

SECOND REGULAR SESSION

SENATE BILL NO. 877

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Pre-filed December 13, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3833S.01I

AN ACT

To amend chapter 379, RSMo, by adding thereto eight new sections relating to the establishment of the Missouri catastrophe fund.

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

Section A. Chapter 379, RSMo, is amended by adding thereto eight new
2 sections, to be known as sections 379.955, 379.957, 379.959, 379.961, 379.963,
3 379.965, 379.967, and 379.969, to read as follows:

**379.955. As used in sections 379.955 to 379.969, unless otherwise
2 indicated, the following terms mean:**

3 (1) "Actuarially indicated", with respect to premiums paid by
4 insurers for reimbursement provided by the fund, an amount
5 determined according to principles of actuarial science to be adequate,
6 but not excessive, in the aggregate, to pay current and future
7 obligations and expenses of the fund, including additional amounts if
8 needed to pay debt service on revenue bonds issued under section
9 379.963 and to provide required debt service coverage in excess of the
10 amounts required to pay actual debt service on revenue bonds issued
11 under section 379.963, and determined according to principles of
12 actuarial science to reflect each insurer's relative exposure to losses
13 from covered events;

14 (2) "Covered event", all earthquakes, regardless of quantity, that
15 occur in a calendar year, that are declared to be earthquakes by the
16 United States Geological Survey, which cause insured losses in this
17 state;

18 (3) "Covered policy", any insurance policy covering residential
19 property in this state, including, but not limited to, any homeowner's,
20 mobile homeowner's, farm owner's, condominium association,

21 condominium unit owner's, tenant's, or apartment building policy, or
22 any other policy covering a residential structure or its contents issued
23 by any authorized insurer, including any basic property insurance
24 policy issued under sections 379.810 to 379.880. "Covered policy" does
25 not include any policy that specifically excludes coverage for covered
26 losses;

27 (4) "Director", the director of the department of insurance,
28 financial institutions and professional registration, or his or her
29 designee;

30 (5) "Fund", the Missouri catastrophe fund created under section
31 379.957;

32 (6) "Losses", direct incurred losses under covered policies in a
33 calendar year, excluding losses attributable to additional living
34 expense coverages not to exceed forty percent of the insured value of
35 a residential structure or its contents, and excluding loss adjustment
36 expenses and fair rental value losses and business interruption losses;

37 (7) "Retention", the amount of losses below which an insurer is
38 not entitled to reimbursement from the fund. An insurer's retention
39 shall be calculated as follows:

40 (a) The department of insurance, financial, and professional
41 regulation shall calculate and report to each insurer the retention
42 multiples for that year. For the contract year beginning January 1,
43 2009, the retention multiple shall be equal to two billion dollars divided
44 by the total estimated reimbursement premium for the contract year;
45 for subsequent years, the retention multiple shall be equal to two
46 billion dollars, adjusted to reflect the percentage growth in premium
47 for covered policies since 2009, divided by the total estimated
48 reimbursement premium for the contract year;

49 (b) The retention multiple as determined under paragraph (a) of
50 this subdivision shall be adjusted to reflect the coverage level elected
51 by the insurer. For insurers electing the ninety percent coverage level,
52 the adjusted retention multiple is one hundred percent of the amount
53 determined under paragraph (a) of this subdivision. For insurers
54 electing the seventy-five percent coverage level, the retention multiple
55 is one hundred twenty percent of the amount determined under
56 paragraph (a) of this subdivision. For insurers electing the forty-five
57 percent coverage level, the adjusted retention multiple is two hundred

58 percent of the amount determined under paragraph (a) of this
59 subdivision;

60 (c) An insurer shall determine its provisional retention by
61 multiplying its provisional reimbursement premium by the applicable
62 adjusted retention multiple and shall determine its actual retention by
63 multiplying its actual reimbursement premium by the applicable
64 adjusted retention multiple;

65 (d) To the extent the Missouri catastrophe fund collects federal
66 backdrop or reinsurance moneys designed to provide protection above
67 the financial capacity of the fund as provided in sections 379.955 to
68 379.969, the insurer elected coverage levels shall automatically become
69 one hundred percent.

379.957. 1. There is hereby created the "Missouri Catastrophe
2 Fund" within the state treasury to be administered by the
3 director. Moneys in the fund may not be expended, loaned, or
4 appropriated except to pay obligations of the fund arising out of
5 reimbursement contracts entered into under section 379.959, payment
6 of debts including obligations arising out of revenue bonds issued
7 under section 379.963, costs of the mitigation program under section
8 379.965, costs of procuring reinsurance, and costs of administration of
9 the fund. The director shall invest the moneys in the fund under
10 section 30.260, RSMo. Except as otherwise provided in sections 379.955
11 to 379.969, earnings from all investments shall be retained in the
12 fund. Notwithstanding the provisions of section 33.080, RSMo, to the
13 contrary, moneys in the trust fund shall not revert to the credit of the
14 general revenue fund at the end of the biennium. The director may
15 employ or contract with such staff and professionals as it deems
16 necessary for the administration of the fund.

17 2. The director shall promulgate such rules as are reasonable
18 and necessary to implement sections 379.955 to 379.969. The director
19 is authorized to adopt those rules that are reasonable and necessary to
20 accomplish the limited duties specifically delegated within sections
21 379.955 to 379.969. Any rule or portion of a rule, as that term is defined
22 in section 536.010, RSMo, that is promulgated under the authority
23 delegated in sections 379.955 to 379.969 shall become effective only if
24 it has been promulgated under the provisions of chapter 536,
25 RSMo. This section and chapter 536, RSMo, are nonseverable and if any

26 of the powers vested with the general assembly under chapter 536,
27 RSMo, to review, to delay the effective date or to disapprove and annul
28 a rule are subsequently held unconstitutional, then the grant of
29 rulemaking authority and any rule proposed or adopted after the
30 effective date of this section shall be invalid and void.

379.959. 1. The director shall enter into a contract with each
2 insurer writing covered policies in this state to provide to the insurer
3 the reimbursement described in subsection 2 of this section, in
4 exchange for the reimbursement premium paid into the fund under
5 section 379.961. As a condition of doing business in this state, each
6 such insurer shall enter into such a contract.

7 2. The contract shall require the director to reimburse the
8 insurer for forty-five percent, seventy-five percent, or ninety percent
9 of its losses from each covered event in excess of the insurer's
10 retention, plus ten percent of the reimbursed losses to cover loss
11 adjustment expenses.

12 3. The insurer shall elect one of the payment percentage
13 coverage levels specified in this section and may, upon renewal of a
14 reimbursement contract:

15 (1) Elect a lower percentage coverage level; or

16 (2) Elect a higher percentage if it pays to the fund an actuarially
17 appropriate equalization charge as determined by the director.

18 4. All members of an insurer group must elect the same
19 percentage coverage level. The Missouri basic property insurance
20 inspection and placement program under section 379.810 shall elect the
21 ninety percent coverage level.

22 5. The contract shall provide that reimbursement amounts shall
23 not be reduced by reinsurance paid or payable to the insurer from
24 other sources; however, recoveries from such other sources, taken
25 together with reimbursements under the contract, may not exceed one
26 hundred percent of the insurer's losses from covered events. If such
27 recoveries and reimbursements exceed one hundred percent of the
28 insurer's losses from covered events, and if there is no agreement
29 between the insurer and the reinsurer to the contrary, any amount in
30 excess of one hundred percent of the insurer's losses shall be returned
31 to the fund.

32 6. The contract shall also provide that the obligation of the

33 director with respect to all contracts covering a particular year shall
34 not exceed the balance of the fund, together with the maximum amount
35 that the director is able to raise through the issuance of revenue bonds
36 under section 379.963. The contract shall require the director to
37 annually notify insurers of the fund's anticipated borrowing capacity
38 for the next year, the current balance of the fund, and the insurer's
39 estimated share of total reimbursement premium to be paid to the
40 fund. For all regulatory and reinsurance purposes, an insurer may
41 calculate its projected payout from the fund as its share of the total
42 fund multiplied by the sum of the current fund balance and the bonding
43 capacity as reported under this subsection. In May and October of each
44 year, the director shall publish in the Missouri register a statement of
45 the fund's anticipated borrowing capacity and the current balance of
46 the fund.

47 7. (1) The contract shall require the insurer to report the
48 insurer's losses from covered events for the year to the director on
49 December thirty-first of each year, and quarterly thereafter. The
50 contract shall require the director to determine and pay, as soon as
51 practicable after receiving these reports, the initial amount of
52 reimbursement due and adjustments to this amount based on later loss
53 information. The adjustments to reimbursement amounts shall require
54 the director to pay, or the insurer to return, amounts reflecting the
55 most recent calculation of losses.

56 (2) If the director determines that the projected year-end balance
57 of the fund, together with the amount that the director determines that
58 it is possible to raise through revenue bonds issued under section
59 379.963, are insufficient to pay reimbursement to all insurers at the
60 level promised in the contract, the director shall:

61 (a) Pay to each insurer the amount of reimbursement it is owed,
62 up to an amount equal to the projected payout determined under
63 subsection 2 of this section; and

64 (b) Thereafter, establish the prorated reimbursement level at the
65 highest level for which any remaining fund balance or bond proceeds
66 are sufficient.

67 8. The contract shall provide that if an insurer demonstrates to
68 the director that it is likely to qualify for reimbursement under the
69 contract, and demonstrates to the director that the immediate receipt

70 of moneys is likely to prevent the insurer from becoming insolvent, the
71 director shall advance the insurer, at market interest rates, the
72 amounts necessary to maintain the solvency of the insurer, up to fifty
73 percent of the director's estimate of the reimbursement due the
74 insurer. The insurer's reimbursement shall be reduced by an amount
75 equal to the amount of the loan and interest thereon.

76 9. The contract shall provide that in the event of the insolvency
77 of an insurer, the fund shall pay directly to the Missouri Property and
78 Casualty Insurance Guaranty Association, established under sections
79 375.771 to 375.779, RSMo, the amount of reimbursement moneys that
80 would otherwise be owed to the insurer related to the claims paid by
81 the guaranty association.

82 10. The director shall adopt the initial contract form no later
83 than September 1, 2008, and shall adopt the initial premium formula no
84 later than October 1, 2008. Initial reimbursement contracts must be
85 entered into no earlier than November 1, 2008, and no later than
86 December 15, 2008.

379.961. 1. Each reimbursement contract shall require the
2 insurer to annually pay to the fund an actuarially indicated premium
3 for the reimbursement promised.

4 2. The director shall select an independent consultant to develop
5 a formula for determining the actuarially indicated premium to be paid
6 to the fund. The formula shall specify, for each zip code or other
7 limited geographical area, the amount of premium to be paid by an
8 insurer for each one thousand dollars of insured value under covered
9 policies in that zip code or other area. In establishing premiums, the
10 director shall consider the coverage elected under subsection 2 of
11 section 379.959 and any factors that tend to enhance the actuarial
12 sophistication of ratemaking for the fund, including deductibles, type
13 of construction, type of coverage provided, relative concentration of
14 risks, and other such factors deemed by the director to be
15 appropriate. The director may, at any time, revise the formula under
16 the procedure provided in this subsection.

17 3. No later than September first of each year, each insurer shall
18 notify the director of its insured values under covered policies by zip
19 code, as of June thirtieth of that year. On the basis of these reports,
20 the director shall calculate the premium due from the insurer, based on

21 the formula adopted under subsection 2 of this section. The insurer
22 shall pay the required annual premium under a periodic payment plan
23 specified in the contract. The director shall provide for payment of
24 reimbursement premium in periodic installments and for the
25 adjustment of provisional premium installments collected prior to
26 submission of the exposure report to reflect data in the exposure
27 report.

28 4. All premiums paid to the fund under reimbursement contracts
29 shall be treated as premium for approved reinsurance for all
30 accounting and regulatory purposes.

31 5. In order to provide startup moneys for the administration of
32 the fund, each insurer subject to sections 379.955 to 379.969 shall pay
33 to the fund an advance premium of one thousand dollars no later than
34 January 1, 2009. The insurer shall receive a credit against future
35 premiums for the advance payment.

379.963. 1. Upon the occurrence of a covered event and a
2 determination that the moneys in the fund are or will be insufficient to
3 pay reimbursement at the levels promised in the reimbursement
4 contracts, the director may take the necessary steps for the issuance of
5 revenue bonds for the benefit of the fund. The bonds shall not be
6 general obligation bonds and shall not constitute debts of this state or
7 any agency, political corporation, or political subdivision and are not
8 a pledge of the full faith and credit or the taxing authority of the
9 state. The terms of the bond may not exceed thirty years. The proceeds
10 of such revenue bonds may be used to make reimbursement payments
11 under reimbursement contracts; to pay interest on bonds; to fund
12 reserves for the bonds; to pay expenses incident to the issuance or sale
13 of such bonds; or for other purposes related to the financial obligations
14 of the fund as the director may determine.

15 2. If the director determines that the amount of revenue
16 produced under section 379.961 is insufficient to fund revenue bonds
17 to pay reimbursement at the levels promised in the reimbursement
18 contracts, the director shall levy an emergency assessment on each
19 insurer writing property and casualty business in this state. The
20 assessment shall be specified as a percentage of future premium
21 collections and is subject to annual adjustments by the director to
22 reflect changes in premiums subject to assessments collected under this

23 subsection in order to meet debt obligations. The same percentage
24 shall apply to all policies in lines of business subject to the assessment
25 issued or renewed during the twelve-month period beginning on the
26 effective date of the assessment. A premium is not subject to an annual
27 assessment under this subsection in excess of six percent of premium
28 with respect to obligations arising out of losses attributable to any one
29 contract year, and a premium is not subject to an aggregate annual
30 assessment under this subsection in excess of ten percent of premium.
31 An annual assessment under this subsection shall continue until the
32 bonds issued with respect to which the assessment was imposed are
33 outstanding, including any bonds the proceeds of which were used to
34 refund the bonds, unless adequate provision has been made for the
35 payment of the bonds under the documents authorizing issuance of the
36 bonds. With respect to each insurer collecting premiums that are
37 subject to the assessment, the insurer shall collect the assessment at
38 the same time as it collects the premium payment for each policy and
39 shall remit the assessment collected to the fund or authority as
40 provided in the order issued by the director. The director shall verify
41 the accurate and timely collection and remittance of emergency
42 assessments and shall maintain reports and report his findings to the
43 director. Each insurer collecting assessments shall provide the
44 information with respect to premiums and collections as may be
45 required by the director of the department of insurance, financial and
46 professional regulation to enable the director to monitor and verify
47 compliance with this subsection.

379.965. 1. The director may procure reinsurance from
2 reinsurers for the purpose of maximizing the capacity of the fund.

3 2. In each fiscal year in which there are no outstanding
4 obligations of the fund, the general assembly may appropriate from the
5 investment income of the Missouri catastrophe fund an amount no less
6 than ten percent and not more than thirty-five percent of the
7 investment income from the prior fiscal year for the purpose of
8 providing funding for local governments, state agencies, public and
9 private educational institutions, and nonprofit organizations to support
10 programs intended to improve catastrophe preparedness, reduce
11 potential losses in the event of a covered event, provide research into
12 means to reduce such losses, educate or inform the public as to means

13 to reduce covered losses, assist the public in determining the
14 appropriateness of particular upgrades to structures or in the
15 financing of such upgrades, or protect local infrastructure from
16 potential damage from a covered loss. Moneys shall first be available
17 for appropriation under this subsection in fiscal year 2010. Moneys in
18 excess of the ten percent specified in this subsection shall not be
19 available for appropriation under this subsection if the director finds
20 that an appropriation of investment income from the fund would
21 jeopardize the actuarial soundness of the fund.

22 3. The director may allow insurers to comply with reporting
23 requirements and reporting format requirements by using alternative
24 methods of reporting if the proper administration of the fund is not
25 thereby impaired and if the alternative methods produce data which
26 are consistent with the purposes of sections 379.955 to 379.969.

27 4. In order to assure the equitable operation of the fund, the
28 director may impose a reasonable fee on an insurer to recover costs
29 involved in reprocessing inaccurate, incomplete, or untimely exposure
30 data submitted by the insurer.

379.967. 1. There is established in the department of insurance,
2 financial institutions and professional registration, the "Missouri
3 Catastrophe Fund Advisory Council". The advisory council shall consist
4 of thirteen members, appointed by the governor with the advice and
5 consent of the senate.

6 2. Each of these members shall be appointed for a term of three
7 years, except that, of the members first appointed, four shall serve for
8 terms of one year, four shall serve for terms of two years and five shall
9 serve for terms of three years. Of these members, one shall be an
10 actuary, one shall be a meteorologist, one shall be an engineer, one
11 shall be a representative of insurers, one shall be a representative of
12 insurance producers, one shall be a representative of reinsurers, one
13 shall be a consumer representative, one shall be a representative of
14 organized labor, one shall be a representative of law enforcement, one
15 shall be a representative of firefighters, one shall be a seismologist, one
16 shall be a representative of the state emergency management agency,
17 and one shall be a member of the public at large. A majority of the
18 membership of the council shall constitute a quorum for the
19 transaction of council business. Action may be taken and motions and

20 resolutions adopted by the council at any meeting thereof by the
21 affirmative vote of a majority of the full membership of the
22 council. The council shall meet regularly as it may determine, and
23 shall also meet at the call of the director. The council shall appoint a
24 chairperson from among its members and such other officers as may be
25 necessary. In addition to providing the director with information and
26 advice in connection with his duties with respect to the fund generally,
27 the council shall be specifically charged with developing prevention
28 and mitigation standards that prevent or significantly reduce the
29 potential damage from the natural or manmade covered loss. Members
30 of the advisory council shall serve without compensation for their
31 services, but shall be paid any necessary expenses incurred in
32 attending meetings of the council or committee thereof or in the
33 performance of other duties authorized by the council.

379.969. Upon the creation of a federal or multistate catastrophic
2 insurance or reinsurance program intended to serve purposes similar
3 to the purposes of the fund created by section 379.957, the director
4 shall promptly make recommendations to the general assembly for
5 coordination with the federal or multistate program, for termination of
6 the fund, or for such other actions as the director finds appropriate in
7 the circumstances.

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