

SECOND REGULAR SESSION

HOUSE BILL NO. 1648

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MUNTZEL.

4158H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 303.200, 379.860, 383.155, 383.160, and 383.175, RSMo, and to enact in lieu thereof five new sections relating to the regulation of residual insurance market entities.

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

Section A. Sections 303.200, 379.860, 383.155, 383.160, and 383.175, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 303.200, 379.860, 383.155, 383.160, and 383.175, to read as follows:

303.200. 1. After consultation with insurance companies ~~[authorized to issue automobile liability policies]~~ **having a certificate of authority to do business in this state and actively writing motor vehicle liability policies**, the director of the department of commerce and insurance, **hereinafter referred to as the director**, shall approve a reasonable plan ~~[or plans for the equitable apportionment among such companies of applicants for such policies and for personal automobile and commercial motor vehicle liability]~~ **to provide motor vehicle insurance policies for applicants** who are in good faith entitled to but are unable to procure such policies through ordinary methods. **The plan shall be known as the "Missouri Automobile Insurance Plan", hereinafter referred to as the plan.** When any such plan has been approved, all such insurance companies shall subscribe thereto and participate therein. ~~[The plan manager, on the plan's behalf, shall contract with an entity or entities to accept and service applicants and policies for any company that does not elect to accept and service applicants and policies. By October first of each year any company that elects to accept and service applicants and policies for the next calendar year for any such plan shall so notify the plan. Except as provided in subsection 2 of this section, any company that does not so notify a plan established for handling coverage for personal automobile risks shall be excused from accepting and~~

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.

17 ~~servicing applicants and policies for the next calendar year for such plan and shall pay a fee to~~
18 ~~the plan or servicing entity for providing such services. The fee shall be based on the company's~~
19 ~~market share as determined by the company's writings of personal automobile risks in the~~
20 ~~voluntary market.] Any applicant for [any such] a policy, any person insured under [any such]~~
21 **the plan, and any insurance company affected may appeal to the director from any ruling or**
22 **decision of the [manager or committee designated to operate such] plan. Any person aggrieved**
23 **hereunder by any order or act of the director may, within ten days after notice thereof, file a**
24 **petition in the circuit court of the county of Cole for a review thereof. The court shall summarily**
25 **hear the petition and may make any appropriate order or decree. [As used in this section, the term**
26 **"personal automobile" means a private passenger nonfleet vehicle, motorcycle, camper and travel**
27 **trailer, antique auto, amphibious auto, motor home, named nonowner applicant, or a low-speed**
28 **vehicle subject to chapter 304 which is not primarily used for business or nonprofit interests and**
29 **which is generally used for personal, family, or household purposes.]**

30 2. ~~[If the total premium volume for any one plan established for handling coverage for~~
31 ~~personal automobile risks exceeds ten million dollars in a calendar year, a company with more~~
32 ~~than five percent market share of such risks in Missouri shall not be excused from accepting and~~
33 ~~servicing applicants and policies of such plan under subsection 1 of this section for the next~~
34 ~~calendar year, unless the governing body of the plan votes to allow any company with such~~
35 ~~market share the option to be excused] **The plan shall perform its functions under a plan of**
36 **operation and through a governing committee as prescribed in the plan of operation. Any**
37 **plan of operation, prior to taking effect, shall be filed and approved by the director. Any**
38 **amendments to the plan of operation so adopted shall also be filed with and approved by**
39 **the director prior to taking effect.**~~

40 3. **The plan of operation shall prescribe the issuance of motor vehicle insurance**
41 **policies by the plan, which may include the administration of such policies by:**

42 (1) **A third party administrator that has a certificate of authority to do business in**
43 **this state;**

44 (2) **A nationally recognized management organization and service provider that**
45 **specializes in the administration of motor vehicle insurance residual market mechanisms,**
46 **subject to the approval of the director; or**

47 (3) **An insurance company that has a certificate of authority to do business in this**
48 **state.**

49 4. **Every form of a policy, endorsement, rider, manual of classifications, rules, and**
50 **rates; every rating plan; and every modification of any of them proposed to be used by the**
51 **plan shall be approved by the director prior to use.**

52 **5. Any policy of insurance issued by the plan shall conform to the provisions of this**
53 **chapter and any insurance law of this state applicable to motor vehicle insurance policies,**
54 **except for any law that specifically exempts the plan from the purview of the law.**

55 **6. The plan shall:**

56 **(1) File annual audited financial reports for the preceding year with the director**
57 **no later than June thirtieth of each year;**

58 **(2) Be subject to examination by the director under sections 374.205 to 374.207; and**

59 **(3) Have the authority to make assessments on member insurance companies if the**
60 **funds from policyholder premiums and other revenues are not sufficient for the sound**
61 **operation of the plan. An assessment upon a member insurance company shall be in the**
62 **same proportion to its share of the voluntary market premium for the type of policies**
63 **written under the plan. The procedures for levying assessment shall be prescribed in the**
64 **plan of operation.**

65 **7. There shall be no liability imposed on the part of, and no cause of action of any**
66 **nature shall arise against any member insurer or any member of the governing committee**
67 **for any omission or action taken by them in the performance of their powers and duties**
68 **under this section.**

 379.860. 1. This program shall be administered by a governing committee (hereinafter
2 referred to as "the committee") of the facility, subject to the supervision of the director, and
3 operated by a manager appointed by the committee.

4 2. The committee shall consist of thirteen members:

5 (1) Ten members shall be elected [~~from the following:~~

6
7 ~~— American Insurance Association, two;~~

8
9 ~~— Property Casualty Insurers Association of America, two;~~

10
11 ~~— National Association of Mutual Insurance Companies, one;~~

12
13 ~~— Missouri Insurance Coalition, one;~~

14
15 ~~— All other stock insurers, two;~~

16
17 ~~— All other nonstock insurers, two]~~ **as prescribed in the plan of operation;**

18 (2) Three members shall be appointed by the director from each of the following:

19

20 Missouri insurer, one;

21

22 Licensed agent of an insurer, two.

23

24 Not more than one insurer in a group under the same management or ownership shall serve on
25 the committee at the same time.

26 3. In case of a vacancy on the governing committee the director shall appoint a
27 representative to such vacancy pending the designation or election as provided in the program.

28 **4. There shall be no liability imposed on the part of and no cause of action of any**
29 **nature shall arise against any member insurer or any member of the governing committee**
30 **for any omission or action taken in the performance of their powers and duties under**
31 **sections 379.810 to 379.880.**

383.155. 1. A joint underwriting association may be created upon determination by the
2 director after a public hearing that medical malpractice liability insurance is not reasonably
3 available for health care providers in the voluntary market. The association shall contain as
4 members all companies authorized to write and engaged in writing, on a direct basis, any
5 insurance or benefit, the premium for which is included under the definition of "net direct
6 premiums". Membership in the association shall be a condition of continued authority to do
7 business in this state.

8 2. A plan of operation shall be adopted to be effective concurrently with the effective
9 date of the association.

10 3. The association shall, pursuant to the provisions of sections 383.150 to 383.195 and
11 the plan of operation, with respect to medical malpractice insurance, have the authority on behalf
12 of its members:

13 (1) To issue, or to cause to be issued, policies of insurance to applicants, including
14 incidental coverages and subject to limits as specified in the plan of operation but not to exceed
15 one million dollars for each claimant under one policy and three million dollars for all claimants
16 under one policy in any one policy year;

17 (2) To underwrite such insurance and to adjust and pay losses with respect thereto, or
18 to appoint a service company to perform those functions;

19 (3) To assume reinsurance from its members; and

20 (4) To cede reinsurance.

21 4. Within forty-five days following the creation of the association, the directors of the
22 association shall submit to the director for his **or her** review, a proposed plan of operation,
23 consistent with the provisions of sections 383.150 to 383.195.

24 5. The plan of operation shall provide for economic, fair and nondiscriminatory
25 administration and for the prompt and efficient distribution of medical malpractice insurance,
26 and shall contain other provisions including, but not limited to, preliminary assessment of all
27 members for initial expenses to commence operations, establishment of necessary facilities,
28 management of the association, assessment of members to defray losses and expenses,
29 reasonable and objective underwriting standards, acceptance and cession of reinsurance,
30 appointment of a servicing company and procedures for determining amounts of insurance to be
31 provided by the association. The preliminary assessment shall be an advance to be recouped
32 under the provisions of subsection 5 of section 383.160.

33 **6. The composition of the board and the terms of directors of the board shall be**
34 **established by the plan of operation.**

35 7. The plan of operation shall be subject to approval by the director after consultation
36 with the members of the association, representatives of the public and other affected individuals
37 and organizations. If the director disapproves all or any part of the proposed plan of operation,
38 the directors shall within fifteen days submit for review a revised plan of operation. If the
39 directors fail to do so, the director shall promulgate a plan of operation or part thereof, as the case
40 may be. The plan of operation approved or promulgated by the director shall become effective
41 and operational upon his **or her** order.

42 ~~[7.]~~ **8.** Amendments to the plan of operation may be made by the directors of the
43 association, subject to the approval of the director or shall be made at his direction.

44 **9. There shall be no liability imposed on the part of and no cause of action of any**
45 **nature shall arise against any member insurer or any member of the board of directors for**
46 **any omission or action taken by them in the performance of their powers and duties under**
47 **sections 383.150 to 383.195.**

 383.160. 1. All association policies of insurance shall be written ~~[so as to apply to injury~~
2 ~~which results from acts or omissions occurring during the policy period]~~ **to provide medical**
3 **malpractice insurance coverage as prescribed by the plan of operation.** No policy form shall
4 be used by the association unless it has been filed with the director and approved or thirty days
5 have elapsed and he has not delivered to the board written disapproval of it as misleading or not
6 in the public interest. The director shall have the power to disapprove any policy form
7 previously approved if found by him after hearing to be misleading or not in the public interest.

8 2. Cancellation of the association's policies shall be governed by law.

9 3. The rates, rating plans, rating rules, rating classifications and territories applicable to
10 the insurance written by the association and statistics relating thereto shall be subject to the
11 casualty rate regulation law giving due consideration to the past and prospective loss and expense
12 experience in medical malpractice insurance of all of the insurers, trends in the frequency and

13 severity of losses, the investment income of the association, and such other information as the
14 director may require. All rates shall be actuarially sound and shall be calculated to be
15 self-supporting.

16 4. In the event sufficient funds are not available for the sound financial operation of the
17 association, additional funds shall be raised by making an assessment on all member companies.
18 Assessments shall be made against members in the proportion that the net direct premiums for
19 the preceding calendar year of each member for each line of insurance requiring it to participate
20 in said plan bear to the net direct premiums for the preceding calendar year of all members for
21 such line of insurance; provided that, assessments made pursuant to sections 383.150 to 383.195
22 shall not exceed in any calendar year one percent of each member's net direct premiums
23 attributable to the line or lines of insurance the writing of which requires it to be a member.

24 5. All members shall deduct the amount of any assessment from past or future premium
25 taxes due but not yet paid the state.

26 6. Any funds which result from policyholder premiums and other revenues received in
27 excess of those funds required for reserves, loss payments and expenses incurred and accrued
28 at the end of any calendar year shall be paid proportionately to the general fund to the extent that
29 credit against premium tax liability has been granted pursuant to subsection 5 and to members
30 which have been assessed but have not received tax credits as provided in subsection 5.

383.175. The association shall be governed by a board of eight directors, to be appointed
2 by the director for the terms specified in the plan of operation. [~~Two directors shall represent~~
3 ~~insurers which write bodily injury insurance in Missouri and are members of the Property~~
4 ~~Casualty Insurers Association of America, two shall represent insurers which write bodily injury~~
5 ~~insurance in Missouri and are members of the Missouri Insurance Coalition, two shall represent~~
6 ~~insurers which write bodily injury insurance in Missouri and are members of the American~~
7 ~~Insurance Association, and two shall represent insurers which write bodily injury insurance in~~
8 ~~Missouri but are not members of any of the foregoing trade associations]~~ **The composition of**
9 **the board of directors shall be established by the plan of operation.** The directors shall be
10 reimbursed out of the administrative funds of the association only for necessary and actual
11 expenses incurred for attending meetings of the governing board.

✓