

SECOND REGULAR SESSION

HOUSE BILL NO. 1940

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FLOOK (Sponsor), LAGER, PAGE AND ERVIN (Co-sponsors).

Read 1st time March 2, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

5215L.01I

AN ACT

To amend chapter 383, RSMo, by adding thereto eight new sections relating to the establishment of the Missouri health care stabilization fund.

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

Section A. Chapter 383, RSMo, is amended by adding thereto eight new sections, to be
2 known as sections 383.350, 383.353, 383.356, 383.359, 383.362, 383.365, 383.368, and 383.371,
3 to read as follows:

383.350. As used in sections 383.350 to 383.371, the following terms mean:

- 2 **(1) "Director", the director of the department of insurance;**
- 3 **(2) "Fund", the Missouri health care stabilization fund established under sections**
4 **383.350 to 383.371;**
- 5 **(3) "Health care provider", includes physicians, dentists, clinical psychologists,**
6 **pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants,**
7 **chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical**
8 **technicians, hospitals, nursing homes, and extended care facilities; but shall not include**
9 **any nursing service or nursing facility conducted by and for those who rely upon treatment**
10 **by spiritual means alone in accordance with the creed or tenets of any well-recognized**
11 **church or religious denomination;**
- 12 **(4) "Insurer", any insurance company, association, exchange, or legal entity**
13 **authorized to issue policies of medical malpractice insurance in this state;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

383.353. 1. There is hereby created in the state treasury the "Missouri Health Care
2 Stabilization Fund". Membership fees and premium surcharges collected under section
3 383.362 shall be deposited in the fund. Notwithstanding the provisions of section 33.080,
4 RSMo, to the contrary, moneys in the Missouri health care stabilization fund shall not
5 revert to the general revenue fund. Interest accruing to the fund shall be part of the fund.
6 Moneys in the fund shall be invested and reinvested in the same manner as provided by
7 law for the investment of other state funds in interest-bearing investments. All expenses
8 of collecting, protecting, and administering the fund shall be paid from the fund.

2. The Missouri health care stabilization fund shall be used for the purpose of
9 paying that portion of a medical malpractice claim, settlement, or judgment which is in
10 excess of the limits expressed in section 383.368 or the maximum liability limits for which
11 the health care provider is insured, whichever limit is greater. The fund is liable only for
12 payment of claims against licensed health care providers in compliance with the provisions
13 of sections 383.350 to 383.371 and includes reasonable and necessary expenses incurred in
14 payment of claims and the fund's administrative expense. The fund shall not be liable for
15 damages for injury or death caused by an intentional crime committed by a health care
16 provider or an employee of a health care provider, whether or not the criminal conduct is
17 the basis for a medical malpractice claim. The fund shall have no obligation for the
18 payment of punitive damages rendered in any judgment. The state shall not be responsible
19 for any costs, expenses, liabilities, judgments, or other obligations of the fund.
20

3. The maximum amount recoverable under the Missouri health care stabilization
21 fund for any single claim under sections 383.350 to 383.371 shall not exceed eight hundred
22 thousand dollars pursuant to any one judgment or settlement for any party against a
23 health care provider, subject to an aggregate limitation for all judgments or settlements
24 arising from all claims made in one year in an amount of two million four hundred
25 thousand dollars for any health care provider.
26

383.356. 1. There is hereby created within the department of insurance the "Health
2 Care Stabilization Board", which shall be composed of the director and nine members
3 appointed by the governor with the advice and consent of the senate. The board shall be
4 composed of:

- 5 **(1) One member who is licensed to practice medicine and surgery in Missouri who**
6 **is a doctor of medicine and who is on a list of nominees submitted to the director by an**
7 **organization representing Missouri's medical society;**
- 8 **(2) One member who is a doctor of osteopathy and who is on a list of nominees**
9 **submitted to the director by an organization representing Missouri doctors of osteopathy;**
- 10 **(3) One member who is a licensed nurse in Missouri and who is on a list submitted**
11 **to the director by an organization representing Missouri nurses;**
- 12 **(4) One member who is a representative of Missouri hospitals and who is on a list**
13 **of nominees submitted to the director by an organization representing Missouri hospitals;**
- 14 **(5) Two members who are insurance representatives and who are on a list of**
15 **nominees submitted to the director by the insurance industry;**
- 16 **(6) Two members who are attorneys that handle medical malpractice and who are**
17 **on a list of nominees submitted to the director by an organization representing Missouri**
18 **attorneys;**
- 19 **(7) One member of the general public appointed by the governor who is unaffiliated**
20 **with the insurance or health care industries or the medical or legal professions; and**
- 21 **(8) The director.**
- 22 **2. The board is created to manage and operate the Missouri health care**
23 **stabilization fund. The appointed members shall serve for a term of six years. Each**
24 **member shall serve until a successor is appointed and qualified. The board shall meet at**
25 **the call of the director or a majority of the members but in any event it shall meet at least**
26 **once a year. A majority of the board members shall constitute a quorum for the**
27 **transaction of any business of the board. The affirmative vote by a majority of the quorum**
28 **present at a duly called meeting after notice is required to exercise any function of the**
29 **board.**
- 30 **3. The board may promulgate any regulations necessary to carry out the provisions**
31 **of sections 383.350 to 383.371. Any rule or portion of a rule, as that term is defined in**
32 **section 536.010, RSMo, that is created under the authority delegated in this section shall**
33 **become effective only if it complies with and is subject to all of the provisions of chapter**
34 **536, RSMo, and, if applicable, section 536.028, RSMo. Sections 383.350 to 383.371 and**
35 **chapter 536, RSMo, are nonseverable and if any of the powers vested with the general**
36 **assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to**
37 **disapprove and annul a rule are subsequently held unconstitutional, then the grant of**
38 **rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be**
39 **invalid and void.**

40 **4. When a vacancy occurs in the membership of the board created by this section,**
41 **the governor, with the advice and consent of the senate, shall appoint a successor of like**
42 **qualifications from a list of three nominees submitted to the director by the professional**
43 **society or association prescribed by this section. Whenever a vacancy occurs in the**
44 **membership of the board created by this section for any reason other than the expiration**
45 **of a member's term of office, the governor, with the advice and consent of the senate, shall**
46 **appoint a successor of like qualifications to fill the unexpired term. In each case of a**
47 **vacancy occurring in the membership of the board, the director shall notify the**
48 **professional society or association required for the vacant position and request a list of**
49 **three nominations from which to make the appointment.**

50 **5. The board shall develop a plan of operation for the efficient administration of**
51 **the fund consistent with the provisions of sections 383.350 to 383.371. The fund shall**
52 **operate pursuant to a plan of operation which shall provide for the economic, fair, and**
53 **nondiscriminatory administration and for the prompt and efficient provision of excess**
54 **medical malpractice insurance and which may contain other provisions including, but not**
55 **limited to, assessment of all members for expenses, deficits, losses, commissions**
56 **arrangements, reasonable underwriting standards, acceptance and cession of reinsurance**
57 **appointment of servicing carriers, and procedures for determining the amounts of**
58 **insurance to be provided by the Missouri health care stabilization fund. The plan of**
59 **operation and any amendments to the plan are subject to the approval of the director. If**
60 **the board fails to develop a plan of operation within the time frame established by the**
61 **director, the director or the director's designee shall develop the plan of operation for the**
62 **fund.**

63 **6. The board may appoint such additional employees, and provide all office space,**
64 **services, equipment, materials and supplies, and all budgeting, personnel, purchasing, and**
65 **related management functions required by the board in the exercise of the powers, duties,**
66 **and functions imposed or authorized by sections 383.350 to 383.371.**

67 **7. The department of insurance shall:**

68 **(1) Provide technical and administrative assistance to the board with respect to**
69 **administration of the fund upon request of the board; and**

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

383.359. All Missouri licensed health care providers shall participate in the fund
2 **and shall remit to the board the appropriate membership fees and premium surcharges as**
3 **are required by section 383.362 on or before the provider's membership anniversary date.**

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

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

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

4. If the annual premium surcharge is collected but not paid within the time limit specified in subsection 3 of this section, the certificate of authority of the insurer, risk manager, or surplus lines agents shall be suspended until the annual premium surcharge is paid.

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

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

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

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

383.368. 1. All health care providers shall participate in the Missouri health care stabilization fund and shall either insure and keep insured the health care provider's liability by a policy of medical malpractice insurance issued by an insurer authorized to

4 do business in this state or shall qualify as a self-insurer. Qualification as a self-insurer is
5 subject to conditions established by the board. The board may establish conditions that
6 permit a self-insurer to self-insure for claims that are against employees who are health
7 care providers and that are not covered by the fund.

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

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

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

383.371. 1. A person filing a claim may recover from the fund only if the health
2 care provider or the employee of the health care provider has coverage under the fund, the
3 fund is named as a party in the action, and the action against the fund is commenced
4 within the same time limitation within which the action against the health care provider
5 or employee of the health care provider must be commenced.

6 2. If, after reviewing the facts upon which the claim or action is based, it appears
7 reasonably probable that damages paid will exceed the limits provided in section 383.318,
8 the fund may appear and actively defend itself when named as a party in an action against
9 a health care provider, or an employee of a health care provider, that has coverage under
10 the fund. In such action, the fund may retain counsel and pay out of the fund attorney fees
11 and expenses including court costs incurred in defending the fund. The attorney or law
12 firm retained to defend the fund shall not be retained or employed by the board to perform
13 legal services for the board of other than those directly connected with the fund. Any
14 judgment affecting the fund may be appealed as provided by law.

15 3. It shall be the responsibility of the insurer or self-insurer providing insurance
16 or self-insurance for a health care provider who is also covered by the fund to provide an
17 adequate defense of the fund on any claim filed that may potentially affect the fund with
18 respect to such insurance contract or self-insurance contract. The insurer or self-insurer
19 shall act in good faith and in a fiduciary relationship with respect to any claim affecting

20 the fund. No settlement exceeding an amount which could require payment by the fund
21 may be agreed to unless approved by the board.

22 4. A person who has recovered a final judgment or a settlement approved by the
23 board against a health care provider, or an employee of a health care provider that has
24 coverage under the fund, may file a claim with the board to recover that portion of such
25 judgment or settlement which is in excess of the limits provided in section 383.368 or the
26 maximum liability limit for which the health care provider is insured, whichever limit is
27 greater. In no event, however, shall the amount recoverable from the fund exceed the
28 amounts established under subsection 3 of section 383.353. Payments shall be made from
29 money collected and paid into the fund and from interest earned thereon.

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

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

✓