

HCS SS SCS SB 132 -- CERTAIN SPECIALTY LINES INSURANCE

This bill changes the laws regarding certain specialty lines insurance.

INSURANCE CLAIMS HANDLING OPERATIONS (Section 44.114, RSMo)

At the time of any emergency, catastrophe, or other life or property threatening event which jeopardizes the ability of an insurer to address the financial needs of its insureds or the public, no political subdivision can impose restrictions or enforce local licensing or registration ordinances with respect to an insurer's claims handling operations. However, nothing can prohibit the political subdivision from performing any safety inspection as authorized by local ordinance of the premises of the insurer's base of operations within the disaster area.

INSURANCE COMPANY RETALIATORY TAXES (Section 375.916)

The bill changes the laws regarding retaliatory taxes on Missouri insurance companies or carriers. An insurance company claiming a state premium tax credit or deduction cannot be required to pay any additional retaliatory tax levied pursuant to Section 375.916 as a result of claiming the credit or deduction. Effective January 1, 2012, operating assessments based upon workers' compensation paid losses that are imposed on an insurance company by the laws of its state or foreign country of domicile cannot be considered any premium or income or other taxes or any fees, fines, penalties, licenses, or deposit requirements or other obligations, prohibitions, or restrictions if, with respect to the tax year in question, the insurance company has its principal place of business within Missouri and receives more than \$3 million of direct insurance premiums on business done in this state.

INSURANCE COVERAGE FOR PORTABLE ELECTRONIC DEVICES (Sections 379.1500 - 379.1550)

Beginning January 1, 2012, a portable electronics transaction vendor must obtain a license from the Department of Insurance, Financial Institutions and Professional Registration in order for an employee or authorized representative to sell or offer portable electronics insurance at each location where the vendor engages in a portable electronics transaction. The initial cost of a license cannot exceed \$1,000, and the annual renewal fee cannot exceed \$500. The fees will be deposited into the Insurance Dedicated Fund.

A vendor is required to have available at each location specific brochures and actual policies or certificates of coverage

available to prospective customers which disclose information about portable electronics insurance benefits, duplication of coverage, material terms of the coverage, process for filing a claim, and option to cancel a policy at any time and receive a prorated refund. Portable electronics insurance will be deemed the primary coverage over any other collateral coverage.

Eligibility and underwriting standards for a customer electing to enroll in coverage must be established for each portable electronics insurance program. Each insurer must maintain all eligibility and underwriting records for five years and appoint a business entity to supervise administration of the program. The supervising entity will be responsible for the development of a training program for the employees and authorized representatives of the vendor. Insurers and applicable supervising business entities offering portable electronics insurance must share all complaint, grievance, and inquiries regarding any conduct that is specific to a vendor and that may not comply with applicable state laws and regulations. A supervising business entity must maintain a registry of authorized vendor locations; and upon request of the department director and within 10 days' notice to the supervising entity, the registry must be open to inspection and examination. Within 30 days of a supervising business entity terminating a vendor location's appointment to sell or solicit the insurance, the entity must update at no charge the registry with the effective date of termination.

A vendor can bill and collect any charge that is not included with the purchase or lease of portable electronics or related services if the fee is listed separately on the customer's bill. A vendor must clearly and conspicuously disclose to the customer if the cost of the portable electronics insurance is included in the purchase price of the electronic device or related services.

A licensed vendor will be subject to specified provisions of law under the Insurance Producers Act and to investigation and examination by the department. The department director can suspend, revoke, refuse to issue, or refuse to renew a license of an insurer or a vendor for specified reasons and can impose other penalties, issue an administrative order, or maintain a civil action against the vendor.

An insurer may terminate or change the terms and conditions of a policy if he or she gives at least 30 days' notice to the policyholder and enrolled customers. An insurer can terminate a policyholder's coverage upon 15 days' notice for the discovery of fraud or nonpayment, for inactivity of service with the vendor, or if he or she exceeds coverage limits.

REGULATION OF SURPLUS LINES INSURANCE (Sections 384.015, 384.017,

384.021, 384.043, 384.051, 384.057, and 384.061)

The bill changes the laws regarding the regulation of surplus lines insurance to comply with the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA) 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 bill:

(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, at the time of placement, 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 based on specified factors 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 these licenses. A person selling, soliciting, or negotiating nonadmitted insurance with respect to an insured must 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 and insurers, the subject and description of the insurance, the amount of premium charged, and any pertinent information that may be requested by the department director. Currently, this is required of every insured or self-insurer in this state;

(6) Imposes a 5% tax on the gross amount of the 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 amount of the premium in respect to risks located in this state;

(7) 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; 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 must be licensed as a surplus lines licensee under the provisions of Chapter 384 only if this state is the insured's home state.

MOTOR VEHICLE EXTENDED SERVICE CONTRACTS (Sections 385.200 - 385.211)

The bill:

(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 also be unlawful for any provider, administrator, producer, or any other person 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 contract. Anyone violating these provisions will be guilty of a level two violation under Section 374.049;

(2) Specifies that the following are authorized to sell motor vehicle extended service contracts: 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 aforementioned 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 of certain administrators under contract to effect coverage, collect provider fees, and settle claims on behalf of a registered provider; and a vehicle owner transferring an existing contract to a subsequent owner of the same vehicle. The bill specifies the application and testing requirements for a person to obtain a license to sell these contracts;

(3) Allows a purchaser of a motor vehicle extended service contract to return the contract for cancellation to the provider within 20 business days of the mailing date of the contract or the contract date if the contract is executed and delivered at the time of sale. Currently, a contract must be returned within 20 business days of the mailing or within 10 days of the date the contract is delivered;

(4) Specifies that if a contract is returned within the free-look period and no claim has been made, the provider must refund the full purchase price to the contract holder. 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. Currently, the penalty can be added if the

refund is not paid within 30 days. Anyone violating these provisions will be guilty of a level two or three violation under Section 374.049;

(5) Requires a business entity applying for a producer license to make application to the department director and pay an initial and renewal fee as determined by the department director which cannot exceed \$100. An application must include the name and address of the business entity, the type of ownership, and certain information as required by the department director. 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 every member and officer and a list of every person 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;

(6) Requires an individual applying for a producer license to make application to the department director and pay an initial and renewal fee as determined by the department director which cannot exceed \$25. An applicant will not be required to take an examination;

(7) Specifies that it is unlawful and will be a level three violation under Section 374.049 for a provider, administrator, 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 contract with the provider in order to maintain coverage under the current contract or the manufacturer's original equipment warranty; or

(e) Any term or provision of a contract;

(8) Specifies that it is unlawful for any person, in connection with the offer, sale, solicitation, or negotiation of a motor vehicle 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;

(9) Specifies that any person who knowingly employs, uses, or engages in any conduct in violation of selling a motor vehicle extended service contract with the intent to defraud will be guilty of a felony and may be subject to imprisonment for up to 10 years as well as court-ordered restitution and a fine;

(10) Allows the department director to suspend, revoke, or refuse to issue or renew a registration or license to sell motor vehicle extended 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 a producer may be suspended, revoked, or not renewed or an application can be refused if the department director finds that a violation by the producer was known or should have been known by his or her business entity and the violation was not reported to the department director and no corrective action was taken;

(11) Requires a licensed contract producer to notify the department director within 30 days of any address change, any license revocation or civil action taken against the producer in another jurisdiction or by another state governmental agency, and the initial pretrial hearing date or arraignment for any felony proceeding initiated by any state or the federal government for any law violation; and

(12) 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 to 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 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 bill regarding motor vehicle extended service contracts become effective January 1, 2012.

The bill contains an emergency clause for the provisions regarding the regulation of surplus lines insurance.