FIRST REGULAR SESSION

SENATE BILL NO. 484

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 13, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1899S.01I

AN ACT

To repeal section 375.775, RSMo 2000, relating to claims of insolvent insurers, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 375.775, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 375.775, to read as follows:

375.775. 1. The association shall:

(1) Be obligated to the extent of the covered claims existing prior to the date of entry of a decree or judgment **that an insolvent insurer exists** pursuant to **[**section 375.560**] sections 375.950 to 375.990 or sections 375.1150 to 375.1246** or **of** a judicial determination by a court of competent jurisdiction in the insurer's domiciliary state that an insolvent insurer exists and arising within thirty days from the date or at the time of the first such decree, judgment or determination, or before the policy expiration date if less than thirty days after such date, or before or at the time the insured replaces the policy or causes its cancellation, if **[**he**] the insured** does so within thirty days of such date, but **such** obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. In no event shall the association be obligated to an insured or claimant in an amount in excess of the face amount or the limits of the policy from which a claim arises or be obligated for the payment of unearned premium in excess of the amount of ten thousand dollars, or to an insured or claimant on any covered claim until it receives confirmation from the receiver or liquidator of an insolvent insurer that the claim is within the coverage of an applicable policy of

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

the insolvent insurer, except that within the sole discretion of the association, if the association deems it has sufficient evidence from other sources, including any claim forms which may be propounded by the association, that the claim is within the coverage of an applicable policy of the insolvent insurer, it shall proceed to process the claim, pursuant to its statutory obligations, without such confirmation by the receiver or liquidator**, as follows**:

(a) All covered claims shall be filed with the association on the claim information form required by this paragraph no later than the final date first set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, except that if the time first set by the court for filing claims is one year or less from the date of insolvency, and an extension of the time to file claims is granted by the court, claims may be filed with the association no later than the new date set by the court or within one year of the date of insolvency, whichever first occurs. In no event shall the association be obligated on a claim filed after such date or on one not filed on the required form. A claim information form shall consist of a statement verified under oath by the claimant which includes all of the following:

a. The particulars of the claim;

b. A statement that the sum claimed is justly owing and that there is no setoff, counterclaim, or defense to said claim;

c. The name and address of the claimant and the attorney who represents the claimant, if any; and

d. If the claimant is an insured, that the insured's net worth did not exceed twenty-five million dollars on the date the insurer became an insolvent insurer. The association may require that a prescribed form be used and may require that other information and documents be included. A covered claim shall not include any claim not described in a timely filed claim information form even though the existence of the claim was not known to the claimant at the time a claim information form was filed;

(b) In the case of claims arising from bodily injury, sickness or disease, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, dental services **[**and comparable services for**], loss of wages, or for the face amounts or limits of the policy from which a claim arises, whichever is less. Such claim shall not be denied to** individuals who, in the exercise of their constitutional rights, rely on spiritual means alone for healing in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof**[**, including prosthetic devices and necessary ambulance, hospital, professional nursing, and any amounts lost or to be lost by reason of claimant's inability to work and earn wages or salary or their equivalent, except that**].** The association shall pay the full amount of any covered claim arising out of a workers' compensation policy. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons

ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself **or herself** had he **or she** not been injured. Verdicts as respect only those civil actions as may be brought to recover damages as provided in this section shall specifically set out the sums applicable to each item in this section for which an award may be made;

(2) Be deemed the insurer to the extent of its obligations on the covered claims and to such extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) Allocate claims paid and expenses incurred among the four accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association **[**under**] pursuant to** subdivision (1) of this subsection to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations **[**under**] pursuant to** subdivision (6) of this subsection, and other expenses authorized by sections 375.771 to 375.779.

The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year of the kinds of insurance in the account. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or, in the discretion of any such company, credited against future assessments. No dividends shall be paid stockholders or policyholders of a member insurer so long as all or part of any assessment against such insurer remains deferred. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made. Assessments made **[**under**] pursuant to** sections 375.771 to 375.779 and section 375.916 shall not be subject to subsection 1 of section 375.916;

(4) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the director, but such designation may be declined by a member insurer;

(5) Reimburse each servicing facility for obligations of the association paid by the facility and for actual expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this section;

(6) Be subject to examination and regulation by the director. The board of directors shall submit, not later than March thirtieth of each year, a financial report for the preceding calendar year in a form approved by the director; and

(7) Be considered to have been designated commissioner pursuant to subsection 2 of section 375.670, and it shall proceed to investigate, hear, settle**[**,**]** and determine covered claims unless the claimant shall, within thirty days from the date the claim is presented, present a written demand that such claim be processed in the liquidation proceedings as a claim not covered by sections 375.771 to 375.779.

2. The association may:

(1) Appear in, defend and appeal any action on a claim brought against the association;

(2) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;

(3) Borrow funds necessary to effect the purposes of sections 375.771 to 375.779 in accord with the plan of operation;

(4) Sue or be sued;

(5) Negotiate and become a party to such contracts as are necessary to carry out the purpose of sections 375.771 to 375.779;

(6) Perform such other acts as are necessary or proper to effectuate the purpose of sections 375.771 to 375.779;

(7) Refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year; and

(8) Become a member of the National Committee on Insurance Guaranty Funds.