

HCS SS SCS SB 132 -- CERTAIN SPECIALTY LINES INSURANCE CONTRACTS

SPONSOR: Rupp (Richardson)

COMMITTEE ACTION: Voted "do pass" by the Committee on Financial Institutions by a vote of 10 to 1.

This substitute changes the laws regarding the regulation of surplus lines insurance and motor vehicle extended service contracts.

REGULATION OF SURPLUS LINES INSURANCE

The substitute changes the laws regarding the regulation of surplus lines insurance to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) to bring about uniformity in the licensing of surplus lines insurance professionals, the standards under which surplus lines insurance may be sold, and the taxes that can be collected from the sale of surplus lines insurance. The substitute:

(1) Specifies that surplus lines insurance may be placed by a surplus lines licensee if the insurer is authorized to write that type of insurance in its domiciliary jurisdiction;

(2) Changes the requirements and qualifications for a nonadmitted insurer to furnish coverage. A surplus lines licensee must not place coverage with a nonadmitted insurer unless the licensee determines that the nonadmitted insurer:

(a) Meets the capital and surplus requirements of Missouri or \$15 million. The Director of the Department of Insurance, Financial Institutions and Professional Registration may waive the financial requirements if the nonadmitted insurer's capital and surplus is at least \$4.5 million and upon an affirmative finding of acceptability by the department director; and

(b) Appears on the most recent list of eligible surplus lines insurers published by the department director or on the most recent quarterly listing of alien insurers maintained by the international insurers department of the National Association of Insurance Commissioners (NAIC);

(3) Specifies that a surplus lines licensee seeking to procure or place nonadmitted insurance in Missouri for an exempt commercial purchaser cannot be required to satisfy any requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the exempt commercial purchaser can be obtained from nonadmitted insurers if:

(a) The surplus lines licensee procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that the insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(b) The exempt commercial purchaser has subsequently requested in writing the surplus lines licensee to procure or place the insurance from a nonadmitted insurer;

(4) Changes the licensing requirements for an insurance producer in the surplus lines insurance market. Beginning on or before July 1, 2012, the department director must participate in the national insurance producer database of the NAIC or any other equivalent uniform national database for the licensure of surplus lines licensees and the renewal of licenses. A person selling, soliciting, or negotiating nonadmitted insurance with respect to an insured must be required to obtain or possess a current surplus lines insurance license issued by the department director only if this state is the insured's home state;

(5) Requires every insured or self-insurer whose home state is Missouri who procures or causes to be procured or continues or renews any surplus lines insurance, other than through a surplus lines broker, to file a report before March 2 with the department director containing the names and addresses of the insureds, the subject of the insurance, and other specified information. Currently, this is required for every insured in this state;

(6) Specifies that only the home state of the insured will have the authority to tax and regulate the placement of these policies, regardless of where risks or portions of the risk are located;

(7) Imposes a 5% tax on the entire gross premium for nonadmitted or surplus lines insurance policies for which the home state of the insured is Missouri. Currently, it is based on the net premium; and

(8) Specifies that the placement of nonadmitted insurance must be subject to the statutory and regulatory requirements of Missouri law only if this state is the insured's home state. A surplus lines broker is required to be licensed as a surplus lines licensee under the provisions of Chapter 384, RSMo, only if this state is the insured's home state.

MOTOR VEHICLE EXTENDED SERVICE CONTRACTS

The substitute:

(1) Specifies that it is unlawful for a motor vehicle extended service contract provider to fail to deliver a fully executed contract to the consumer within a commercially feasible time period, but no more than 45 days, from the date the consumer's initial payment is processed. It will be unlawful for any provider, administrator, or contract producer selling a contract to fail to deliver, upon request, an unsigned copy of the contract to the consumer prior to the time the consumer's initial payment is processed. A seller may comply with this provision by directing the consumer to a web site containing an unsigned copy of the service contract. Anyone who violates these provisions will be guilty of a level two violation under the provisions regarding insurance regulation;

(2) Revises the provisions regarding who can sell these contracts by specifying that any licensed motor vehicle dealer offering the contract in connection with the sale of a motor vehicle or vehicle maintenance or repair services; a manufacturer of motor vehicles; a federally insured depository institution; a lender licensed under Section 367.100 - 367.215; a provider along with its subsidiaries and affiliated entities registered with the Director of the Department of Insurance, Financial Institutions and Professional Registration who has demonstrated financial responsibility as required in Section 385.202; an authorized employee of any of the afore specified entities; a business entity producer or individual producer licensed as an insurance producer for the limited line of motor vehicle extended service contracts; an authorized employee or representative of certain administrators under contract to effect coverage, collect provider fees, and settle claims on behalf of a registered provider; or a vehicle owner transferring an existing motor vehicle extended service contract to a subsequent owner of the same vehicle is authorized to sell these contracts. The substitute specifies the application and testing requirements for obtaining a limited line of motor vehicle extended service contract license;

(3) Allows a purchaser to return a contract for cancellation to the provider within 20 business days of the mailing date of the contract or the purchase date if the contract is executed and delivered at the time of sale. Currently, a contract must be returned within 20 days of the mailing or within 10 days of the date the contract is delivered. If a contract is returned within this free-look period and no claim has been made, the provider must refund to the contract holder the full purchase price. If a claim has been made, the provider must refund the purchase price less any claims that have been paid. A contract must contain a statement which specifies that a contract holder may cancel a contract after the free-look period at any time, and the provider must refund 100% of the unearned pro rata provider fee, less any

claims paid. A reasonable administrative fee can be charged in an amount of up to \$50. If the refund is not paid within 45 days, a 10% penalty of the outstanding amount per month must be added to the refund. Anyone violating these provisions will be guilty of a level two or three violation under Section 374.049;

(4) Requires a business entity applying for a producer license to apply to the department director and pay a fee as determined by the department director which cannot exceed \$100. An application must include the name and address of the business entity and the type of ownership. If the business is a partnership or unincorporated association, the application must contain the name and address of every person or corporation having a financial interest in or owning any part of the business entity. If the business is a corporation, the application must include the name and address of every officer and director. If the business is a limited liability company, the application must contain the name and address of all members and officers and a list of all persons employed by the business entity to whom it pays any salary or commission for the sale, solicitation, negotiation, or procurement of any motor vehicle extended service contract;

(5) Requires an individual applying for a producer license to apply to the department director and pay a fee as determined by the department director which cannot exceed \$25;

(6) Specifies that it is unlawful for a provider, administrator, motor vehicle extended service contract producer, or any other motor vehicle extended service contract seller or solicitor to use "warranty" in its materials and to represent in any manner a false, deceptive, or misleading statement with respect to:

(a) An affiliation with a motor vehicle manufacturer or dealer;

(b) Possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(c) The expiration date of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

(d) A requirement that a motor vehicle owner register for a new service contract with the provider in order to maintain coverage under the current extended service contract or the manufacturer's original equipment warranty; or

(e) Any term or provision of an extended service contract;

(7) Specifies that it is unlawful for any person, in connection with the offer, sale, solicitation, or negotiation of an extended

service contract to:

- (a) Employ any deception, device, scheme, or artifice to defraud;
 - (b) Make or use any misrepresentation, concealment, or suppression of any material fact;
 - (c) Engage in any pattern or practice of making any false statement of material fact; or
 - (d) Engage in any act, practice, or course of business which operates as a fraud or deceit upon any person;
- (8) Allows the department director to suspend, revoke, or refuse to issue or renew a registration or license to sell service contracts for specified causes. If a license is not renewed or is denied, an appeals process to the Administrative Hearing Commission is specified. The license of an extended service contract producer may be suspended, revoked, refused, or not renewed or an application can be refused if the department director finds a specified violation;
- (9) Requires a licensed contract producer to notify the department director within 30 days of any address change or any license revocation or civil action taken against the producer in another jurisdiction or by another state governmental agency. A producer must report to the department director any felony proceeding initiated by any state or the federal government for any law violation within 30 days of the initial pretrial hearing date or arraignment; and
- (10) Requires a provider to maintain a register of business entity motor vehicle extended service contract producers who are authorized to sell, offer, negotiate, or solicit the sale of these contracts in this state and make the list available for inspection upon the request of the department director. Within 30 days of a provider authorizing a producer to sell, offer, negotiate, or solicit the sale of service contracts, the provider must enter the name and license number of the producer in the company registry of producers. If a producer's appointment is terminated, the provider must update the registry with the effective termination date within 30 days. A provider must notify the department director in writing if he or she has possession of information relating to any cause for discipline.

The provisions of the substitute regarding motor vehicle extended service contracts become effective January 1, 2012.

The substitute contains an emergency clause for the provisions

regarding the regulation of surplus lines insurance.

FISCAL NOTE: Estimated Net Income on General Revenue Fund of Unknown, expected to exceed \$100,000 in FY 2012, FY 2013, and FY 2014. Estimated Net Income on Other State Funds of Unknown in FY 2012, FY 2013, and FY 2014.

PROPONENTS: Supporters say that the bill brings Missouri into compliance with federal regulations regarding motor vehicle extended service contracts and helps protect consumers.

Testifying for the bill were Senator Rupp; Office of the Attorney General; and Missouri Automobile Dealers Association.

OPPONENTS: There was no opposition voiced to the committee.