

HCS SS SCS SB 895 -- DEPARTMENT OF INSURANCE

SPONSOR: Engler (Wilson, 130)

COMMITTEE ACTION: Voted "do pass" by the Committee on Insurance Policy by a vote of 13 to 0.

This substitute changes the laws regarding insurance and the Department of Insurance's enforcement of violations of the state insurance code.

DEPARTMENT OF INSURANCE

The substitute:

- (1) Synchronizes the penalties, administrative orders, civil actions, and other remedies available to the Director of the Department of Insurance;
- (2) Allows the director, upon determining that a person has violated or attempted to violate provisions of the insurance laws, to order the following relief:
  - (a) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;
  - (b) A curative order or order directing the person to take other action necessary to comply with insurance laws;
  - (c) Order a civil penalty or forfeiture; and
  - (d) Award reasonable costs of the investigation;
- (3) Authorizes fines of up to \$100,000 and imprisonment of up to 10 years if a person violates a cease and desist order. Currently, a person may be punished by a maximum \$1,000 fine and up to one year in jail;
- (4) Allows the director to suspend or revoke a corporation's or insurer's certificate of authority for violating insurance laws or for felony or misdemeanor convictions. The director must provide 30 days' notice and a hearing, if requested, before revocation;
- (5) Allows the director to seek redress in county circuit courts. The court can issue injunctions, freeze assets, or take other action as specified. A consumer restitution fund is created for preserving and distributing disgorgement or restitution funds obtained through enforcement procedures to aggrieved consumers;

(6) Classifies various violations of insurance laws into five categories from level one through level five. Maximum fines are established at each level with level one being the least and level five the highest. All fines collected will go to fund public schools as required by Article IX, Section 7, of the Missouri Constitution;

(7) Allows any applicant who is refused a license to sell insurance to file a petition with the Administrative Hearing Commission. The director will retain discretion in refusing a license or renewal;

(8) Allows administrative hearings before the director for persons aggrieved by any order of the director;

(9) Authorizes the director to consult and share information with other members of the National Association of Insurance Commissioners, the Commissioner of Securities within the Office of Secretary of State, state securities regulators, the Division of Finance within the Department of Economic Development, the Attorney General, federal banking and securities regulators, the National Association of Securities Dealers (NASD), the United States Department of Justice, the Commodity Futures Trading Commission, and the Federal Trade Commission to effectuate greater uniformity in insurance and financial services regulation among state and federal governments and self-regulatory organizations. The cooperation, coordination, consultation, and sharing of records and information authorized by the substitute include:

(a) Establishing or employing one or more designees as a central electronic depository for licensing and rate and form filings with the director and for records required or allowed to be maintained;

(b) Encouraging insurance companies and producers to implement electronic filing through a central electronic depository;

(c) Developing and maintaining uniform forms;

(d) Conducting joint market conduct examinations and other investigations through collaboration and cooperation with other insurance regulators;

(e) Holding joint administrative hearings;

(f) Instituting and prosecuting joint civil or administrative enforcement proceedings; and

(g) Sharing and exchanging personnel;

(10) Modifies various fees charged by the department for the regulation of insurance companies and the operation of the Division of Consumer Affairs within the Office of the Attorney General. The expenses for an examination of a company will be paid by the company. The department director will assess the company for all reasonable expenses including the cost of compensation and travel for the examiners, analysts, actuaries, and attorneys directly contributing to the examination of the company;

(11) Prohibits insurers from canceling or non-renewing a homeowner insurance policy based on an inquiry or one weather related claim in the proceeding five years;

(12) Requires insurers providing group health insurance to employers with at least 51 employees to provide the employer, upon request, with a report containing the total dollar amount paid under the plan for each of the prior three years of coverage. The information cannot individually identify any person covered under the plan; and

(13) Allows insurers selling life insurance policies to exclude or limit their liability if a policy holder, whether sane or insane, commits suicide within the first year of the date of issuance of the policy.

#### POLICE AND FIREMEN'S RETIREMENT SYSTEMS

Currently, the board of trustees of police and firemen's pension systems are not subject to investment limitations established in Section 376.305, RSMo. The substitute makes these systems subject to the limitations.

#### INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

The substitute provides the statutory framework for states to enter into the Interstate Insurance Product Regulation Compact. The compact establishes a single point of filing for certain insurance products and rate filings which are subject to uniform national standards developed by members of the compact; however, companies are still allowed the option to file products in the individual states through the existing form filing processes. Unless a state opts out, approval of a product by the compact will be the same as approval by a member state. Individual states will continue to regulate market activities and allow for coordination among states and the Interstate Insurance Product Regulation Commission, established in the substitute, to determine instances of violations of uniform standards subject to the final order of the commission.

The commission becomes operational if 26 states or states representing 40% of the premiums for life, annuities, disability, and long-term care insurance join the compact. The commission will make an annual report to the legislature and governor of each state in the compact.

#### BAIL BOND AGENTS

The substitute changes the laws regarding the licensure of bail bond agents. The substitute:

- (1) Requires the Department of Insurance to notify any bail bond agent who is listed as having a forfeited bond;
- (2) Requires all licenses issued to bail bond agents to include a photograph of the licensee;
- (3) Requires all bail bond agents to provide the department with the name, address, and telephone number of each employer which they work for or contract with;
- (4) Requires any newly appointed surety bail bond agent to file an affidavit with the department stating that all forfeitures or judgments on previously written bonds have been satisfied;
- (5) Requires all applicants for licensure to be fingerprinted and have a criminal background check;
- (6) Authorizes the department to have a cause of action brought against a licensee who has been found guilty of a dangerous felony or has filed bankruptcy as an owner of a bail bond business;
- (7) Allows bail bond agents to write bonds in municipal or circuit courts if the general bail bond agent who employs them is qualified to write bonds in these courts;
- (8) Allows bail bonds agents to be released from a bond if the agent can prove the defendant is incarcerated in another jurisdiction or that it is physically impossible for the defendant to appear through no fault of the bail bond agent; and
- (9) Requires any bail bond agent arrested for a felony to notify the department of the arrest within 10 days.

#### INVESTMENT PRACTICES OF DOMESTIC INSURERS

The substitute:

- (1) Exempts insurers organized under Chapter 376 from several

requirements in Chapter 375 including that:

(a) Notification be given on interest due on an insurance policy loan;

(b) Insurance companies not deal or trade in goods, wares, merchandise, commodities, or certain real estate purchases, sales, or trades;

(c) No officer, stockholder, agent, or employee use company funds for private profit or gain;

(d) Beneficial owners of a company selling any equity securities of the company must own the security sold and deliver the security sold as required;

(e) Domestic insurers invest in stocks or shares having at least the second highest designation or quality rating conferred by the Securities Valuation Office of the National Association of Insurance Commissioners;

(f) Investments in foreign governments or corporations are permitted as long as the investments are allowed in United States companies; and

(g) Insurance companies follow the provisions of Sections 375.1070 - 375.1075, Investments in Medium and Lower Quality Obligations Law;

(2) Allows insurers organized under Chapter 376 to engage in derivative transactions through an investment subsidiary;

(3) Establishes Sections 376.291 - 376.307 which applies to investments and investment practices of domestic insurers organized under the provisions of Chapter 376. Terms relative to these sections are defined;

(4) Requires an insurer's board of directors to adopt a plan for acquiring investments and for engaging in investment practices appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus needs. Prohibited investments are also specified;

(5) Prohibits insurers, without prior approval of the department director, from:

(a) Making a loan or investment in an officer of the insurer or a person in which the officer has any financial interest;

(b) Making a guarantee for the benefit of or in favor of an

officer of the insurer or a person in which the officer has a financial interest; and

(c) Entering into an agreement for the purchase or sale of property from or to an officer of the insurer or a person in which the officer has any financial interest;

(6) Allows an insurer, without prior approval of the director, to:

(a) Make policy loans in accordance with the terms of the contract;

(b) Advance reasonable expenses expected in the course of business to directors or officers;

(c) Make loans secured by the principal residence of an existing officer in connection with the officer's relocation at the insurer's request; and

(d) Make loans or advances to officers or directors which comply with state and federal law pertaining to loans made to a regulated noninsurance subsidiary or affiliate of the insurer in the normal course of business;

(7) Requires investments to be valued based on published accounting and valuation standards of the National Association of Insurance Commissioners;

(8) Prohibits insurers from investing more than 3% of its admitted assets in investments issued by a single person. This limitation will not apply to amounts insured by a single financial guaranty insurer having the highest generic rating issued by a nationally recognized statistical rating organization or to asset-backed securities. Requirements are established for medium-grade, low-grade, and Canadian investments;

(9) Allows an insurer, subject to certain limitations, to acquire rated credit instruments issued, assumed, guaranteed, or issued by the United States, Canada, government-sponsored enterprises of the United States or Canada, a government or class one money market mutual fund, a class one bond mutual fund, or general obligation instruments of the state;

(10) Allows an insurer to invest in tangible personal property if the resulting ownership of the property returns to the insurer the cost of the investment plus a return deemed adequate by the insurer. Investments in tangible property cannot exceed 2% of admitted assets or .5% on any single item;

(11) Allows insurers to acquire obligations secured by mortgages on real estate situated within a domestic jurisdiction. A mortgage loan secured by other than a first lien cannot be acquired unless the insurer is the holder of the first lien and it meets certain requirements. The real estate must be income producing or intended for improvement or development to produce income;

(12) Allows insurers to enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions subject to the board of directors adopting a written plan detailing how cash received will be invested or used, operational procedures used to manage investments risk, and the extent an insurer may engage in these transactions; and

(13) Establishes conditions and requirements for insurers to invest in foreign markets.

#### REGULATION OF CAPTIVE INSURANCE COMPANIES

Captive insurance companies:

(1) Are allowed, when permitted, to apply for a license to provide insurance and annuity contracts under Section 376.010 to parent, affiliated, or controlled unaffiliated companies;

(2) Cannot adopt a name that is likely to be confused or mistaken with an existing company;

(3) Must maintain adequate paid-in capital and surplus as required in order to be issued a license. No dividend can be paid without prior approval from the Director of the Department of Insurance;

(4) Are allowed to be incorporated under Section 379.1310;

(5) Must annually report their financial condition to the director as required;

(6) Will be examined at least once every three years by the director or his or her agent;

(7) Can have their license suspended or revoked by the director for cause;

(8) Must comply with investment requirements contained in Chapter 375 and Sections 379.080 and 379.082 as applicable;

(9) May reinsure risks or portions of risks with prior approval of the director;

(10) Cannot be required to join a rating organization or be allowed to join or contribute financially to a plan, pool, association, guaranty, or insolvency fund for claims arising out of the operation of the company; and

(11) Must pay the Director of the Department of Revenue on or before May 1 of each year the taxes required under Section 379.1326. Fees and assessments received by the Department of Insurance will be paid into the Insurance Dedicated Fund.

#### MOTOR VEHICLE SERVICE CONTRACTS

The substitute:

(1) Defines "fronting company" as a dealer that authorizes a third-party administrator or provider to use its name or business to evade or circumvent a sale, an offer for sale, or a solicitation of a sale of a service contract to a consumer;

(2) Prohibits an unlicensed motor vehicle or boat dealer from selling a motor vehicle service contract to a consumer;

(3) Prohibits a dealer from acting as a fronting company; and

(4) Creates penalties for violation of these provisions.

#### PRODUCT SERVICE AGREEMENT

The substitute:

(1) Prohibits any person from issuing or selling a product service contract without registering and paying a fee with the Director of the Department of Insurance;

(2) Requires providers of service contracts to maintain at least one of the following:

(a) A funded reserve account of at least 40% of gross consideration received less claims paid;

(b) A financial security deposit with the department director of at least 5% of the gross consideration received less claims paid;

(c) A net worth of \$100 million; or

(d) A reimbursement insurance policy covering 100% of the service contract obligations;

(3) Prohibits provider fees collected from being subject to premium taxes and exempts the person selling the contract from



other state licensing laws if all requirements are met;

(4) Requires providers of service contracts to furnish a written statement to the consumer outlining their obligations and conveying terms and restrictions. Misleading advertising is prohibited;

(5) Requires providers of service contracts to maintain accurate records of every transaction for a period of at least three years after the specified period of coverage has expired. Records must be made available to the department upon request;

(6) Prohibits insurers who issue reimbursement insurance policies from terminating a policy without notifying the director. Insurers have the right to seek indemnification against a provider if the insurer pays amounts under the service contract that the provider was obligated to pay; and

(7) Creates penalties for violation of the provisions of the substitute.

#### ANATOMIC PATHOLOGY SERVICES

The substitute prohibits licensed health care professionals from charging, billing, or soliciting payment for anatomic pathology services, unless the services are rendered personally by the health care professional or under his or her direct supervision. Any patient, insurer, third-party payor, hospital, public health clinic, or nonprofit health clinic will not be required to reimburse any licensed health care professional for charges or claims submitted in violation of this provision. Nothing will prohibit the billing of a referring laboratory for services when samples must be sent to another specialist.

State licensing boards having jurisdiction over health care professionals who request or provide these services may revoke, suspend, or deny a license to anyone who violates these provisions.

#### INSURANCE PRODUCER CONTINUING EDUCATION

Currently, life insurance producers who are limited to writing policies with an initial face amount for any individual of \$5,000 or less are exempt from the continuing education requirements. The substitute changes the amount to a cumulative initial face amount of \$10,000 or less for any individual.

#### MERCHANDISING PRACTICES

The substitute requires Missouri courts to take guidance in its

decisions from the policies and interpretations given by the Federal Trade Commission and the federal courts regarding unfair trade practices under the Federal Trade Commission Act.

FISCAL NOTE: Estimated Income on General Revenue Fund of Up to \$143,265 in FY 2007, Up to \$187,298 in FY 2008, and Up to \$183,737 in FY 2009. Estimated Cost on Other State Funds of Unknown less than \$745,668 in FY 2007, Unknown less than \$1,027,864 in FY 2008, and Unknown less than \$1,035,179 in FY 2009.

PROPOSERS: Supporters say that the bill is important for consumer protection and gives the department the tools it needs to protect consumers. Examinations of insurance companies will be quicker and less costly. The provisions regarding releasing claims information need to be reviewed.

Testifying for the bill were Senator Engler; Department of Insurance; Missouri Professional Bailbonding Association; United Healthcare; Coventry Health Care; Missouri Association of Independent Insurance Agents; Missouri's Health Insurance Plans; and America's Health Insurance Plans.

OPPOSERS: Those who oppose the bill say that the Department of Insurance can already take administrative action against bail bond agents so there is no need for additional laws. If an agent wants to change jobs, he or she will need to have a release signed from the first employer. If the first employer won't sign the form, it could really cause problems.

Testifying against the bill were Dave Strassner; and Angela Park.

Marc Webb, Legislative Analyst