

SCS HB 604 -- INSURANCE

This bill modifies provisions related to insurance.

LONG-TERM CARE INSURANCE (Sections 135.096 and 376.1109, RSMo)

Beginning December 31, 2020, the bill allows a resident individual to deduct from their Missouri taxable income an amount equal to 100% of all nonreimbursed amounts paid by such individual for long-term care insurance. The definition of qualified long-term care insurance is expanded to include insurance policies that are considered an asset or resource for purposes of eligibility for purposes of eligibility for long-term care benefits under MO HealthNet.

No long-term care insurance policy shall increase premium rates, in excess of the amount that is actuarially justified based on credible experience, and on the rate basis in effect in this state without recognition of rates that may be in effect in other states.

WORKERS' COMPENSATION BENEFITS (Sections 287.170 and 287.180)

This bill requires temporary, total and partial disability payments to be made to a claimant by check, other negotiable instrument, or by electronic transfer or other manner authorized by the claimant.

SECOND INJURY FUND SURCHARGE (Section 287.715)

Currently, the Second Injury Fund receives funds from an annual surcharge of up to 3% on employers' workers' compensation premiums and an annual supplemental surcharge of up to 3% for calendar years 2014 to 2021. This bill extends the supplemental surcharge sunset from 2021 to 2022. For calendar year 2023 the Director of the Division of Workers' Compensation shall collect a supplemental surcharge not to exceed 2.5% of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year rounded up to the nearest one-half of a percentage point and then it will expire December 31, 2023.

CERTIFICATES OF SELF-INSURANCE (Section 303.220)

This bill allows any religious denomination that discourages its members from purchasing insurance as being contrary to its religious tenets but has more than 25 members with motor vehicles, to qualify as a self-insurer by obtaining a self-insurance certificate issued by the Director of the Department of Revenue.

Currently, a religious denomination can only qualify if it

prohibits its members from purchasing insurance of any form.

#### PETROLEUM STORAGE TANK INSURANCE FUND (Section 319.131)

Currently, the Petroleum Storage Tank Insurance Fund assumes costs of 3rd-party claims and cleanup of contamination caused by releases from petroleum storage tanks and pays legal defense costs for eligible 3rd-party claims. This bill specifies that the legal defense costs are separate from other coverage limits and allows the Fund to set a limit for such coverage.

#### CONTINUING EDUCATION CREDITS FOR INSURANCE PRODUCERS (Section 375.029)

This bill allows an insurance producer to receive up to four hours of continuing education credit per biennial reporting period for participation as an individual member or employee of a business entity producer member of a local, regional, state, or national professional insurance association with approval by the Director of the Department of Commerce and Insurance.

An insurance producer shall not use continuing education credit granted under this section to satisfy continuing education hours required to be completed in a classroom or classroom-equivalent setting, or to satisfy any continuing education ethics requirements.

#### CREDIT FOR REINSURANCE AS AN ASSET OR REDUCTION FROM LIABILITY OF AN INSURER (Section 375.246)

The bill authorizes the Director of the Department of Commerce and Insurance to promulgate certain rules, as specified in the bill, to establish requirements relating to or setting forth the valuation of assets or reserve credits, the amount and forms of security supporting reinsurance agreements described in the bill, or the circumstances under which credit will be reduced or eliminated.

In addition to as currently provided by law, credit for reinsurance shall be allowed when the reinsurance is ceded to an assuming insurer meeting certain conditions. The assuming insurer shall have its head office or be domiciled in, as applicable, and licensed in a reciprocal jurisdiction, as such term is defined in the bill. The assuming insurer shall have and maintain minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction in an amount to be set forth by the Director by rule. If the assuming insurer is an association, it shall maintain the same, net of liabilities, and a central fund containing an amount to be set forth by rule. The assuming insurer shall have and maintain a minimum solvency or

capital ratio, as applicable, which shall be set forth by rule. If the assuming insurer is an association, it shall have and maintain a minimum solvency and capital ratio in the reciprocal jurisdiction where the insurer has its head office or is domiciled, as applicable, and is also licensed. The assuming insurer shall agree and provide adequate assurance to the Director that it will provide prompt written notice and explanation to the Director if it falls below minimum capital and surplus requirements outlined in the bill, or if any regulatory action is taken against it for serious noncompliance with the law. The assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the Director as agent for service of process. The Director may require that the consent for service of process be provided for and included in each reinsurance agreement. These provisions shall not alter the capacity of the parties to a reinsurance agreement to agree to enforceable alternative dispute resolution mechanisms. The assuming insurer shall consent in writing to pay all final judgments obtained by a ceding insurer or its legal successor, where enforcement is sought, which have been declared enforceable in the jurisdiction where the judgment was obtained. Each reinsurance agreement shall require the assuming insurer to provide security, in an amount equal to 100% of the assuming insurer's liabilities attributable to reinsurance under the agreement, if the assuming insurer resists enforcement of an enforceable final judgment or arbitration award. The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement involving this state's ceding insurers, and shall agree to notify the ceding insurer and the Director and to provide security as specified by rule in an amount equal to 100% of the assuming insurer's liabilities to the ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement. The assuming insurer or its legal successor shall provide, if requested by the Director, certain documentation as specified by rule. The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements as specified by rule. The assuming insurer's supervisory authority shall confirm to the Director on an annual basis that the assuming insurer complies with the minimum capital and surplus or solvency or capital ratio requirements specified in this bill. Nothing in these provisions precludes an assuming insurer from providing the Director with information on a voluntary basis.

This bill requires the Director to create and publish a list of reciprocal jurisdictions. The Director's list shall contain any jurisdiction meeting the definitions provided in the bill and shall consider any other reciprocal jurisdiction included on the list published by the National Association of Insurance Commissioners (NAIC). The Director may approve additional jurisdictions under rules promulgated by the Director. The Director may remove a

jurisdiction from the list upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, except that the Director shall not remove a non-United States jurisdiction that is subject to a covered agreement, as defined in the bill, or a United States jurisdiction that meets the requirements for NAIC accreditation.

The Director shall create and publish a list of assuming insurers that have satisfied the conditions set forth in this bill and to which cessions shall be granted credit as specified in the bill. The Director may add an assuming insurer to the list if an NAIC accredited jurisdiction has added the assuming insurer to such a list, or if the eligible assuming insurer submits certain information to the Director, as provided in the bill, and complies with any additional requirements the Director may adopt that are not in conflict with an applicable covered agreement.

If the Director determines an assuming insurer no longer meets one or more requirements for recognition under the bill, the Director may revoke or suspend the insurer's eligibility for recognition in accordance with the bill. While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the date of suspension shall qualify for credit, except to the extent that the assuming insurer's obligations are secured as provided by law. If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of revocation with respect to any reinsurance agreement entered into by the insurer, before or after the revocation, except to the extent the insurer's obligations are secured as provided by law.

If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding insurer or its representative may seek a court order requiring that the assuming insurer post security for all outstanding liabilities.

Nothing in this bill shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by law.

Credit may be taken under this bill only for reinsurance agreements entered into, amended, or renewed on or after December 31, 2021, and only with respect to losses incurred and reserves reported on or after the later of: the date on which the assuming insurer has met applicable eligibility requirements, or the effective date of the new reinsurance agreement, amendment, or renewal. Nothing in this bill shall alter or impair a ceding insurer's right to take credit for reinsurance under the bill as long as the reinsurance qualifies for credit under another applicable provision of law.

Nothing in this bill shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

The bill authorizes the Director to adopt rules and regulations applicable to reinsurance agreements relating to certain life insurance policies, variable annuities with guaranteed benefits, long-term care insurance policies, and such other life and health insurance and annuity products as to which the NAIC adopts model rules with respect to credit for reinsurance. A rule adopted under these provisions regarding life insurance policies may apply to any treaty containing policies issued on or after January 1, 2015, or policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with a treaty on or after January 1, 2015. A rule adopted under these provisions may require the ceding insurer, in calculating the amounts or forms of security required to be held, to use the NAIC valuation manual to the extent applicable. Regulations adopted under this authority shall not apply to an assuming insurer that: meets the conditions set forth in this bill or, if this state has not fully implemented the provisions of this bill, is operating in at least five states that have implemented the provisions of this bill; is certified in this state; or maintains at least \$250 million in capital and surplus as specified in the bill and is licensed in at least 26 states, or licensed in at least 10 states and licensed or accredited in at least 35 states. The authority to adopt regulations under these provisions does not limit the Director's authority to otherwise adopt regulations relating to credit for reinsurance.

#### MENTAL HEALTH INSURANCE COVERAGE (Section 376.1551)

This bill requires that each health carrier that issues health benefit plans on or after January 1, 2022, and that provide coverage for a mental health condition shall meet the requirements of the Mental Health Parity and Addiction Equity Act of 2008.

These provisions do not apply to specified supplemental policies.

#### ISSUANCE OF FUNDING AGREEMENTS (Section 376.2080)

This bill specifies that life insurance companies may issue funding agreements, defined in the bill as an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts not based on mortality or morbidity contingencies of the person to whom the funding agreement is issued. Funding agreements shall not be deemed to constitute a security. The issuance of a funding agreement shall be deemed to be doing insurance business.

EXPLANATIONS OF REFUSAL TO WRITE AUTOMOBILE INSURANCE (Section 379.120)

Currently, if any insurer refuses to write a policy of automobile insurance, the insurer must send to the applicant a written explanation of the refusal which clearly states the reason for the refusal and that the applicant may be eligible for coverage through the assigned risk plan if other insurance is not available.

This bill exempts insurers from these requirements if the applicant is written on a policy of insurance issued by an affiliate or subsidiary insurer within the same insurance holding company system.

PROPERTY INSURANCE (Sections 379.140, 379.145, 379.150, and 379.160)

Currently, an insurer must pay a claim for any total loss or damage by a fire in the full amount for which the property was insured. This bill modifies it to any peril covered under the policy for real property less any deductible with certain exclusions as outlined in the bill.

Any fire insurance policy issued or renewed after August 28, 2021 will cover partial losses caused by fire to be adjusted by settling the loss at the actual cash value or to repair, rebuild or replace the property destroyed or damaged with other of like kind or quality within a reasonable time. Notice shall be given within 30 days or after the receipt of the proof of loss herein required.

GROUP PERSONAL LINES PROPERTY AND CASUALTY INSURANCE (Sections 379.1800 to 379.1824)

The bill specifies that no policy of group personal lines property and casualty insurance shall be issued or delivered in the state unless it conforms to one of the categories described in the bill.

The bill describes policies issued to an employer or trustees of a fund established by an employer; policies issued to a labor union or similar employee organization; policies issued to a trust, or trustees of a fund, established by two or more employers or by one or more labor unions or similar employee organizations or by a combination thereof; and policies issued to an association or to a trust, or trustees of a fund, established for the benefit of members of one or more associations. For each, the bill specifies persons' eligibility for coverage under the policies and the sources of funds from which the policy premiums may be paid. For policies issued for the benefit of an association or associations,

the bill further requires that the association or associations have at the outset at least 100 members, have been organized and maintained in good faith for purposes other than obtaining insurance, and have been in active existence for at least one year. The association's constitution and bylaws shall require that the association shall meet at least annually to further the purposes of the members, shall collect dues or solicit member contributions, and shall provide members with voting privileges and representation on the governing board and committees. Lastly, if compensation of any kind will be paid to the policyholder in connection with a group policy issued for the benefit of an association or associations, the insurer shall notify prospective insureds as required in the bill.

Group personal lines property and casualty insurance issued to a group other than one described above shall meet additional requirements. No such policy shall be issued or delivered in this state unless the Director of the Department of Commerce and Insurance finds that the issuance of the group policy is not contrary to the best interest of the public, would result in economies of acquisition or administration, and that the benefits are reasonable in relation to the premiums charged. No policy issued or delivered in another state shall offer coverage in this state unless the Director, or another state with comparable requirements, determines these additional requirements have been met. Premiums for these plans shall be paid from funds that are contributed by the policyholder, by covered persons, or by both. If compensation is to be paid to the policyholder in connection with the group policy, the insurer shall notify prospective insureds as specified in the bill.

For all group personal lines property and casualty insurance, master policies shall be issued to the policyholders, and eligible employees or members insured under a master policy shall be issued certificates of coverage setting forth a statement as to the insurance protection to which they are entitled. No master policy or certificate of insurance, nor any subsequent amendments to the policy forms, shall be issued or delivered in this state unless the forms and any amendments thereto have met the applicable filing requirements of this state. The master policy shall set forth coverages, exclusions, and conditions of the insurance provided, together with the terms and conditions of the agreement between the policyholder and insurer, as provided in the bill. If the master policy provides for remittance of premiums by the policyholder, failure by the policyholder to remit premiums timely paid by an employee or member shall not be considered nonpayment of premium by the employee or member.

The master policy shall provide a basic package of coverages and

limits that are available to all eligible employees or members, including at least the minimum coverages and limits required in the employee's or member's state of residence or in the state where the subject property is located, and may offer additional coverages or limits to qualified employees or members for an increased premium. The master policy shall provide coverage for all eligible employees or members who elect coverage during their initial period of eligibility, which may be up to 31 days. Employees or members who do not elect coverage during the initial period and later request coverage shall be subject to the insurer's underwriting standards. Coverage under a master policy may be reduced only as to all members of a class, and shall never be reduced to a level below the limits required by applicable law. Coverage under the master policy may be terminated as to an employee or member only for reasons specified in the bill. If optional coverages or limits are required by law to be available, the policyholder's acceptance or rejection of them on behalf of the group shall be binding on the employees or members. If the policyholder rejects any coverages or limits that are required by law to be provided unless rejected by the named insured, notice of the rejection shall be given to the employees or members upon or before delivery of their certificates of coverage. The bill prohibits the stacking of coverages or limits under a master policy, except that state law shall apply with regard to the stacking of coverages for separate certificates of coverage issued to relatives living in the same household.

No master policy or certificate of insurance shall be issued or delivered in this state unless the rating plan and amendments thereto have met applicable filing requirements of this state. Group insurance premium rates shall not be deemed to be unfairly discriminatory if adjusted to reflect past and prospective loss experience or group expense factors, or if averaged broadly among persons covered under the master policy. The rates likewise shall not be deemed unfairly discriminatory if they do not reflect individual rating factors including surcharges and discounts required for individual personal lines property and casualty policies. Experience refunds or dividends may be paid to the policyholder of a group personal lines property and casualty policy if justified by the insurer's experience under that policy. However, if an experience refund or dividend is paid, it shall be applied for the sole benefit of the insured employees or members to the extent it exceeds the policyholder's contribution to premiums for the applicable period.

An insurer issuing or delivering group personal lines property and casualty insurance shall maintain separate statistics as to the loss and expense experience pertinent thereto. No insurer shall issue or deliver a policy if purchasing insurance is a condition of employment or membership in the group, or if any employee or member



shall be penalized for nonparticipation. The bill prohibits insurers from issuing or delivering a policy if the purchase is contingent on purchase of other insurance, product, or services, or on the purchase of additional coverage under the policy, except as specified in the bill. The insurer's experience from the policies shall be included in the determination of its participation in residual market plans. For purposes of premium taxes, the insurer shall allocate premiums in accordance with the rules for individual personal lines policies, except that the allocation may be based on an annual survey of the insureds. Premiums shall be apportioned among states without differentiation between the source of payment.

The bill requires persons acting as an insurance broker or agent in connection with the policies to be licensed in this state as an insurance producer, except as otherwise specified in the bill and provides that the signature of a licensed producer residing in this state shall not be required for issuance or delivery of a policy.

Regarding termination of coverage, the bill requires insurers to give 30 days written notice, as specified in the bill, to persons whose coverage is being terminated for reasons other than by their own request or a failure to pay premiums. The employee or member whose coverage is terminated shall be entitled to be issued a comparable individual policy if he or she applies and pays the first premium within 30 days of receiving the notice. These notice and replacement policy provisions shall not apply if the master policy is replaced within 30 days.

The bill further requires insurers to be duly licensed, specifies that the bill is not applicable to mass marketing of individual policies, excludes certain credit insurance, specifies that it does not apply to or modify motor vehicle insurance, and provides that it shall not modify the authority of the Director with respect to consumer complaints or disputes.

These provisions shall take effect on January 1, 2022. A master policy or certificate of insurance that is lawfully in effect at that time shall comply with this bill within 12 months of such date.

#### MISSOURI STATUTORY THRESHOLDS FOR SETTLEMENTS INVOLVING MINORS ACT (Section 436.700 and 507.184)

This bill creates the "Missouri Statutory Thresholds for Settlements Involving Minors Act" which allows persons having legal custody over a minor to enter into settlement agreements with a person or entity against whom the minor has a claim if the following requirements are met:

(1) A conservator or guardian ad litem has not been appointed for the minor;

(2) The total amount of the claim, including reimbursement of medical expenses, liens, reasonable attorneys' fees and costs, is \$35,000 or less if paid in cash, by draft, or if paid by the purchase of a premium for an annuity;

(3) The moneys paid pursuant to the settlement follow the requirements of this bill; and

(4) The person entering into the settlement agreement completes an affidavit or statement that attests that the person has made a reasonable inquiry and that the minor will be fully compensated by the settlement or that there is no practical way to obtain additional amounts from the person or entity.

The limit of \$35,000 for the total amount of the claim shall be increased by inflation every five years beginning January 1, 2027. The affidavit or statement shall be maintained by the attorney representing the person entering into the settlement agreement on behalf of the minor for at least six years in accordance with the Missouri Supreme Court Rules of Professional Conduct.

As set forth in the bill, the payments from the settlement agreement shall be deposited into a uniform transfer to minors account for the sole benefit of the minor, shall be paid by direct payment to a provider of an annuity with the minor as the sole beneficiary, or shall be paid into a trust account or trust subaccount established by the Children's Division of the Department of Social Services for those minors in the custody of the state. The moneys in the minor's saving account, trust account, or trust subaccount may not be withdrawn, removed, paid out, or transferred to any person, including the minor, unless pursuant to court order, the minor attains 18 years of age, at the direction of a duly appointed conservator, at the direction of the custodian for the uniform transfer to minors account, or upon the minor's death.

The signature of the person entering into the settlement agreement on behalf of the minor is binding on the minor without the need for further court approval or review and has the same force and effect as if the minor were a competent adult entering into the agreement.

This bill provides that a person, including any insurer of a person, acting in good faith in entering into a settlement agreement on behalf of a minor pursuant to this bill shall not be liable to the minor for the moneys paid in the settlement or for any other claims arising out of the settlement of the claim. Additionally, any person or entity against whom a minor has a claim

that settles the claim with the minor in good faith pursuant to this bill shall not be liable to the minor for any claims arising from the settlement of the claim.

The provision of current law regarding settlements contracted by a next friend, guardian ad litem or guardian or conservator shall not be construed as prohibiting settlements made pursuant to this bill or as requiring court approval of settlements made pursuant to this bill.