

FIRST REGULAR SESSION

HOUSE BILL NO. 899

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES KIRKTON (Sponsor), GARDNER,
ENGLISH AND ENGLER (Co-sponsors).

1936L.011

D. ADAM CRUMBLISS, Chief Clerk

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Section A. Sections 383.015, 383.016, 383.035, 383.037, and 383.206, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as sections 383.006, 383.009, 383.015, 383.016, 383.018, 383.035, and 383.206, to read as follows: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, 2013, shall have one hundred eighty days following August 28, 2013, to come into compliance with the requirements of sections 383.005 to 383.040 as amended by the

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.

4 **general assembly in 2013 and to file their articles of association and bylaws conforming to**
5 **sections 383.005 to 383.040 as amended by the general assembly in 2013 or the director**
6 **may suspend the assessable association's certificate of authority or issue a cease and desist**
7 **order prohibiting the assessable association from writing new business.**

383.015. 1. Any such group of persons desiring to provide malpractice insurance or
2 indemnification for its members shall pay a license fee of one hundred dollars and shall file
3 articles of association with the director of the department of insurance, financial institutions and
4 professional registration. The articles shall be filed in accordance with the provisions of sections
5 375.201 to 375.236 and shall also include the names of persons initially associated, the method
6 by which other persons may be admitted to the association as members, the purposes for which
7 organized, the amount of the initial assessment which has been paid into the association, the
8 method of assessment thereafter, and the maximum amount of any assessment which the
9 association may make against any member. The articles of association shall provide for bylaws
10 and for the amendment of the articles of association and bylaws.

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

13 3. The articles of association shall be accompanied by a copy of the initial bylaws of the
14 association. The bylaws shall provide for a governing body for the association, a manner of
15 election thereof, the manner in which assessments will be made, the specific kinds of insurance
16 or indemnification which will be offered, the classes of membership which will be offered, and
17 may provide that **regular** assessments of various amounts for particular classes of membership
18 may be made. All **regular** assessments shall be uniform within classes. The bylaws may
19 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
2 provisions of sections 383.010 to 383.040 shall:

3 (1) Specify [and define] the types of assessments, [including but not limited to initial,]
4 **which shall include at a minimum** regular[, operating, special, any other assessment to cover
5 losses and expenses incurred in the operation of the association, or any other assessment to
6 maintain or restore the association's assets, solvency, or surplus] **assessments and special**
7 **assessments;**

8 (2) Specify [by type of assessment the] **that special** assessments [that] shall apply to
9 [members, former members, or] both members and former members of the association; [and]

10 (3) With respect to [any assessment to cover losses and expenses incurred in the
11 operation of the association and any assessment to maintain or restore the association's assets,
12 solvency, or surplus] **special assessments and any operating assessments** specify:

- 13 (a) The exact method and criteria by which the amounts of each type of assessment are
14 to be determined;
- 15 (b) The time in which the assessments must be paid;
- 16 (c) That such assessments shall be made without limitation as to frequency; **and**
- 17 (d) The maximum amount of any single assessment; [and
- 18 (e)] **(4) With respect to special assessments specify** how such assessments apply to
19 members and former members. **Special assessments made by an association after the fifth**
20 **anniversary of the termination date of a former member's coverage under the association's**
21 **policy shall not apply to the former member.**

383.018. A copy of the articles of association and bylaws, as approved by the
2 **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
2 383.040 shall be subject to the provisions of the following provisions of the revised statutes of
3 Missouri:

- 4 (1) Sections 374.010, 374.040, 374.046 to 374.049, 374.110, 374.115, 374.122, 374.170,
5 374.190, 374.210, 374.215, 374.216, 374.230, 374.240, 374.250 and 374.280, relating to the
6 general authority of the director of the department of insurance, financial institutions and
7 professional registration;
- 8 (2) Sections 375.022, 375.031, 375.033, 375.035, 375.037 and 375.039, relating to
9 dealings with licensed agents and brokers;
- 10 (3) Sections 375.041 and 379.105, relating to annual statements;
- 11 (4) Section 375.163, relating to the competence of managing officers;
- 12 (5) Section 375.246, relating to reinsurance requirements, except that no association
13 shall be required to maintain reinsurance, and for insurance issued to members who joined the
14 association on or before January 1, 1993, an association shall be allowed credit, as an asset or
15 as a deduction from liability, for reinsurance which is payable to the ceding association's insured
16 by the assuming insurer on the basis of the liability of the ceding association under contracts
17 reinsured without diminution because of the insolvency of the ceding association;
- 18 (6) Section 375.390, relating to the use of funds by officers for private gain;
- 19 (7) Section 375.445, relating to insurers operating fraudulently;
- 20 (8) Section 379.080, relating to permissible investments, except that limitations in such
21 section shall apply only to assets equal to such positive surplus as is actually maintained by the
22 association;
- 23 (9) Section 379.102, relating to the maintenance of unearned premium and loss reserves
24 as liabilities, except that any such loss reserves may be discounted in accordance with reasonable
25 actuarial assumptions;

26 (10) Sections 383.100 to 383.125 relating to reports from medical malpractice insurers;
27 (11) Sections 383.200 to 383.209 and 383.225 relating to notification, data reporting,
28 and rating requirements;

29 **(12) Sections 375.1025, 375.1030, 375.1032, and sections 375.1035 to 375.1062**
30 **relating to audit by an independent certified public accountant.**

31 2. Any association licensed pursuant to the provisions of sections 383.010 to 383.040
32 shall file with its annual statement a certification by a fellow or an associate of the Casualty
33 Actuarial Society. Such certification shall conform to the National Association of Insurance
34 Commissioners annual statement instructions unless otherwise provided by the director.

35 3. The director shall have authority in accordance with section 374.045 to make all
36 reasonable rules and regulations to accomplish the purpose of sections 383.010 to 383.040,
37 including the extent to which insurance provided by an association may be extended to provide
38 payment to a covered person resulting from a specific illness possessed by such covered person[;
39 except that no rule or regulation may place limitations or restrictions on the amount of premium
40 an association may write or on the amount of insurance or limit of liability an association may
41 provide].

42 4. Other than as provided in this section, no other insurance law of the state of Missouri
43 shall apply to an association licensed pursuant to the provisions of this chapter, unless such law
44 shall expressly state it is applicable to such associations.

45 5. [If, after its second full calendar year of operation, any association licensed under the
46 provisions of sections 383.010 to 383.040 shall file an annual statement which shows a surplus
47 as regards policyholders of less than zero dollars, or if the director has other conclusive and
48 credible evidence more recent than the last annual statement indicating the surplus as regards
49 policyholders of an association is less than zero dollars, the director may order such association
50 to submit, within ninety days following such order, a voluntary plan under which the association
51 will restore its surplus as regards policyholders to at least zero dollars. The director may monitor
52 the performance of the association's plan and may order modifications thereto, including
53 assessments or rate or premium increases, if the association fails to meet any targets proposed
54 in such plan for three consecutive quarters.] **An assessable association shall maintain a**
55 **policyholder's surplus of at least six hundred thousand dollars. Notwithstanding any**
56 **provision in this section to the contrary, as assessable association licensed under sections**
57 **383.010 to 383.040 as of January 1, 2013, may renew its license, if all other conditions have**
58 **been met, by maintaining a policyholder's surplus in at least the amount specified in the**
59 **following provisions:**

60 **(1) On and after December 31, 2013, two hundred thousand dollars;**

61 **(2) On and after December 31, 2014, four hundred thousand dollars;**

62 **(3) On and after December 31, 2015, six hundred thousand dollars.**

63 6. [If the director issues an order in accordance with subsection 5 of this section, the
64 association may, in accordance with chapter 536, file a petition for review of such order. Any
65 association subject to an order issued in accordance with subsection 5 of this section shall be
66 allowed a period of three years, or such longer period as the director may allow, to accomplish
67 its plan to restore its surplus as regards policyholders to at least zero dollars. If at the end of the
68 authorized period of time the association has failed to restore its surplus to at least zero dollars,
69 or if the director has ordered modifications of the voluntary plan and the association's surplus has
70 failed to increase within three consecutive quarters after such modification, the director may
71 allow an additional time for the implementation of the voluntary plan or may exercise the
72 director's powers to take charge of the association as the director would a mutual casualty
73 company pursuant to sections 375.1150 to 375.1246. Sections 375.1150 to 375.1246 shall apply
74 to associations licensed pursuant to sections 383.010 to 383.040 only after the conditions set
75 forth in this section are met. When the surplus as regards policyholders of an association subject
76 to subsection 5 of this section has been restored to at least zero dollars, the authority and
77 jurisdiction of the director under subsections 5 and 6 of this section shall terminate, but this
78 subsection may again thereafter apply to such association if the conditions set forth in subsection
79 5 of this section for its application are again satisfied.] **Any association licensed under sections**
80 **383.010 to 383.040 shall not cause the ratio of its net written premiums to its policyholders'**
81 **surplus to exceed three to one without the approval of the director. Notwithstanding any**
82 **provision of this section, an association licensed under sections 383.010 to 383.040 on**
83 **January 1, 2013, may renew its license, if all other conditions have been met, by not causing**
84 **the ration of its net written premiums to its policyholders' surplus to exceed the ratio**
85 **specified in the following provisions:**

86 **(1) On and after December 31, 2013, four to one;**

87 **(2) On and after December 31, 2014, three and one-half to one;**

88 **(3) On and after December 31, 2015, three to one.**

89 **7. Violation of any of the provisions in subsection 5 or 6 of this section by any**
90 **assessable association is grounds for the revocation of its license to conduct business by the**
91 **director.**

92 **8.** Any association licensed pursuant to the provisions of sections 383.010 to 383.040
93 shall place on file with the director, except as to excess liability risks which by general custom
94 are not written according to manual rates or rating plans, a copy of every manual of
95 classifications, rules, underwriting rules and rates, every rating plan and every modification of
96 the foregoing which it uses. Filing with the director within ten days after such manuals, rating
97 plans or modifications thereof are effective shall be sufficient compliance with this subsection.

98 Any rates, rating plans, rules, classifications or systems in effect or in use by an association on
99 August 28, 1992, may continue to be used by the association. Upon written application of a
100 member of an association, stating his or her reasons therefor, filed with the association, a rate in
101 excess of that provided by a filing otherwise applicable may be used by the association for that
102 member.

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

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

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

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

15 [(3)] (2) No rate shall be held to be inadequate unless such rate is unreasonably low for
16 the insurance provided with respect to the classification to which such rate is applicable;

17 [(4)] (3) To the extent Missouri loss experience is available, rates and projected losses
18 shall be based on Missouri loss experience and not the insurance company's or the insurance
19 industry's loss experiences in states other than Missouri unless the failure to do so jeopardizes
20 the financial stability of the insurer; provided however, that loss experiences relating to the
21 specific proposed insured occurring outside the state of Missouri may be considered in allowing
22 a surcharge to such insured's premium rate;

23 [(5)] (4) Investment income or investment losses of the insurance company for the
24 ten-year period prior to the request for rate approval may be considered in reviewing rates.
25 Investment income or investment losses for a period of less than ten years shall not be considered
26 in reviewing rates. Industrywide investment income or investment losses for the ten-year period
27 prior to the request for rate approval may be considered for any insurance company that has not
28 been authorized to issue insurance for more than ten years;

29 [(6)] (5) The locale in which the health care practice is occurring;

30 [(7)] (6) Inflation;

31 [(8)] (7) Reasonable administrative costs of the insurer;

32 ~~[(9)]~~ **(8)** Reasonable costs of defense of claims against Missouri health care providers;

33 ~~[(10)]~~ **(9)** A reasonable rate of return on investment for the owners or shareholders of
34 the insurer when compared to other similar investments at the time of the rate request; except
35 that, such factor shall not be used to offset losses in other states or in activities of the insurer
36 other than the sale of policies of insurance to Missouri health care providers; and

37 ~~[(11)]~~ **(10)** Any other reasonable factors may be considered in the disapproval of the rate
38 request.

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

42 4. If actuarially supported and included in a filed rate, rating plan, rule, manual, or rating
43 system, an insurer may charge an additional premium or grant a discount rate to any health care
44 provider based on criteria as it relates to a specified insured health care provider or other specific
45 health care providers within the specific insured's employ or business entity. Such criteria may
46 include:

47 (1) Loss experiences;

48 (2) Training and experience;

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

50 (4) Availability of equipment, capital, or hospital privileges;

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

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

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

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

55 (9) Any other reasonable criteria identified by the insurer and filed with the department
56 of insurance, financial institutions and professional registration.

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

61 6. The director of the department of insurance, financial institutions and professional
62 registration shall promulgate rules for the administration and enforcement of this section. Any
63 rule or portion of a rule, as that term is defined in section 536.010, that is created under the
64 authority delegated in this section shall become effective only if it complies with and is subject
65 to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and
66 chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant
67 to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are

68 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed
69 or adopted after August 28, 2006, shall be invalid and void.

2 [383.037. The rates made by each association licensed pursuant to
3 sections 383.010 to 383.040 shall be subject to the following provisions:

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

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

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

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