

FIRST REGULAR SESSION

HOUSE BILL NO. 761

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE RODEN.

1754H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.900, 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, 287.920, and 375.1275, RSMo, and to enact in lieu thereof two new sections relating to the privatization of the Missouri employers mutual insurance company, with a delayed effective date for certain sections.

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

Section A. Sections 287.900, 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, 287.920, and 375.1275, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.901 and 375.1275, to read as follows:

287.901. 1. Before January 1, 2023, the board of directors of the Missouri employers mutual insurance company shall perform all acts necessary to establish a successor mutual insurance company. The successor mutual insurance company shall operate to the same extent as any mutual casualty insurer that is licensed and authorized to write insurance in this state, subject to the authority and regulation by the department of commerce and insurance under chapter 379, and with all the powers and subject to all the laws, rules, and requirements of a mutual insurance company that is organized under the laws of this state.

2. Before January 1, 2022, the board of directors shall provide a report to the governor, the president pro tempore of the senate, and the speaker of the house of representatives that outlines the steps it will take to become a private successor mutual insurance company. The report shall also calculate the value, if any, of state equity or other state financial interests in the Missouri employers mutual insurance company. A copy of the report shall be provided to the secretary of state.

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.

15 **3. The board of directors shall perform all necessary acts to file articles of**
16 **incorporation of the successor mutual insurer corporation and shall take all necessary**
17 **actions to qualify for a certificate of authority as provided by law.**

18 **4. Beginning January 1, 2023, the successor mutual insurance company shall**
19 **become the successor in interest to all the assets and liabilities of the Missouri employers**
20 **mutual insurance company without any conveyance or transfer and without any further**
21 **act or deed and shall be vested by operation of law with title to all property of the Missouri**
22 **employers mutual insurance company. The successor mutual insurance company shall be**
23 **responsible for the obligations of the Missouri employers mutual insurance company to the**
24 **same extent as though incurred originally by the successor mutual insurance company.**
25 **The successor mutual insurance company shall not be an independent public corporation,**
26 **a state agency, or a public entity of this state. The successor mutual insurance company**
27 **shall not be called the "Missouri Employers Mutual Insurance Company" or use the term**
28 **"state workers' compensation" or other similar terms in its new name or logo from and**
29 **after January 1, 2023.**

30 **5. Beginning January 1, 2023, the successor mutual insurance company shall be**
31 **subject to all provisions of the statutes that relate to the private insurance carriers and to**
32 **the jurisdiction of the department of commerce and insurance.**

33 **6. The director of the department of commerce and insurance is authorized to**
34 **supervise the Missouri employers mutual insurance company's transition into a private**
35 **successor mutual insurance company. The director is authorized to promulgate rules and**
36 **regulations to implement the provisions of this section. Any rule or portion of a rule, as**
37 **that term is defined in section 536.010, that is created under the authority delegated in this**
38 **section shall become effective only if it complies with and is subject to all of the provisions**
39 **of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are**
40 **nonseverable, and if any of the powers vested with the general assembly pursuant to**
41 **chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are**
42 **subsequently held unconstitutional, then the grant of rulemaking authority and any rule**
43 **proposed or adopted after August 28, 2021, shall be invalid and void.**

375.1275. 1. For RBC reports required to be filed by life and health insurers with respect
2 to 1993, the following requirements shall apply in lieu of the provisions of section 375.1255:

3 (1) In the event of a company action level event with respect to an insurer, the director
4 shall take no regulatory action;

5 (2) In the event of a regulatory action level event pursuant to section 375.1257, the
6 director shall take the actions required pursuant to section 375.1255;

7 (3) In the event of a regulatory action level event pursuant to section 375.1257 or an
8 authorized control level event, the director shall take the actions required pursuant to section
9 375.1257 with respect to the insurer;

10 (4) In the event of a mandatory control level event with respect to an insurer, the director
11 shall take the actions required pursuant to section 375.1260 with respect to the insurer.

12 2. For RBC reports required to be filed by property and casualty insurers with respect
13 to 1996, the following requirements shall apply in lieu of the provisions of sections 375.1255 to
14 375.1262:

15 (1) In the event of a company action level event with respect to a domestic insurer, the
16 director shall take no regulatory action under sections 375.1250 to 375.1275;

17 (2) In the event of a regulatory action level event under subdivision (1), (2) or (3) of
18 subsection 1 of section 375.1257, the director shall take the actions required under section
19 375.1255;

20 (3) In the event of a regulatory action level event under subdivision (4), (5), (6), (7), (8)
21 or (9) of subsection 1 of section 375.1257 or an authorized control level event, the director shall
22 take the actions required under section 375.1257, with respect to the insurer;

23 (4) In the event of a mandatory control level event, the director shall take the actions
24 required under section 375.1260 with respect to the insurer.

25 3. For RBC reports required to be filed by health organizations with respect to 2014, the
26 following requirements shall apply in lieu of the provisions of sections 375.1255 to 375.1262:

27 (1) In the event of a company action level event with respect to a domestic health
28 organization, the director shall take no regulatory action;

29 (2) In the event of a regulatory action level event under subdivisions (1) to (3) of
30 subsection 1 of section 375.1257, the director shall take the actions required pursuant to section
31 375.1255;

32 (3) In the event of a regulatory action level event under subdivisions (4) to (9) of
33 subsection 1 of section 375.1257 or an authorized control level event, the director shall take the
34 actions required under section 375.1257 with respect to the health organization;

35 (4) In the event of a mandatory control level event with respect to a health organization,
36 the director shall take the actions required under section 375.1260 with respect to the health
37 organization.

38 ~~[4. The actions required under sections 375.1255 to 375.1262 or this section shall not~~
39 ~~apply to any insurer operating under the provisions of sections 287.900 to 287.920 which is~~
40 ~~under any order of supervision, including waivers of requirements for capital and surplus, issued~~
41 ~~or commenced by the director prior to August 28, 1996. This provision shall remain in effect~~
42 ~~until such order or proceeding expires or is otherwise terminated by further order of the director.]~~

2 ~~[287.900. 1. Sections 287.900 to 287.920 shall be known as the~~
3 ~~"Missouri Employers Mutual Insurance Company Act".~~

4 ~~2. As used in sections 287.900 to 287.920, the following words mean:~~

5 ~~(1) "Administrator", the chief executive officer of the Missouri~~
6 ~~employers mutual insurance company;~~

7 ~~(2) "Board", the board of directors of the Missouri employers mutual~~
8 ~~insurance company;~~

9 ~~(3) "Company", the Missouri employers mutual insurance company~~
10 ~~created in section 287.902.]~~

2 ~~[287.902. The "Missouri Employers Mutual Insurance Company" is~~
3 ~~created as an independent public corporation for the purpose of insuring Missouri~~
4 ~~employers against liability for workers' compensation, occupational disease and~~
5 ~~employers' liability coverage. The company shall be organized and operated as~~
6 ~~a domestic mutual insurance company and it shall not be a state agency. The~~
7 ~~company shall have the powers granted a general not-for-profit corporation~~
8 ~~pursuant to section 355.090 to the extent the provisions of such section do not~~
9 ~~conflict with the provisions of sections 287.900 to 287.920. The company shall~~
10 ~~be a member of the Missouri property and casualty guaranty association, sections~~
11 ~~375.771 to 375.779, and as such will be subject to assessments therefrom, and the~~
12 ~~members of such association shall bear responsibility in the event of the~~
13 ~~insolvency of the company. The company shall be established pursuant to the~~
14 ~~provisions of sections 287.900 to 287.920. Preference shall be given to Missouri~~
15 ~~employers that develop an annual premium of not greater than ten thousand~~
16 ~~dollars. The company shall use flexibility and experimentation in the~~
17 ~~development of types of policies and coverages offered to employers, subject to~~
18 ~~the approval of the director of the department of commerce and insurance.]~~

2 ~~[287.905. 1. There is created a board of directors for the company. The~~
3 ~~board shall be appointed by January 1, 1994, and shall consist of five members~~
4 ~~appointed or selected as provided in this section. The governor shall appoint the~~
5 ~~initial five members of the board with the advice and consent of the senate. Each~~
6 ~~director shall serve a five-year term. Terms shall be staggered so that no more~~
7 ~~than one director's term expires each year on the first day of July. The five~~
8 ~~directors initially appointed by the governor shall determine their initial terms by~~
9 ~~lot. At the expiration of the term of any member of the board, the company's~~
10 ~~policyholders shall elect a new director in accordance with provisions determined~~
11 ~~by the board.~~

12 ~~2. Any person may be a director who:~~

13 ~~(1) Does not have any interest as a stockholder, employee, attorney,~~
14 ~~agent, broker or contractor of an insurance entity who writes workers'~~
15 ~~compensation insurance or whose affiliates write workers' compensation~~
~~insurance; and~~

16 ~~(2) Is of good moral character and who has never pleaded guilty to, or~~
17 ~~been found guilty of, a felony.~~

18 ~~3. The board shall annually elect a chairman and any other officers it~~
19 ~~deems necessary for the performance of its duties. Board committees and~~
20 ~~subcommittees may also be formed.]~~

21

2 ~~[287.907. 1. By March 1, 1994, the board shall hire an administrator who~~
3 ~~shall serve at the pleasure of the board and the company shall be fully prepared~~
4 ~~to be operational by March 1, 1995, and assume its responsibilities pursuant to~~
5 ~~sections 287.900 to 287.920. The administrator shall receive compensation as~~
6 ~~established by the board and must have proven successful experience as an~~
7 ~~executive at the general management level in the insurance business.~~

8 ~~2. The board is vested with full power, authority and jurisdiction over the~~
9 ~~company. The board may perform all acts necessary or convenient in the~~
10 ~~administration of the company or in connection with the insurance business to be~~
11 ~~carried on by the company. In this regard, the board is empowered to function~~
12 ~~in all aspects as a governing body of a private insurance carrier.]~~

12

2 ~~[287.909. 1. The administrator of the company shall act as the company's~~
3 ~~chief executive officer. The administrator shall be in charge of the day-to-day~~
4 ~~operations and management of the company.~~

5 ~~2. Before entering the duties of office, the administrator shall give an~~
6 ~~official bond in an amount and with sureties approved by the board. The~~
7 ~~premium for the bond shall be paid by the company.~~

8 ~~3. The administrator or his designee shall be the custodian of the moneys~~
9 ~~of the company and all premiums, deposits or other moneys paid thereto shall be~~
10 ~~deposited with a financial institution as designated by the administrator.~~

11 ~~4. No board member, officer or employee of the company is liable in a~~
12 ~~private capacity for any act performed or obligation entered into when done in~~
13 ~~good faith, without intent to defraud, and in an official capacity in connection~~
14 ~~with the administration, management or conduct of the company or affairs~~
15 ~~relating to it.]~~

15

2 ~~[287.910. The board shall have full power and authority to establish rates~~
3 ~~to be charged by the company for insurance. The board shall contract for the~~
4 ~~services of or hire an independent actuary, a member in good standing with the~~
5 ~~American Academy of Actuaries, to develop and recommend actuarially sound~~
6 ~~rates. Rates shall be set at amounts sufficient, when invested, to carry all claims~~
7 ~~to maturity, meet the reasonable expenses of conducting the business of the~~
8 ~~company and maintain a reasonable surplus. The company shall conduct a~~
9 ~~workers' compensation program that shall be neither more nor less than~~
10 ~~self-supporting.]~~

2 ~~[287.912. The board shall formulate and adopt an investment policy and~~
3 ~~supervise the investment activities of the company. The administrator may invest~~
4 ~~and reinvest the surplus or reserves of the company subject to the limitations~~
5 ~~imposed on domestic insurance companies by state law. The company may retain~~
6 ~~an independent investment counsel. The board shall periodically review and~~
7 ~~appraise the investment strategy being followed and the effectiveness of such~~
8 ~~services. Any investment counsel retained or hired shall periodically report to the~~
9 ~~board on investment results and related matters.]~~

2 ~~[287.915. Any insurance agent or broker licensed to sell workers'~~
3 ~~compensation insurance in this state shall be authorized to sell insurance policies~~
4 ~~for the company in compliance with the bylaws adopted by the company. The~~
5 ~~board shall establish a schedule of commissions to pay for the services of the~~
6 ~~agent.]~~

2 ~~[287.917. 1. The administrator shall formulate, implement and monitor~~
3 ~~a workplace safety program for all policyholders:~~
4 ~~2. The company shall have representatives whose sole purpose is to~~
5 ~~develop, with policyholders, a written workplace accident and injury reduction~~
6 ~~plan that promotes safe working conditions and which is based upon clearly~~
7 ~~stated goals and objectives. Company representatives shall have reasonable~~
8 ~~access to the premises of any policyholder or applicant during regular working~~
9 ~~hours. The company shall communicate the importance of a well-defined safety~~
10 ~~plan and assist in any way to obtain this objective.~~
11 ~~3. The administrator or board may refuse to insure, or may terminate the~~
12 ~~insurance of any subscriber who refuses to permit on-site examinations or~~
13 ~~disregards the workplace accident and injury reduction plan.~~
14 ~~4. Upon the completion of a detailed inspection and recognition of a high~~
15 ~~regard for employee work safety, a deviation may be applied to the rate structure~~
16 ~~of that insured noting special recognition of those efforts.]~~

2 ~~[287.919. 1. The Missouri employers mutual insurance company shall~~
3 ~~not receive any state appropriation, directly or indirectly, except as provided in~~
4 ~~section 287.690:~~
5 ~~2. In order to provide funds for the creation, continued development and~~
6 ~~operation of the company, the board is authorized to issue revenue bonds from~~
7 ~~time to time, in a principal amount outstanding not to exceed forty million dollars~~
8 ~~at any given time, payable solely from premiums received from insurance policies~~
9 ~~and other revenues generated by the company.~~
10 ~~3. The board may issue bonds to refund other bonds issued pursuant to~~
11 ~~this section.~~
12 ~~4. The bonds shall have a maturity of no more than ten years from the~~
~~date of issuance. The board shall determine all other terms, covenants and~~

13 ~~conditions of the bonds, except that no bonds may be redeemed prior to maturity~~
 14 ~~unless the company has established adequate reserves for the risks it has insured.~~
 15 ~~5. The bonds shall be executed with the manual or facsimile signature of~~
 16 ~~the administrator or the chairman of the board and attested by another member~~
 17 ~~of the board. The bonds may bear the seal, if any, of the company.~~
 18 ~~6. The proceeds of the bonds and the earnings on those proceeds shall be~~
 19 ~~used by the board for the development and operation of the Missouri employers~~
 20 ~~mutual insurance company, to pay expenses incurred in the preparation, issuance~~
 21 ~~and sale of the bonds and to pay any obligations relating to the bonds and the~~
 22 ~~proceeds of the bonds under the United States Internal Revenue Code of 1986,~~
 23 ~~as amended.~~
 24 ~~7. The bonds may be sold at a public sale or a private sale. If the bonds~~
 25 ~~are sold at a public sale, the notice of sale and other procedures for the sale shall~~
 26 ~~be determined by the administrator or the company.~~
 27 ~~8. This section is full authority for the issuance and sale of the bonds and~~
 28 ~~the bonds shall not be invalid for any irregularity or defect in the proceedings for~~
 29 ~~their issuance and sale and shall be incontestable in the hands of bona fide~~
 30 ~~purchasers or holders of the bonds for value.~~
 31 ~~9. An amount of money from the sources specified in subsection 2 of this~~
 32 ~~section sufficient to pay the principal of and any interest on the bonds as they~~
 33 ~~become due each year shall be set aside and is hereby pledged for the payment~~
 34 ~~of the principal and interest on the bonds.~~
 35 ~~10. The bonds shall be legal investments for any person or board charged~~
 36 ~~with the investment of public funds and may be accepted as security for any~~
 37 ~~deposit of public money, and the bonds and interest thereon are exempt from~~
 38 ~~taxation by the state and any political subdivision or agency of the state.~~
 39 ~~11. The bonds shall be payable by the company, which shall keep a~~
 40 ~~complete record relating to the payment of the bonds.~~
 41 ~~12. Not more than fifty percent of the bonds sold shall be sold to public~~
 42 ~~entities.]~~
 43

2 ~~[287.920. 1. The board shall cause an annual audit of the books of~~
 3 ~~accounts, funds and securities of the company to be made by a competent and~~
 4 ~~independent firm of certified public accountants, the cost of the audit to be~~
 5 ~~charged against the company. A copy of the audit report shall be filed with the~~
 6 ~~director of the department of commerce and insurance and the administrator. The~~
 7 ~~audit shall be open to the public for inspection.~~
 8 ~~2. The board shall submit an annual independently audited report in~~
 9 ~~accordance with procedures governing annual reports adopted by the National~~
 10 ~~Association of Insurance Commissioners by March first of each year and the~~
 11 ~~report shall be delivered to the governor and the general assembly and shall~~
 12 ~~indicate the business done by the company during the previous year and contain~~
 a statement of the resources and liabilities of the company.

13 ~~3. The administrator shall annually submit to the board for its approval~~
 14 ~~an estimated budget of the entire expense of administering the company for the~~
 15 ~~succeeding calendar year having due regard to the business interests and contract~~
 16 ~~obligations of the company.~~

17 ~~4. The incurred loss experience and expense of the company shall be~~
 18 ~~ascertained each year to include but not be limited to estimates of outstanding~~
 19 ~~liabilities for claims reported to the company but not yet paid and liabilities for~~
 20 ~~claims arising from injuries which have occurred but have not yet been reported~~
 21 ~~to the company. If there is an excess of assets over liabilities, necessary reserves~~
 22 ~~and a reasonable surplus for the catastrophic hazard, then a cash dividend may be~~
 23 ~~declared or a credit allowed to an employer who has been insured with the~~
 24 ~~company in accordance with criteria approved by the board, which may account~~
 25 ~~for the employer's safety record and performance.~~

26 ~~5. The department of commerce and insurance shall conduct an~~
 27 ~~examination of the company in the manner and under the conditions provided by~~
 28 ~~the statutes of the insurance code for the examination of insurance carriers. The~~
 29 ~~board shall pay the cost of the examination as an expense of the company. The~~
 30 ~~company is subject to all provisions of the statutes which relate to private~~
 31 ~~insurance carriers and to the jurisdiction of the department of commerce and~~
 32 ~~insurance in the same manner as private insurance carriers, except as provided by~~
 33 ~~the director.~~

34 ~~6. For the purpose of ascertaining the correctness of the amount of~~
 35 ~~payroll reported, the number of employees on the employer's payroll and for such~~
 36 ~~other information as the administrator may require in the proper administration~~
 37 ~~of the company, the records and payrolls of each employer insured by the~~
 38 ~~company shall always be open to inspection by the administrator or his duly~~
 39 ~~authorized agent or representative.~~

40 ~~7. Every employer provided insurance coverage by the company, upon~~
 41 ~~complying with the underwriting standards adopted by the company, and upon~~
 42 ~~completing the application form prescribed by the company, shall be furnished~~
 43 ~~with a policy showing the date on which the insurance becomes effective.]~~
 44

Section B. The repeal of sections 287.900, 287.902, 287.905, 287.907, 287.909, 287.910,
 2 287.912, 287.915, 287.917, 287.919, and 287.920 of this act and the repeal and reenactment of
 3 section 375.1275 of this act shall become effective January 1, 2023.

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