

HCS SCS SB 583 -- INSURANCE REGULATION

This bill changes the laws regarding the regulation of insurance.

PAYMENTS FROM THIRD-PARTY PAYERS TO THE MO HEALTHNET DIVISION  
(Section 208.215, RSMo)

The bill changes the laws regarding the authority of the MO HealthNet Division within the Department of Social Services to collect payments from third-party payers. Health benefit plans, third-party administrators, administrative service organizations, and pharmacy benefits managers are required to process and pay properly submitted medical assistance or MO HealthNet subrogation claims using standard electronic transactions or paper claim forms for a period of three years from the date services were provided by an entity. The entity cannot be required to reimburse for items or services not covered under MO HealthNet; cannot deny a claim based solely on the date of submission, the type or format of the claim form, failure to present proper documentation of coverage at the point of sale, or failure to obtain prior authorization; cannot be required to reimburse for items or services previously submitted to the third-party payer by the provider or the participant and the claim was properly denied for procedural reasons; and cannot be required to reimburse for items or services which are not covered under the plan offered by the entity against which a claim for subrogation has been filed. An entity must reimburse for items or services to the same extent that the entity would have been liable if it had been properly billed at the point of sale and the amount due is limited to what the entity would have paid if it had been properly billed at the point of sale. Health benefit plans, third-party administrators, administrative service organizations, and pharmacy benefits managers must also pay a subrogation claim if the state enforces its right to a claim within six years of the submission of the claim.

The computerized records of the division, if certified by the division director or his designee, will be prima facie evidence of proof of moneys expended and the amount of the debt due the state.

TRAILER DEALER LIABILITY INSURANCE (Section 301.560)

Currently, a trailer dealer is required to provide a copy of a current dealer garage liability insurance policy when submitting his or her licensure application. The bill removes this requirement.

NONRESIDENT MOTORIST FINANCIAL RESPONSIBILITY (Sections 303.025 and 303.040)

A nonresident motorist is prohibited from operating or allowing another motorist to operate a vehicle within the state unless he or she maintains financial responsibility that meets the requirements of his or her state. If a nonresident motorist is found guilty of not maintaining financial responsibility, he or she will have his or her driving privileges suspended in Missouri and the Director of the Department of Revenue must notify the appropriate official in the state where the nonresident resides.

An uninsured nonresident motorist involved in an accident in this state and the responding law enforcement agency must notify the department director of the accident, and any resident motorist involved in an accident with an uninsured nonresident motorist may report it to the department director.

#### DISCLOSURE OF HEALTH INSURANCE INFORMATION (Sections 354.442 and 376.1450)

The bill allows an insurer and a health maintenance organization to provide certain health insurance information regarding an enrollee's health benefit plan online unless a paper copy is requested by the enrollee by written, oral, or electronic means. Requests for a paper copy must be provided to the enrollee within 15 business days of the request.

#### LIFE INSURANCE PRODUCER LICENSE EXAMINATIONS (Section 375.024)

The Director of the Department of Insurance, Financial Institutions and Professional Registration or a vendor under contract with the department is required to review life insurance producer license examinations if, during any 12-month period beginning on September 1, the overall pass rate of first-time examinees is less than 70%. The department must collect certain specified demographic information, in conformance with the appropriate privacy laws, from examinees and compile an annual report based on the review. The report must indicate if there was any disparity in the pass rate based on the demographic information. The department director may establish procedures by rule to collect the necessary information to implement these provisions. By December 1, 2011, the department director must deliver the initial annual report on the review to the Governor, Lieutenant Governor, Speaker of the House of Representatives, and President Pro Tem of the Senate and must submit an annual report thereafter no later than December 1.

#### REGULATORY ACTIONS AGAINST INSURANCE COMPANIES OPERATING IN HAZARDOUS FINANCIAL CONDITIONS (Sections 375.539 and 375.1255)

The Director of the Department of Insurance, Financial Institutions and Professional Registration is authorized to

determine that an insurance company is in a hazardous financial condition. The department director may deem any property or casualty insurance company or any property and casualty insurance company which has any policy in force with a single net retained risk that exceeds 10% of the company's capital and surplus as of the preceding December 31 to be in a hazardous financial condition. The bill specifies the factors for the department director to consider when determining whether a company may be in a hazardous financial condition. The department director may consider adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries when determining whether the continued operation of the insurer may be hazardous to Missouri's policyholders, creditors, or the general public. If the department director determines that the continued operation of an insurer may be hazardous, he or she may issue an order requiring the insurer to take various actions including requiring the insurer to reduce its total amount of present and potential liability for policy benefits by reinsurance, reduce its volume of business, increase its capital and surplus, or document the adequacy of premium rates in relation to the risks insured. Any insurer subject to an order from the department director can request a hearing to be conducted in private unless the insurer requests a public hearing.

Risk-based capital (RBC) reporting requirements for property and casualty insurance companies are revised to allow the department to require a property and casualty insurance company to take action if its risk-based capital fails the National Association of Insurance Commissioners (NAIC) RBC trend test. The RBC trend test for a property and casualty insurance company is specified as a company action level event where the insurer has total adjusted capital which is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 triggers the trend test determined in accordance with the trend test calculation included in the Property and Casualty RBC report instructions.

#### INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT (Sections 375.1152, 375.1155, and 375.1191)

The bill changes the laws regarding the Insurers Supervision, Rehabilitation and Liquidation Act to provide for the treatment of qualified financial contracts in insurance insolvency proceedings. In its main provisions, the bill:

- (1) Defines "netting agreement" as a contract or agreement that documents one or more transactions between the parties to the agreement for or involving one or more qualified financial contracts and that provides for the netting, liquidation, setoff,

termination, acceleration, or close out under or in connection with one or more qualified financial contracts or present or future payment or delivery obligations or payment of delivery entitlements thereunder among the parties to the netting agreement and "qualified financial contract" as a commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the department director determines by rule to be a qualified financial contract;

(2) Allows for the enforcement and recognition of the contractual rights of the insurer's counterparties under qualified financial contracts, netting agreements, and related security agreements to terminate, liquidate, accelerate, or close out contracts; to offset and net off obligations owed under contracts; and to enforce any security rights under the agreements, free of any stay or prohibition that might otherwise apply under a delinquency proceeding;

(3) Requires any net or settlement amount owed under a qualified financial contract by the nondefaulting party to an insurer to be transferred to or on the order of the receiver for the insurer;

(4) Requires a receiver to transfer to one party other than the insurer all netting agreements and qualified financial contracts between an insurer and a single counterparty and its affiliates together if a bulk transfer of insurer liabilities or contracts is made by the receiver;

(5) Prohibits a receiver from avoiding a transfer of money or property under a netting agreement or qualified financial contract made prior to the commencement of a formal delinquency proceeding unless the transfer was made with the actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors; and

(6) Requires the receiver for the insurer to disaffirm or repudiate all contracts if the receiver disaffirms or repudiates any qualified financial contract or netting agreement with a counterparty and establishes the amount of the counterparty's claim in the event of disaffirmance or repudiation. The amount of a claim for damages must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation of the netting agreement or qualified financial contract.

#### LIQUIDATION OF CERTAIN DOMESTIC INSURANCE COMPANIES (Section 375.1175)

A domestic insurer organized as a stock insurance company is

allowed to voluntarily dissolve and liquidate as a corporation if the Director of the Department of Insurance, Financial Institutions and Professional Registration approves the articles of dissolution prior to filing the articles with the Secretary of State and the insurer files a copy of the department director's approval along with the articles of dissolution with the Secretary of State.

In determining whether to approve a dissolution, the department director must consider, among other factors, whether the insurer's annual financial statements show no written insurance premiums for five years, the insurer has demonstrated that all policyholder claims have been satisfied or transferred to another insurer, and an examination pursuant to Sections 374.202 - 374.207 has been completed within the last five years.

MISSOURI LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT  
(Sections 376.717 - 376.758)

The laws regarding the Missouri Life and Health Insurance Guaranty Association Act are revised to make them consistent with the model act adopted by the National Association of Insurance Commissioners. The bill:

(1) Clarifies that structured settlement annuities are covered by the guaranty association and specifies the rules for determining how the responsibility for coverage of these types of annuities is allocated among state guaranty associations;

(2) Expands the list of areas in which the guaranty association will not provide coverage including:

(a) Any portion of a policy or contract to the extent that the required assessments are preempted by federal or state law;

(b) An obligation that does not arise under the express written terms of the policy or contract issued by the insolvent insurer;

(c) Certain contracts which establish benefits by reference to a portfolio of assets that is not owned by the insurer;

(d) An unallocated annuity contract;

(e) Certain types of indexed policies; and

(f) A policy providing any hospital, medical, prescription drug, or other health care benefits pursuant to Part C or Part D of Subchapter XVIII, Chapter 7 of Title 42 of the United States Code, commonly known as Medicare Part C & D, or any of its regulations;

(3) Defines the "principal place of business" of a corporation for the purpose of applying the residency test that determines which state guaranty association has coverage responsibility;

(4) Makes several technical changes regarding:

(a) The guaranty association's options in providing coverage;

(b) The handling of terminated policies;

(c) The guaranty association's standing to appear or intervene in litigation;

(d) The guaranty association's assignment and subrogation rights;

(e) The guaranty association's general powers and the handling of reinsurance contracts;

(f) The handling of assessments of insurers to fund the guaranty association's operations; and

(g) Additional requirements for the association's plan of operation; and

(5) Exempts any member insurer who is impaired or insolvent prior to August 28, 2010, from these provisions.

#### HEALTH INSURANCE FOR ADOPTED CHILDREN (Section 376.816)

All health carriers or health benefit plans, except Missouri Medicaid plans, which are issued, delivered, continued, or renewed to a Missouri resident on or after January 1, 2011, are required to include coverage for adopted children on the same basis as other dependents of the enrollee.

#### MEDICARE SUPPLEMENT AND LONG-TERM CARE INSURANCE POLICIES (Sections 376.882 and 376.1109)

When any federal Medicare supplement or long-term care insurance policy issued, delivered, or renewed in Missouri on or after January 1, 2011, is canceled for any reason, the insurer must refund the unearned portion of any premium paid beyond the month in which the cancellation is effective. Any refund must be returned to the policyholder within 20 days from the date that the insurer receives notice of the cancellation. A policyholder may cancel a federal Medicare supplement or long-term care insurance policy by sending a written or electronic notification.

A long-term care insurance policy must contain a notice which

informs an applicant that he or she is entitled to a refund of unearned premiums if the policy is canceled for any reason.

#### CHILDREN'S INSURANCE ELIGIBILITY (Section 1)

For each school year beginning July 1, 2010, the Department of Social Services is required to provide all state-licensed child-care providers who receive federal or state funds under Section 210.027 and all public school districts with written information regarding the eligibility criteria and application procedures for obtaining health insurance coverage through the State Children's Health Insurance Program (SCHIP). This information is to be distributed to the parents at the time of their child's enrollment in child care or school. The Department of Elementary and Secondary Education must add an attachment to the application for the free and reduced-price lunch program which will require the parent or guardian to check a box indicating whether the child has or does not have health insurance. If the child does not have health insurance and the parent or guardian's income does not exceed the highest level established by federal law, the school district must provide a notice to the parent or guardian that the uninsured child may qualify for health insurance coverage under SCHIP. The Department of Elementary and Secondary Education, in collaboration with the Department of Social Services, must submit an annual report to the Governor and the committee chairs of the House of Representatives Budget Committee and the Senate Appropriations Committee on the number of families in each district receiving free or reduced-price lunches, the number of families who indicated the absence of health insurance coverage on the forms, the number of families who received information on SCHIP, and the number of families who applied for coverage under SCHIP because of the receipt of the information.

The bill contains an emergency clause for the provisions regarding health insurance coverage through SCHIP.