claims not resulting in losses;**
61 **(7) The specialty or subspecialty of the health care provider;**
62 **(8) Access to equipment and hospital privileges; and**
63 **(9) Any other factors determined to be reasonable by the**
64 **director.**

65 **5. Any rate application shall be deemed approved if not rejected**
66 **within sixty days, unless the director extends such period due to the**
67 **applicant's failure to timely provide requested information.**

68 **6. The director of the department of insurance shall annually**
69 **provide the governor and the general assembly a report as to the rate**
70 **increases or decreases of the rates approved pursuant to this section**
71 **and the number of requests disapproved pursuant to this section.**

72 **7. As used in this section, "insurer" includes every insurance**
73 **company authorized to transact business in this state, every**
74 **unauthorized insurance company transacting business pursuant to**
75 **chapter 384, RSMo, every risk retention group, every insurance**
76 **company issuing policies or providing benefits to or through a**
77 **purchasing group, and any other person providing medical malpractice**
78 **insurance coverage in this state.**

79 **8. The director of the department of insurance shall promulgate**
80 **rules for the enforcement of this section. Any rule or portion of a rule,**
81 **as that term is defined in section 536.010, RSMo, that is created under**
82 **the authority delegated in this section shall become effective only if it**
83 **complies with and is subject to all of the provisions of chapter 536,**
84 **RSMo, and, if applicable, section 536.028, RSMo. This section and**
85 **chapter 536, RSMo, are nonseverable and if any of the powers vested**
86 **with the general assembly pursuant to chapter 536, RSMo, to review, to**
87 **delay the effective date, or to disapprove and annul a rule are**
88 **subsequently held unconstitutional, then the grant of rulemaking**
89 **authority and any rule proposed or adopted after August 28, 2006, shall**
90 **be invalid and void.**

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.

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