

FIRST REGULAR SESSION

SENATE BILL NO. 468

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT.

Read 1st time February 18, 1999, and 1,000 copies ordered printed.

S2025.011

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 379, RSMo, by adding thereto eight new sections relating to the creation of the Missouri earthquake 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 sections, to be known as sections 379.980, 379.982, 379.984, 379.986, 379.988, 379.990, 379.992 and 379.994, to read as follows:

379.980. As used in sections 379.980 to 379.994, unless otherwise indicated, the following terms mean:

(1) "Actuarially indicated", with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued pursuant to section 379.988 and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued pursuant to section 379.988, and determined according to principles of actuarial science to reflect each insurer's relative exposure to earthquake losses;

(2) "Covered event", any one earthquake, which causes insured losses in this state;

(3) "Covered policy", any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile home owner's, farm owner's, condominium association, condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including any joint underwriting association or

similar entity created pursuant to law. "Covered policy" does not include any policy that specifically excludes earthquake coverage or any reinsurance agreement;

(4) "Losses", direct incurred losses under covered policies, excluding losses attributable to additional living expense coverages and excluding loss adjustment expenses;

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

(a) The department of insurance shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning January 1, 2001, the retention multiple shall be equal to three billion dollars divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to three billion dollars, adjusted to reflect the percentage growth in premium for covered policies since 2001, divided by the total estimated reimbursement premium for the contract year;

(b) The retention multiple as determined pursuant to paragraph (a) of this subdivision shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the ninety percent coverage level, the adjusted retention multiple is one hundred percent of the amount determined pursuant to paragraph (a) of this subdivision. For insurers electing the seventy-five percent coverage level, the retention multiple is one hundred twenty percent of the amount determined pursuant to paragraph (a) of this subdivision. For insurers electing the forty-five percent coverage level, the adjusted retention multiple is two hundred percent of the amount determined pursuant to paragraph (a) of this subdivision;

(c) An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple.

379.982. 1. There is hereby created the "Missouri Earthquake Catastrophe Fund" within the state treasury to be administered by the department of insurance. Moneys in the fund may not be expended, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into pursuant to section 379.984, payment of debts including obligations arising out of revenue bonds issued pursuant to section 379.988, costs of the mitigation program pursuant to section 379.990, costs of procuring reinsurance, and costs of administration of the fund. The department of insurance shall invest the moneys in the fund pursuant to section 30.260, RSMo. Except as otherwise provided in sections 379.980 to 379.994, earnings from all investments shall be retained in the fund. Notwithstanding the provisions of section 33.080, RSMo, to the contrary, moneys in the trust fund shall not revert to the credit of

the general revenue fund at the end of the biennium. The department of insurance may employ or contract with such staff and professionals as it deems necessary for the administration of the fund.

2. The department of insurance may adopt such rules as are reasonable and necessary to implement sections 379.980 to 379.994. The director is authorized to adopt those rules that are reasonable and necessary to accomplish the limited duties specifically delegated within sections 379.980 to 379.994. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is promulgated pursuant to the authority delegated in sections 379.980 to 379.994 shall become effective only if it has been promulgated pursuant to the provisions of chapter 536, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.

379.984. 1. The department of insurance shall enter into a contract with each insurer writing covered policies in this state to provide to the insurer the reimbursement described in subsection 2 of this section, in exchange for the reimbursement premium paid into the fund pursuant to section 379.986. As a condition of doing business in this state, each such insurer shall enter into such a contract.

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

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

(1) Elect a lower percentage coverage level if no revenue bonds issued pursuant to subsection 1 of section 379.988 are outstanding; or

(2) Elect a higher percentage if it pays to the fund an actuarially appropriate equalization charge as determined by the department of insurance.

4. All members of an insurer group must elect the same percentage coverage level. Any joint underwriting association, risk apportionment plan, or other entity created pursuant to section 379.460 must elect the ninety percent coverage level.

5. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources; however, recoveries from such other sources, taken together with reimbursements under the contract, may not exceed one hundred percent of the insurer's losses from covered events. If such recoveries and reimbursements exceed one hundred percent of the insurer's losses from

covered events, and if there is no agreement between the insurer and the reinsurer to the contrary, any amount in excess of one hundred percent of the insurer's losses shall be returned to the fund.

6. The contract shall also provide that the obligation of the department of insurance with respect to all contracts covering a particular year shall not exceed the balance of the fund together with the maximum amount that the department of insurance is able to raise through the issuance of revenue bonds pursuant to section 379.988. The contract shall require the department of insurance to annually notify insurers of the fund's anticipated borrowing capacity for the next year, the projected year-end balance of the fund, and the insurer's estimated share of total reimbursement premium to be paid to the fund. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund premium for the current contract year multiplied by the sum of the projected year-end fund balance and the anticipated borrowing capacity for that year as reported pursuant to this subsection. In May and October of each year, the department of insurance shall publish in the Missouri register a statement of the fund's anticipated borrowing capacity and the current balance of the fund.

7. (1) The contract shall require the insurer to report to the department of insurance on December thirty-first of each year, and quarterly thereafter, its losses from covered events for the year. The contract shall require the department of insurance to determine and pay, as soon as practicable after receiving these reports, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the department of insurance to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.

(2) If the department of insurance determines that the projected year-end balance of the fund, together with the amount that the department of insurance determines that it is possible to raise through revenue bonds issued pursuant to section 379.988, are insufficient to pay reimbursement to all insurers at the level promised in the contract, the department of insurance shall:

(a) First reimburse insurers writing covered policies, which insurer is found by the department of insurance to be in full compliance with sections 379.980 to 379.994, to have surplus as to policyholders not exceeding twenty million dollars, and to write at least twenty-five percent of its countrywide property insurance premiums within this state. The amount of such reimbursement shall be the lesser of ten million dollars or an amount equal to ten times the insurer's reimbursement premium for the current year. The amount of reimbursement paid pursuant to this paragraph may not exceed the full amount of reimbursement promised in the reimbursement contract. This

paragraph does not apply with respect to any contract year in which the year-end projected cash balance of the fund, exclusive of any bonding capacity of the fund, exceeds two billion dollars;

(b) Next pay to each insurer the amount of reimbursement it is owed, up to an amount equal to the projected payout determined pursuant to subsection 6 of this section;

(c) Thereafter, establish, based on reimbursable losses, the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient.

8. The contract shall provide that if an insurer demonstrates to the department of insurance that it is likely to qualify for reimbursement under the contract, and demonstrates to the department of insurance that the immediate receipt of moneys is likely to prevent the insurer from becoming insolvent, the department of insurance shall advance the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to fifty percent of the department of insurance's estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the loan and interest thereon.

9. The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Missouri Property and Casualty Insurance Guaranty Association for the benefit of the insurer's policyholders in this state the net amount of all reimbursement moneys owed to the insurer. As used in this subsection, the term "net amount of all reimbursement moneys" means that amount which remains after reimbursement for preliminary or duplicate payments owed to private reinsurers or other inuring reinsurance payments to private reinsurers that satisfy statutory or contractual obligations of the insolvent insurer attributable to covered events to such reinsurers. Such private reinsurers shall be reimbursed or otherwise paid prior to payment to the Missouri Insurance Property and Casualty Guaranty Association, notwithstanding any law to the contrary. The guaranty association shall pay all claims up to the maximum amount permitted by section 375.772, RSMo; thereafter, any remaining moneys shall be paid pro rata to claims not fully satisfied.

10. The department of insurance must adopt the initial contract form no later than January 1, 2001, and must adopt the initial premium formula no later than June 30, 2001. Initial reimbursement contracts must be entered into no earlier than July 1, 2001, and no later than December 31, 2001.

379.986. 1. Each reimbursement contract shall require the insurer to annually pay to the fund an actuarially indicated premium for the reimbursement.

2. The department of insurance shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the

fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each one thousand dollars of insured value under covered policies in that zip code or other area. In establishing premiums, the department of insurance shall consider the coverage elected pursuant to subsection 2 of section 379.984 and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the department of insurance to be appropriate. The department of insurance may, at any time, revise the formula pursuant to the procedure provided in this subsection.

3. No later than September first of each year, each insurer shall notify the department of insurance of its insured values under covered policies by zip code, as of June thirtieth of that year. On the basis of these reports, the department of insurance shall calculate the premium due from the insurer, based on the formula adopted pursuant to subsection 2 of this section. The insurer shall pay the required annual premium pursuant to a periodic payment plan specified in the contract. The department of insurance shall provide for payment of reimbursement premium in periodic installments and for the adjustment of provisional premium installments collected prior to submission of the exposure report to reflect data in the exposure report.

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

5. In order to provide startup moneys for the administration of the fund, each insurer subject to sections 379.980 to 379.994 shall pay to the fund an advance premium of one thousand dollars no later than December 31, 2001. The insurer shall receive a credit against future premiums for the advance payment.

379.988. 1. Upon the occurrence of an earthquake and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the department of insurance may enter into agreements with local governments for the issuance of revenue bonds for the benefit of the fund. The terms of the bond may not exceed fifteen years. The department of revenue shall pledge all future revenues pursuant to section 379.986 and pursuant to subsection 3 of this section, or a lesser portion of such revenues sufficient to raise moneys in an amount that will pay reimbursement at the levels promised in the reimbursement contracts, to the retirement of such bonds. The department of insurance may also enter into such agreements in the absence of an earthquake upon a determination that such action would maximize the ability of the fund to meet future obligations.

2. The governing body of any county or municipality may issue bonds from time to time to fund an assistance program, in conjunction with the fund, for the purpose of meeting the reimbursement obligations of the fund. The issuance of such bonds is for the public purpose of ensuring that policyholders located within the county or municipality are able to recover under property insurance policies after an earthquake. The county or municipality may enter into such contracts with the fund as are necessary to carry out this section.

3. Any bonds issued pursuant to this section shall be payable from and secured by moneys received by the fund pursuant to section 379.986, and assigned and pledged to or on behalf of the county or municipality for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the county or municipality shall not be pledged for the payment of such bonds.

4. If the department of insurance determines that the amount of revenue produced pursuant to section 379.986 is insufficient to fund revenue bonds to pay reimbursement at the levels promised in the reimbursement contracts, the department of insurance shall levy an emergency assessment on each insurer writing property and casualty business in this state. Pursuant to the emergency assessment, each such insurer shall pay to the fund by July first of each year an amount set by the department of insurance not exceeding two percent of its gross direct written premiums for the prior year from all property and casualty business in this state, except that, if the governor has declared a state of emergency pursuant to chapter 44, RSMo, due to the occurrence of an earthquake, the amount of the assessment may be increased to an amount not exceeding four percent of such premiums. The annual assessments pursuant to this subsection shall continue until the revenue bonds issued with respect to which the assessment was imposed are retired. An insurer shall not at any time be subject to aggregate annual assessments pursuant to this subsection. Any rate filing or portion of a rate filing reflecting a rate change attributable entirely to the assessment levied pursuant to this subsection shall be deemed approved when made, subject to the authority of the department of insurance to require actuarial justification as to the adequacy of any rate at any time. If the rate filing reflects only a rate change attributable to the assessment pursuant to this subsection, the filing may consist of a certification so stating.

379.990. 1. The department of insurance may procure reinsurance from reinsurers for the purpose of maximizing the capacity of the fund.

2. Each fiscal year, the general assembly may appropriate from the investment income of the Missouri earthquake catastrophe fund an amount no less than ten million dollars and no more than thirty-five percent of the investment income from the prior fiscal year for the purpose of providing funding for local governments, state agencies,

public and private educational institutions, and nonprofit organizations to support programs intended to improve earthquake preparedness, reduce potential losses in the event of an earthquake, provide research into means to reduce such losses, educate or inform the public as to means to reduce earthquake losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from an earthquake. Moneys shall first be available for appropriation pursuant to this subsection in fiscal year 2004. Moneys in excess of the ten million dollars shall not be available for appropriation pursuant to this subsection if the department of insurance finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.

3. The department of insurance may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which are consistent with the purposes of sections 379.980 to 379.994.

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

379.992. The department of insurance shall appoint a ten-member advisory council that consists of an actuary, a seismologist, an engineer, a representative of insurers, a representative of insurance agents, a representative of reinsurers, a representative from the seismic safety commission and three consumers who shall also be representatives of other affected professions and industries, to provide the department of insurance with information and advice in connection with its duties pursuant to sections 379.980 to 379.994. Members of the advisory council shall serve without compensation for their services, but shall be paid any necessary expenses incurred in attending meetings of the council or committee thereof or in the performance of other duties authorized by the council.

379.994. Upon the creation of a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by section 379.982, the department of insurance shall promptly make recommendations to the general assembly for coordination with the federal or multistate program, for termination of the fund, or for such other actions as the department of insurance finds appropriate in the circumstances.

Unofficial

Bill

Copy