

SECOND REGULAR SESSION

# SENATE BILL NO. 779

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

Pre-filed December 11, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4328S.011

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Section A. Sections 303.200, 379.860, 383.155, 383.160, and 383.175, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 303.200, 379.860, 383.155, 383.160, and 383.175, to read as follows: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

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

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

36         2. If the total premium volume for any one plan established for handling  
37 coverage for personal automobile risks exceeds ten million dollars in a calendar  
38 year, a company with more than five percent market share of such risks in  
39 Missouri shall not be excused from accepting and servicing applicants and policies  
40 of such plan under subsection 1 of this section for the next calendar year, unless  
41 the governing body of the plan votes to allow any company with such market  
42 share the option to be excused.]

43         **2. The plan shall perform its functions under a plan of operation**  
44 **and through a governing committee as prescribed in the plan of**  
45 **operation. Any plan of operation, prior to being placed in effect, shall**  
46 **be filed with and approved by the director. Any amendments to the**  
47 **plan of operation so adopted shall also be filed with and approved by**  
48 **the director prior to being placed in effect.**

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

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

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

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

60           **4. No form of a policy, endorsement, rider, manual of**  
61 **classifications, rules, or rates, no rating plan, nor any modification of**  
62 **any of them proposed to be used by the plan shall be used prior to**  
63 **approval by the director.**

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

68           **6. The plan shall:**

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

71           **(2) Be subject to examination by the director under sections**  
72 **374.205 to 374.207;**

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

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

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

5           2. The committee shall consist of thirteen members:

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

7 American Insurance Association, two;  
8 Property Casualty Insurers Association of America, two;  
9 National Association of Mutual Insurance Companies, one;  
10 Missouri Insurance Coalition, one;  
11 All other stock insurers, two;  
12 All other nonstock insurers, two] **as prescribed in the plan of**  
13 **operation;**

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

16 Missouri insurer, one;  
17 Licensed agent of an insurer, two.

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

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

23 **4. There shall be no liability imposed on the part of, and no**  
24 **cause of action of any nature shall arise against, any member insurer**  
25 **or any member of the governing committee for any omission or action**  
26 **taken in the performance of their powers and duties under sections**  
27 **379.810 to 379.880.**

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

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

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

14 (1) To issue, or to cause to be issued, policies of insurance to applicants,  
15 including incidental coverages and subject to limits as specified in the plan of

16 operation but not to exceed one million dollars for each claimant under one policy  
17 and three million dollars for all claimants under one policy in any one policy year;

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

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

21 (4) To cede reinsurance.

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

25 5. The plan of operation shall provide for economic, fair and  
26 nondiscriminatory administration and for the prompt and efficient distribution  
27 of medical malpractice insurance, and shall contain other provisions including,  
28 but not limited to, preliminary assessment of all members for initial expenses to  
29 commence operations, establishment of necessary facilities, management of the  
30 association, assessment of members to defray losses and expenses, reasonable and  
31 objective underwriting standards, acceptance and cession of reinsurance,  
32 appointment of a servicing company and procedures for determining amounts of  
33 insurance to be provided by the association. The preliminary assessment shall  
34 be an advance to be recouped under the provisions of subsection 5 of section  
35 383.160.

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

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

46 [7.] 8. Amendments to the plan of operation may be made by the  
47 directors of the association, subject to the approval of the director or shall be  
48 made at his direction.

49 **9. There shall be no liability imposed on the part of, and no**  
50 **cause of action of any nature shall arise against any member of the**  
51 **board of directors for any omission or action taken by them in the**

52 **performance of their powers and duties under sections 383.150 to**  
53 **383.195.**

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

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

11 3. The rates, rating plans, rating rules, rating classifications and  
12 territories applicable to the insurance written by the association and statistics  
13 relating thereto shall be subject to the casualty rate regulation law giving due  
14 consideration to the past and prospective loss and expense experience in medical  
15 malpractice insurance of all of the insurers, trends in the frequency and severity  
16 of losses, the investment income of the association, and such other information  
17 as the director may require. All rates shall be actuarially sound and shall be  
18 calculated to be self-supporting.

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

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

31 6. Any funds which result from policyholder premiums and other revenues  
32 received in excess of those funds required for reserves, loss payments and  
33 expenses incurred and accrued at the end of any calendar year shall be paid  
34 proportionately to the general fund to the extent that credit against premium tax

35 liability has been granted pursuant to subsection 5 and to members which have  
36 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,  
2 to be appointed by the director for the terms specified in the plan of  
3 operation. [Two directors shall represent insurers which write bodily injury  
4 insurance in Missouri and are members of the Property Casualty Insurers  
5 Association of America, two shall represent insurers which write bodily injury  
6 insurance in Missouri and are members of the Missouri Insurance Coalition, two  
7 shall represent insurers which write bodily injury insurance in Missouri and are  
8 members of the American Insurance Association, and two shall represent insurers  
9 which write bodily injury insurance in Missouri but are not members of any of the  
10 foregoing trade associations.] **The composition of the board of directors**  
11 **shall be established by the plan of operation.** The directors shall be  
12 reimbursed out of the administrative funds of the association only for necessary  
13 and actual expenses incurred for attending meetings of the governing board.

✓  
Bill

Copy