SECOND REGULAR SESSION

HOUSE BILL NO. 1280

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES JOHNSON (47) (Sponsor) AND ZWEIFEL (Co-sponsor).

Read 1st time January 10, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4033L.01I

AN ACT

To repeal sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.835, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, RSMo, and to enact in lieu thereof nineteen new sections relating to property insurance.

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

Section A. Sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.835, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, RSMo, are repealed and nineteen new sections enacted in lieu thereof, to be known as sections 375.001, 375.002, 375.003, 375.004, 379.810, 379.815, 379.820, 379.825, 379.830, 379.835, 379.840, 379.845, 379.850, 379.855, 379.860, 379.865, 379.870, 379.875, and 379.880, to read as follows:

375.001. As used in sections 375.001 to 375.008 the following words and terms mean:

(1) **"Claim", unless otherwise defined in sections 375.001 to 375.008, any specific request or demand for payment of a loss which may be included within the terms of coverage of an insurance policy. A mere inquiry into whether a policy will cover a loss shall not constitute a claim;**

(2) "Insurer", all insurance companies, reciprocals, or interinsurance exchanges transacting the business of insurance in this state;

[(2)**] (3)** "Nonpayment of premium", failure of the **[**named**]** insured to discharge when due any of his obligations in connection with the payment of premiums on the policy, or any

EXPLANATION — Matter enclosed in bold-faced brackets **[**thus**]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

installment of the premium, whether the premium is payable directly to the insurer or its **[**agent**]** **producer** or indirectly under any premium finance plan or extension of credit;

[(3)**] (4)** "Nonrenewal", the determination of an insurer not to issue or deliver a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer or a certificate or notice extending the term of a policy beyond its policy period or term;

[(4)**] (5)** "Policy", a contract of insurance providing fire and extended coverage insurance, whether separately or in combination with other coverages, on owner-occupied habitational property not exceeding two families. "Policy" does not include any insurance contracts issued under a property insurance inspection and placement program ("FAIR" plan) or an assigned risk plan**[**, or any insurance contracts insuring property not used predominantly for habitational purposes, or an insurance contract insuring a mobile home**]**;

[(5)**] (6)** "Renewal" or "to renew", the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term. Any policy with a policy period or term of less than six months shall for the purposes of sections 375.001 to 375.008 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date, shall for the purpose of sections 375.001 to 375.008, be considered as if written for successive policy periods or terms of one year, and the policy may be terminated at the expiration of any annual period upon giving **[**thirty**]** **sixty** days' notice of cancellation prior to the anniversary date, and the cancellation shall not be subject to any other provisions of sections 375.001 to 375.008**;**

(7) "Weather-related claim", loss resulting from an act of God which an insured is unable to control and is unable to reasonably reduce the risk that such peril will damage the insured property.

375.002. 1. A notice of cancellation of a policy shall be effective only if it is based on one or more of the following reasons:

(1) Nonpayment of premium; or

(2) Fraud or material misrepresentation affecting the policy or in the presentation of a claim thereunder, or violation of any of the terms or conditions of the policy; or

(3) The named insured or any occupant of the property has been convicted of a crime arising out of acts increasing the hazard insured against; or

(4) Physical changes in the property insured which **significantly** increase the hazards originally insured.

2. This section shall not apply to any policy or coverage which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless it

is a renewal policy. **Any declination of an application for a policy or coverage shall comply with the notice requirements of section 375.003.**

3. This section shall not apply to nonrenewal.

375.003. 1. No notice of cancellation of a policy to which section 375.002 applies shall be effective unless mailed or delivered by the insurer to the named insured at least **[**thirty**] sixty** days prior to the effective date of cancellation. However, where cancellation is for nonpayment of premium at least ten days' notice of cancellation shall be given. The notice shall state the insurer's actual reason for proposing the action, the statement of reason to be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. Generalized terms such as "personal habits", "living conditions", **"credit history, poor credit history, poor credit rating, poor insurance score",** or "poor morals" shall not suffice to meet the requirements of this subsection. The notice shall also state that the insured may be eligible for insurance through the Missouri basic property insurance inspection and placement program.

2. This section shall not apply to nonrenewal.

375.004. 1. No insurer shall refuse to renew a policy unless the insurer or its agent mails or delivers to the named insured, at the address shown in the policy, at least thirty days' advance notice of its intention not to renew. The notice shall state the insurer's actual reason for proposing the action, the statement of reason to be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. Generalized terms such as "personal habits", "living conditions", **"credit history, poor credit history, poor credit rating, poor insurance score",** or "poor morals" shall not suffice to meet the requirements of this subsection. The notice shall also state that the insured may be eligible for insurance through the Missouri basic property insurance inspection and placement program. This section shall not apply:

(1) If the insurer has manifested its willingness to renew; or

(2) In case of nonpayment of premium; or

(3) If the named insured has indicated he does not wish to have the policy renewed; or

(4) If the insured fails to pay any advance premium required by the insurer for renewal.

2. Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

3. No insurer shall use weather-related claims as a basis for the insurer's decision to refuse to renew a policy.

4. No insurer shall consider as a claim any inquiry by the insured into whether a policy will cover a loss or as to the type or level of coverage. No insurer shall use such inquiries as a basis for nonrenewing the policy.

5. No insurer shall use a rating plan or rating system that surcharges the individual insured's dwelling fire or homeowners insurance premium based upon the insured's weather-related claims or the insured's inquiries as described in subsection 4 of this section.

379.810. There is hereby established the "Missouri **[**Basic Property Insurance Inspection and Placement Program**] FAIR (Fair Access to Insurance Requirements) Plan**" (hereinafter referred to as "**[**program**] the plan**") to make available **[**basic**]** property insurance to persons having property interests in this state who are in good faith entitled to but who are unable to procure such coverage through ordinary methods. Such **[**program**] plan** shall provide for the equitable distribution and placement of risks among all insurers in the manner and subject to the conditions hereinafter stated.

379.815. As used in this section, the following terms mean:

(1) "All-industry placement facility" (hereinafter referred to as "the facility"), the organization formed by insurers to assist applicants in securing basic property insurance, to issue policies and to administer the **[**program**] plan** and the joint reinsurance association;

(2) **[**"Basic property insurance", the coverage against direct loss to real and tangible personal property at a fixed location that is provided in the standard fire policy and extended coverage endorsement, including builders' risk, and such vandalism and malicious mischief endorsements, and such other classes of insurance as may be added to the program with respect to the property by amendment as hereinafter provided. Basic property insurance does not include automobile risks or such types of manufacturing risks as the governing committee may exclude with the approval of the director. Any contract, as defined in section 375.918, RSMo, of the facility shall be subject to the provisions of section 375.918, RSMo;

(3)**]** "Commercial", **[**basic property insurance not included under the personal lines statistical plan**] property insurance for business or nonprofit interests which is not for personal, family, or household purposes**;

[(4)**] (3)** "Director", the director of the department of insurance of the state of Missouri;

[(5)**] (4)** "Habitational", **[**basic**]** property insurance included under the personal lines statistical plan;

[(6)**] (5)** "Inspection bureau", the **[**rating bureau or other organization**] entity** designated by the facility **[**with the approval of the director**]** to make inspections as required under the program and to perform such other duties as may be authorized by the facility**, subject to the approval of the director**;

[(7)**] (6)** "Insurer", any insurance company, reciprocal or interinsurance exchange or other organization licensed and authorized by the director to write property insurance, including the property insurance components of multiperil policies, on a direct basis, in this state;

[(8)] **(7)** "Person" includes any individual or group of individuals, corporation, partnership, or association, or any other organized group of persons;

[(9)] **(8)** "Premiums written", gross direct premiums (excluding that portion of premium on risks ceded to the joint reinsurance association) charged during the second preceding calendar year with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits;

(9) "Property insurance", real and personal property, dwelling fire program (habitational dwelling 1-4 family), commercial fire (commercial and apartments five units and over), and homeowners program. Earthquake coverage is available as an optional endorsement under the dwelling fire program and the homeowners program, in addition to other optional endorsements under each program. The FAIR plan is to offer dwelling fire, commercial fire, and homeowners coverage for property owners, renters, and condominium owners. Such products are to be similar to what is available in the standard market and provide protection against loss from such hazards as fire, lightning, wind, hail, explosion, smoke, vehicles, aircraft, and vandalism and malicious mischief. The FAIR plan homeowners policy shall protect against all such perils as well as burglary and theft, and shall include personal liability coverage. Property insurance does not include automobile risks or such types of manufacturing risks as the governing committee may exclude with the approval of the director;

(10) "Property owner", with respect to any real, personal, or mixed real and personal property, means any person having an insurable interest in such property;

(11) "Secretary", the Secretary of the United States Department of Housing and Urban Development.

379.820. 1. Any property owner or [his] **the owner's** representative, the insurer, or the insurance [agent or other] producer may request an inspection by the inspection bureau. Such requests need not be in writing. The absence of a [building] **property** owner or [his] **the owner's** representative during an inspection shall not preclude a tenant seeking insurance from obtaining an inspection under the [program] **plan**.

2. The manner and scope of the inspections of [program] **plan** business shall be prescribed by the facility with the approval of the director.

3. An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken during the inspection.

4. During the inspection, the inspector shall point out features of structure and occupancy to the applicant or [his] **the applicant's** representative and shall indicate those features which may result in condition charges if the risk is accepted. The inspector shall have no authority to advise whether the facility will provide the coverage.

5. Within five business days after the inspection, a copy of the completed inspection report, and any photograph indicating the pertinent features of the building, construction, maintenance, occupancy and surrounding property shall be sent promptly to the facility. Included with the report shall be a rate makeup statement, including any condition charges or surcharges proposed as a result of the inspection and permitted by filings approved by the director. A copy of the inspection report shall be made available to the applicant upon request.

379.825. 1. The facility, upon receipt of an application for coverage and the corresponding inspection report from the inspection bureau, shall, after it finds that the property is eligible for insurance under this [program] **plan**, issue a policy.

2. The facility shall apportion the liability so assumed to the insurers in the manner hereinafter provided in section 379.835.

3. Assessments upon each insurer in the [program] **plan** for expenses in connection with [program] **plan** business shall be levied and assessed by the governing committee of the facility in the manner hereinafter provided in section 379.835, subject to such minimum assessment as shall be established by the governing committee.

4. Subject to the insurable value thereof, the maximum limits of liability which may be placed through this [program] **plan** are: on any habitational property at one location, [two] **three** hundred thousand dollars; and on any commercial property at one location, [one] **three** million dollars. The facility will endeavor to assist in placement when the requested amount of insurance exceeds the maximum limit of liability available under this [program] **plan**. The word "location" as used herein means real and personal property consisting of and contained in a single building or consisting of and contained in contiguous buildings under one ownership.

379.830. 1. The facility shall, within [five] **three** business days after receipt of the inspection report and application, complete an action report advising that:

(1) The risk is acceptable; or

(2) The risk is acceptable at a surcharged rate and the improvements necessary before coverage will be provided at an unsurcharged premium rate; or

(3) The risk will be acceptable if the improvements noted in the action report are made by the applicant and confirmed by reinspection; or

(4) The risk is not acceptable for the reasons stated in the action report.

2. In the event a risk is declined because it fails to meet reasonable underwriting standards, the facility will so notify the applicant.

(1) Reasonable underwriting standards shall include, but not be limited to, the following:

(a) Physical condition of the property, such as its construction, heating, wiring, evidence of previous fires or general deterioration;

(b) Its present use or housekeeping, such as vacancy, overcrowding, storage of rubbish or flammable materials.

(2) Neighborhood or area location or any environmental hazard beyond the control of the property owner shall not be deemed to be acceptable criteria for declining a risk.

3. If the risk is acceptable to the facility, the facility shall notify the applicant, and the licensed producer designated by the applicant, of the acceptability of the risk and the premium to be charged. The facility, upon receipt of the premium, shall within three business days issue the policy to be effective at 12:00 noon of the date of the receipt of the premium, unless a later effective date is specified. The policy shall be forwarded to the applicant with a copy to the licensed producer. The facility shall pay the commission to the licensed producer designated by the applicant.

4. In the event the risk is conditionally declined because the property does not meet reasonable underwriting standards but can be improved to meet such standards, the facility shall promptly advise the applicant what improvements noted in the action report should be made to the property. Upon completion of the improvements by the applicant or property owner, the facility, when so notified, will have the property promptly reinspected and thereupon shall process the application in the manner described in subsection 3 of this section.

5. If the inspection of the property reveals that there are one or more substandard conditions, surcharges may be imposed in conformity with the filings approved by the director.

6. If the facility declines the risk, or agrees to write the coverage sought on condition that the property will be improved, it shall promptly send a copy of both the inspection and action reports to the property owner and the director. At the time the facility sends such reports to the property owner, it shall also explain **[**his**]** **the owner's** right to appeal the decision of the facility to the director pursuant to section 379.850 of the **[**program**]** **plan** and shall **[**in writing**]** set forth **in writing** the procedures to be followed for such appeal.

7. A list of all insureds written through the plan shall be made available to any person who makes a request for such information at a nominal charge that has been approved by the director.

379.835. 1. A "Joint Reinsurance Association" (hereinafter referred to as "the association") shall be created consisting of all insurers. The association shall assume from the facility one hundred percent reinsurance on behalf of insurers and shall distribute the liability in accordance with section 379.825.

2. Each insurer shall participate in the writings, expenses, profits and losses of the association in the following manner:

(1) For habitational risks, the same proportion as its habitational premiums written bear to the aggregate habitational premiums written by all insurers in the [program] **plan**;

(2) For commercial risks, the same proportion as its commercial premiums written bear to the aggregate commercial premiums written by all insurers in the [program] **plan**.

3. Such association shall adopt a plan of operation and rules of procedure which, prior to being placed in effect, shall be filed with and approved by the director. Any amendments to the plan of operation or rules of procedure so adopted shall also be filed with and approved by the director prior to being placed into effect.

379.840. **1.** All policies issued shall be for [basic] property insurance on the forms and in accordance with the rate or rating procedures approved by the director for use with the [program] **plan**. Such policies shall be issued for a term of one year.

2. The facility and all policies issued by the facility shall be subject to the unfair claims settlement practices act under sections 375.1000 to 375.1018, RSMo, and the unfair trade practices act under sections 375.930 to 375.948, RSMo.

379.845. 1. The facility shall not cancel a policy or binder issued under the [program] **plan** without approval of the governing committee except in case of:

(1) Evidence of incendiarism (meaning arson by or at the direction of the insured); or

(2) For nonpayment of premium; or

(3) Fraud or material misrepresentation; or

(4) A finding by the facility on the basis of satisfactory evidence that changes in the physical condition of the property or other changed conditions make the risk uninsurable. **A copy of the findings shall be provided by the facility to the director ten days prior to the notice of cancellation being sent to the insured.**

2. Any notice of cancellation or notice of nonrenewal of a policy or binder issued under the [program] **plan**, together with a **clear and specific** statement of the reason therefor, shall be sent to the insured and a copy retained by the facility. **The notice shall state the actual reason for proposing the action and shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the facility's decision without further inquiry. Generalized terms shall not suffice to meet this requirement.** Any such notice shall be sent not less than [thirty] **sixty** days prior to the cancellation or nonrenewal of any risk under the [program] **plan** to allow ample time for an application for new coverage to be made and a new policy to be written under the [program] **plan**.

3. Any cancellation or nonrenewal notice to the insured relating to a policy or binder issued under the [program] **plan** shall contain the procedures for obtaining an inspection under

the [program] **plan** and shall be accompanied by a statement that the insured has a right of appeal as hereinafter provided.

379.850. 1. Any applicant may appeal a decision of the facility relating to the conditions for acceptance **or denial** of coverage to the director, in writing, within thirty days from the decision of the facility.

2. Other than as provided in subsection 1 of this section, any applicant or insurer shall have the right of appeal to the governing committee. A decision of the committee may be appealed to the director, in writing, within thirty days from the action or decision of the committee.

379.855. 1. Commission under the [program] **plan** shall be twelve percent on new business and ten percent on renewal business on the policy premium and shall be paid to the licensed producer designated by the applicant.

2. If a licensed producer is not designated, the commission shall be deposited by the facility in a fund to be held by the director to be applied to the state of Missouri contribution as provided in Section 1223, Para (1), of U.S. Public Law 90-448. One year after termination of the [program] **plan**, any funds so held by the director and not applied as above set out shall be paid over to the treasurer of the state of Missouri as general revenue.

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

2. The committee shall consist of [thirteen] **fifteen** members:

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

American Insurance Association, two

Alliance of American Insurers, two

National Association of Independent Insurers, two

All other stock insurers, two

All other nonstock insurers, two

(2) [Three] **Five** members shall be appointed by the director from each of the following:

Missouri insurer, one

Licensed agent of an insurer, two

Consumer representatives, two

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

3. In case of a vacancy on the governing committee the director shall appoint a representative to such vacancy pending the designation or election as provided in the [program] **plan**.

4. A temporary governing committee shall be appointed by the director to serve until an official committee is duly elected and appointed.

379.865. 1. There shall be an annual meeting of the insurers and members of the governing committee on a date fixed by the committee **and approved by the director**.

2. A special meeting may be called at such time and place designated by the committee or upon the written request to the committee of any **committee member or any** ten insurers, not more than one of which may be in a group under the same management or ownership.

3. Twenty days' notice of such annual or special meeting shall be given in writing by the committee to **all** insurers **and committee members**. A majority of the insurers shall constitute a quorum. Voting by proxy shall be permitted. Notice of any meeting shall be accompanied by an agenda for such meeting.

4. Any matter may be proposed and voted upon by mail, provided such procedure is unanimously authorized by the members of the committee present and voting at any meeting of the committee. If so approved by the committee, notice of any proposal shall be mailed to the **committee members and** insurers not less than twenty days prior to the final date fixed by the committee for voting thereon.

5. At any regular or special meeting at which the vote of the insurers is or may be required on any proposal or any vote of the insurers which may be taken by mail on any proposal, such votes shall be cast and counted on a weighted basis in accordance with each insurer's premiums written. On any proposal, deemed by the committee to relate exclusively to habitational or exclusively to commercial business, the votes shall be cast and counted on a weighted basis in accordance with each insurer's respective habitational or commercial premiums written, as the case may be. A proposal shall become effective when approved by at least two-thirds of the votes cast on such weighted basis.

379.870. 1. The committee shall meet as often as may be required to perform the general duties of administration of the **[**program**] plan** or on the call of the director.

2. The committee shall be empowered to appoint a manager, who shall serve at the pleasure of the committee **and the director**, to budget expenses, levy assessments, disburse funds, and perform all other duties provided herein or necessary or incidental to the proper administration of the **[**program**] plan**. The adoption of or substantive changes in pension plans or employee benefit program shall be subject to approval of **committee members,** insurers**, and the director**. Assessments upon each insurer shall be levied on the basis of its premiums written.

3. Annually the manager shall prepare an operating budget which shall be subject to approval of the committee **and the director**. Such budget shall be furnished to the **members**

and insurers after approval. Any contemplated expenditure in excess of or not included in the annual budget shall require prior approval by the committee **and the director**.

4. The committee shall furnish to all **committee members,** insurers**,** and to the director a written report of operations annually in such form and detail as the **[**committee**]** **director** may determine.

5. The presence of **[**seven**]** **nine** members of the committee, at least five of whom shall be insurers, shall constitute a quorum.

6. The committee shall appoint an underwriting committee to review with the manager of the **[**program**]** **plan** risks which have been submitted for insurance and may appoint such other committees as it may deem advisable. **The director shall be informed in writing of the appointment of all committees.**

379.875. 1. The facility shall separately code and maintain separate statistics on business written in accordance with the foregoing **[**program**]** **plan** and shall make reports thereon as may be required by the committee and director.

2. The manager shall submit annually or at such other periods as may be designated by the director to the committee, the director and the Secretary of Housing and Urban Development, a report setting forth the number of requests for inspections, the number of risks inspected, the number of policies written, the number of risks conditionally accepted and reinspections made, the number of risks declined, **the number and amount of all claims submitted, denied, and paid,** and such other information as the director may request.

379.880. All insurers agree to undertake a continuing public education program, in cooperation with producers and others, to assure that the **[**basic property insurance inspection and placement program**]** **FAIR plan** receives adequate public attention.

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