

SECOND REGULAR SESSION

# SENATE BILL NO. 866

96TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Read 1st time February 29, 2012, and ordered printed.

TERRY L. SPIELER, Secretary.

6041S.011

## AN ACT

To repeal sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, and to enact in lieu thereof one new section relating to the privatization of the Missouri employers mutual insurance company, with an effective date for certain sections.

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

Section A. Sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 287.901, to read as follows:

**287.901. 1. Before January 1, 2014, the board of directors of the Missouri employers mutual insurance company shall perform all acts necessary to establish a successor mutual insurance company. The successor mutual insurance company shall operate to the same extent as any mutual casualty insurer that is licensed and authorized to write insurance in this state, subject to the authority and regulation by the department of insurance pursuant to chapter 379, and with all the powers and subject to all the laws, rules, and requirements of a mutual insurance company that is organized under the laws of this state.**

**2. On or before January 1, 2013, the board of directors shall provide a report to the governor, the president pro tempore of the senate, and the speaker of the house of representatives that outlines the steps it will take to become a private successor mutual insurance company. The report shall also calculate the value, if any, of state equity or other state financial interests in the Missouri employers mutual insurance company. A copy of the report shall be provided to**

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

17 the secretary of state.

18           3. The board of directors shall perform all necessary acts to file  
19 articles of incorporation of the successor mutual insurer corporation  
20 and shall take all necessary actions to qualify for a certificate of  
21 authority as provided by law.

22           4. Beginning January 1, 2014, the successor mutual insurance  
23 company shall become the successor in interest to all the assets and  
24 liabilities of the Missouri employers mutual insurance company without  
25 any conveyance or transfer and without any further act or deed and  
26 shall be vested by operation of law with title to all property of the  
27 Missouri employers mutual insurance company. The successor mutual  
28 insurance company shall be responsible for the obligations of the  
29 Missouri employers mutual insurance company to the same extent as  
30 though incurred originally by the successor mutual insurance  
31 company. The successor mutual insurance company shall not be an  
32 independent public corporation, state agency, nor a public entity of  
33 this state. The successor mutual insurance company shall not be called  
34 the "Missouri Employers Mutual Insurance Company" nor use the term  
35 "state workers' compensation" or other similar terms in its new name  
36 or logo from and after January 1, 2014.

37           5. Beginning January 1, 2014, the successor mutual insurance  
38 company shall be subject to all provisions of the statutes which relate  
39 to the private insurance carriers and to the jurisdiction of the  
40 department of insurance, financial institutions and professional  
41 registration.

42           6. The director of the department of insurance, financial  
43 institutions and professional registration is authorized to supervise the  
44 Missouri employers mutual insurance company's transition into a  
45 private successor mutual insurance company. The director is  
46 authorized to promulgate rules and regulations to implement the  
47 provisions of this section. Any rule or portion of a rule, as that term is  
48 defined in section 536.010 that is created under the authority delegated  
49 in this section shall become effective only if it complies with and is  
50 subject to all of the provisions of chapter 536, and, if applicable, section  
51 536.028. This section and chapter 536 are nonseverable and if any of  
52 the powers vested with the general assembly pursuant to chapter 536,  
53 to review, to delay the effective date, or to disapprove and annul a rule

54 **are subsequently held unconstitutional, then the grant of rulemaking**  
55 **authority and any rule proposed or adopted after August 28, 2012, shall**  
56 **be invalid and void.**

[287.902. The "Missouri Employers Mutual Insurance  
2 Company" is created as an independent public corporation for the  
3 purpose of insuring Missouri employers against liability for  
4 workers' compensation, occupational disease and employers'  
5 liability coverage. The company shall be organized and operated  
6 as a domestic mutual insurance company and it shall not be a state  
7 agency. The company shall have the powers granted a general  
8 not-for-profit corporation pursuant to section 355.090 to the extent  
9 the provisions of such section do not conflict with the provisions of  
10 sections 287.900 to 287.920. The company shall be a member of the  
11 Missouri property and casualty guaranty association, sections  
12 375.771 to 375.779, and as such will be subject to assessments  
13 therefrom, and the members of such association shall bear  
14 responsibility in the event of the insolvency of the company. The  
15 company shall be established pursuant to the provisions of sections  
16 287.900 to 287.920. Preference shall be given to Missouri  
17 employers that develop an annual premium of not greater than ten  
18 thousand dollars. The company shall use flexibility and  
19 experimentation in the development of types of policies and  
20 coverages offered to employers, subject to the approval of the  
21 director of the department of insurance, financial institutions and  
22 professional registration.]

[287.905. 1. There is created a board of directors for the  
2 company. The board shall be appointed by January 1, 1994, and  
3 shall consist of five members appointed or selected as provided in  
4 this section. The governor shall appoint the initial five members  
5 of the board with the advice and consent of the senate. Each  
6 director shall serve a five-year term. Terms shall be staggered so  
7 that no more than one director's term expires each year on the first  
8 day of July. The five directors initially appointed by the governor  
9 shall determine their initial terms by lot. At the expiration of the  
10 term of any member of the board, the company's policyholders shall  
11 elect a new director in accordance with provisions determined by

12 the board.

13 2. Any person may be a director who:

14 (1) Does not have any interest as a stockholder, employee,  
15 attorney, agent, broker or contractor of an insurance entity who  
16 writes workers' compensation insurance or whose affiliates write  
17 workers' compensation insurance; and

18 (2) Is of good moral character and who has never pleaded  
19 guilty to, or been found guilty of, a felony.

20 3. The board shall annually elect a chairman and any other  
21 officers it deems necessary for the performance of its duties. Board  
22 committees and subcommittees may also be formed.]

[287.907. 1. By March 1, 1994, the board shall hire an  
2 administrator who shall serve at the pleasure of the board and the  
3 company shall be fully prepared to be operational by March 1,  
4 1995, and assume its responsibilities pursuant to sections 287.900  
5 to 287.920. The administrator shall receive compensation as  
6 established by the board and must have proven successful  
7 experience as an executive at the general management level in the  
8 insurance business.

9 2. The board is vested with full power, authority and  
10 jurisdiction over the company. The board may perform all acts  
11 necessary or convenient in the administration of the company or in  
12 connection with the insurance business to be carried on by the  
13 company. In this regard, the board is empowered to function in all  
14 aspects as a governing body of a private insurance carrier.]

[287.909. 1. The administrator of the company shall act as  
2 the company's chief executive officer. The administrator shall be  
3 in charge of the day-to-day operations and management of the  
4 company.

5 2. Before entering the duties of office, the administrator  
6 shall give an official bond in an amount and with sureties approved  
7 by the board. The premium for the bond shall be paid by the  
8 company.

9 3. The administrator or his designee shall be the custodian  
10 of the moneys of the company and all premiums, deposits or other  
11 moneys paid thereto shall be deposited with a financial institution

12 as designated by the administrator.

13 4. No board member, officer or employee of the company is  
14 liable in a private capacity for any act performed or obligation  
15 entered into when done in good faith, without intent to defraud,  
16 and in an official capacity in connection with the administration,  
17 management or conduct of the company or affairs relating to it.]

[287.910. The board shall have full power and authority to  
2 establish rates to be charged by the company for insurance. The  
3 board shall contract for the services of or hire an independent  
4 actuary, a member in good standing with the American Academy  
5 of Actuaries, to develop and recommend actuarially sound  
6 rates. Rates shall be set at amounts sufficient, when invested, to  
7 carry all claims to maturity, meet the reasonable expenses of  
8 conducting the business of the company and maintain a reasonable  
9 surplus. The company shall conduct a workers' compensation  
10 program that shall be neither more nor less than self-supporting.]

[287.912. The board shall formulate and adopt an  
2 investment policy and supervise the investment activities of the  
3 company. The administrator may invest and reinvest the surplus  
4 or reserves of the company subject to the limitations imposed on  
5 domestic insurance companies by state law. The company may  
6 retain an independent investment counsel. The board shall  
7 periodically review and appraise the investment strategy being  
8 followed and the effectiveness of such services. Any investment  
9 counsel retained or hired shall periodically report to the board on  
10 investment results and related matters.]

[287.915. Any insurance agent or broker licensed to sell  
2 workers' compensation insurance in this state shall be authorized  
3 to sell insurance policies for the company in compliance with the  
4 bylaws adopted by the company. The board shall establish a  
5 schedule of commissions to pay for the services of the agent.]

[287.917. 1. The administrator shall formulate, implement  
2 and monitor a workplace safety program for all policyholders.

3 2. The company shall have representatives whose sole  
4 purpose is to develop, with policyholders, a written workplace  
5 accident and injury reduction plan that promotes safe working

6 conditions and which is based upon clearly stated goals and  
7 objectives. Company representatives shall have reasonable access  
8 to the premises of any policyholder or applicant during regular  
9 working hours. The company shall communicate the importance of  
10 a well-defined safety plan and assist in any way to obtain this  
11 objective.

12 3. The administrator or board may refuse to insure, or may  
13 terminate the insurance of any subscriber who refuses to permit  
14 on-site examinations or disregards the workplace accident and  
15 injury reduction plan.

16 4. Upon the completion of a detailed inspection and  
17 recognition of a high regard for employee work safety, a deviation  
18 may be applied to the rate structure of that insured noting special  
19 recognition of those efforts.]

[287.919. 1. The Missouri employers mutual insurance  
2 company shall not receive any state appropriation, directly or  
3 indirectly, except as provided in section 287.690.

4 2. In order to provide funds for the creation, continued  
5 development and operation of the company, the board is authorized  
6 to issue revenue bonds from time to time, in a principal amount  
7 outstanding not to exceed forty million dollars at any given time,  
8 payable solely from premiums received from insurance policies and  
9 other revenues generated by the company.

10 3. The board may issue bonds to refund other bonds issued  
11 pursuant to this section.

12 4. The bonds shall have a maturity of no more than ten  
13 years from the date of issuance. The board shall determine all  
14 other terms, covenants and conditions of the bonds, except that no  
15 bonds may be redeemed prior to maturity unless the company has  
16 established adequate reserves for the risks it has insured.

17 5. The bonds shall be executed with the manual or facsimile  
18 signature of the administrator or the chairman of the board and  
19 attested by another member of the board. The bonds may bear the  
20 seal, if any, of the company.

21 6. The proceeds of the bonds and the earnings on those  
22 proceeds shall be used by the board for the development and

23 operation of the Missouri employers mutual insurance company, to  
24 pay expenses incurred in the preparation, issuance and sale of the  
25 bonds and to pay any obligations relating to the bonds and the  
26 proceeds of the bonds under the United States Internal Revenue  
27 Code of 1986, as amended.

28 7. The bonds may be sold at a public sale or a private sale.  
29 If the bonds are sold at a public sale, the notice of sale and other  
30 procedures for the sale shall be determined by the administrator or  
31 the company.

32 8. This section is full authority for the issuance and sale of  
33 the bonds and the bonds shall not be invalid for any irregularity or  
34 defect in the proceedings for their issuance and sale and shall be  
35 incontestable in the hands of bona fide purchasers or holders of the  
36 bonds for value.

37 9. An amount of money from the sources specified in  
38 subsection 2 of this section sufficient to pay the principal of and  
39 any interest on the bonds as they become due each year shall be set  
40 aside and is hereby pledged for the payment of the principal and  
41 interest on the bonds.

42 10. The bonds shall be legal investments for any person or  
43 board charged with the investment of public funds and may be  
44 accepted as security for any deposit of public money, and the bonds  
45 and interest thereon are exempt from taxation by the state and any  
46 political subdivision or agency of the state.

47 11. The bonds shall be payable by the company, which shall  
48 keep a complete record relating to the payment of the bonds.

49 12. Not more than fifty percent of the bonds sold shall be  
50 sold to public entities.]

[287.920. 1. The board shall cause an annual audit of the  
2 books of accounts, funds and securities of the company to be made  
3 by a competent and independent firm of certified public  
4 accountants, the cost of the audit to be charged against the  
5 company. A copy of the audit report shall be filed with the director  
6 of the department of insurance, financial institutions and  
7 professional registration and the administrator. The audit shall be  
8 open to the public for inspection.

9           2. The board shall submit an annual independently audited  
10 report in accordance with procedures governing annual reports  
11 adopted by the National Association of Insurance Commissioners  
12 by March first of each year and the report shall be delivered to the  
13 governor and the general assembly and shall indicate the business  
14 done by the company during the previous year and contain a  
15 statement of the resources and liabilities of the company.

16           3. The administrator shall annually submit to the board for  
17 its approval an estimated budget of the entire expense of  
18 administering the company for the succeeding calendar year having  
19 due regard to the business interests and contract obligations of the  
20 company.

21           4. The incurred loss experience and expense of the company  
22 shall be ascertained each year to include but not be limited to  
23 estimates of outstanding liabilities for claims reported to the  
24 company but not yet paid and liabilities for claims arising from  
25 injuries which have occurred but have not yet been reported to the  
26 company. If there is an excess of assets over liabilities, necessary  
27 reserves and a reasonable surplus for the catastrophe hazard, then  
28 a cash dividend may be declared or a credit allowed to an employer  
29 who has been insured with the company in accordance with criteria  
30 approved by the board, which may account for the employer's safety  
31 record and performance.

32           5. The department of insurance, financial institutions and  
33 professional registration shall conduct an examination of the  
34 company in the manner and under the conditions provided by the  
35 statutes of the insurance code for the examination of insurance  
36 carriers. The board shall pay the cost of the examination as an  
37 expense of the company. The company is subject to all provisions  
38 of the statutes which relate to private insurance carriers and to the  
39 jurisdiction of the department of insurance, financial institutions  
40 and professional registration in the same manner as private  
41 insurance carriers, except as provided by the director.

42           6. For the purpose of ascertaining the correctness of the  
43 amount of payroll reported, the number of employees on the  
44 employer's payroll and for such other information as the



45 administrator may require in the proper administration of the  
46 company, the records and payrolls of each employer insured by the  
47 company shall always be open to inspection by the administrator  
48 or his duly authorized agent or representative.

49 7. Every employer provided insurance coverage by the  
50 company, upon complying with the underwriting standards adopted  
51 by the company, and upon completing the application form  
52 prescribed by the company, shall be furnished with a policy  
53 showing the date on which the insurance becomes effective.]

Section B. The repeal of sections 287.002, 287.905, 287.907, 287.909,  
2 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920 shall become effective  
3 January 1, 2014.

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Bill

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