

HCS SCS SB 777 -- BOAT SLIPS, AUTOMATED TELLER MACHINES,
INSURANCE COMPANIES, AND LOANS

(Vetoed by the Governor)

This bill changes the laws regarding boat and watercraft slips, automatic teller machine fees, regulation of insurance companies, and financial products associated with certain loan transactions.

BOAT AND WATERCRAFT SLIPS (Section 339.503, RSMo)

The bill defines "boat slip" or "watercraft slip" for the purposes of the Real Estate Appraisers Act as a defined area of water which is a part of a boat dock serving a common interest community and is to be considered real property. The rights of a real estate owner in a slip are to be included as collateral in any deed of trust and uniform commercial code filing of a lender taking a security interest in the owner's real estate.

AUTOMATED TELLER MACHINE FEES (Section 362.111)

An agreement to operate or share an automated teller machine (ATM) cannot prohibit the owner or operator from charging an access fee or surcharge to an individual conducting a transaction using a foreign bank account. Currently, foreign banks may charge fees, but domestic banks cannot.

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. 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 regulation, resolution, or order 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.

SALE OF CERTAIN FINANCIAL PRODUCTS AND PLANS ASSOCIATED WITH LOAN TRANSACTIONS (Sections 408.052, 408.140, 408.233, and 408.300)

A lending institution is allowed to offer, sell, and finance automobile club memberships, certain service contracts, certain vehicle protection devices issued by providers, and other plans and services providing a benefit to the borrower if the cost is disclosed separately from the loan contract, the lender does not require the purchase of the plan as a condition for the approval of the loan, the plan can be canceled within 30 days and a refund received, and the plan has a separate written acknowledgment of the intent to purchase the plan by the customer. However, no plan may include reimbursement for a deductible on a property insurance claim, and all optional products must be clearly identified as optional.

The sale of a deficiency waiver addendum, guaranteed asset protection, or a similar product purchased as part of a loan transaction with collateral and at the borrower's consent is authorized if the cost of the product is disclosed in the loan contract, is reasonable, and meets specified requirements. A debtor may cancel an addendum, protection, or other similar product within 15 days of its purchase and receive a full refund

or a credit of the premium. If the product is terminated before the scheduled maturity date, the refund must be promptly paid and adjusted by the pro rata method.