SECOND REGULAR SESSION

# SENATE BILL NO. 923

## 95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR MAYER.

Read 1st time February 8, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4936S.01I



## AN ACT

To amend chapter 379, RSMo, by adding thereto eight new sections relating to the establishment of the Missouri catastrophe fund.

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

Section A. Chapter 379, RSMo, is amended by adding thereto eight new sections, to be known as sections 379.955, 379.957, 379.959, 379.961, 379.963, 379.965, 379.967, and 379.969, to read as follows:

**379.955. As used in sections 379.955 to 379.969, unless otherwise indicated, the following terms mean:**

**(1) "Actuarially indicated", with respect to premiums paid by insurers for reimbursement provided by the fund, an amount determined according to principles of actuarial science to be adequate, but not excessive, in the aggregate, to pay current and future obligations and expenses of the fund, including additional amounts if needed to pay debt service on revenue bonds issued under section 379.963 and to provide required debt service coverage in excess of the amounts required to pay actual debt service on revenue bonds issued under section 379.963, and determined according to principles of actuarial science to reflect each insurer's relative exposure to losses from covered events;**

**(2) "Covered event", all earthquakes, regardless of quantity, that occur in a calendar year, that are declared to be earthquakes by the United States Geological Survey, which cause insured losses in this state;**

**(3) "Covered policy", any insurance policy covering residential property in this state, including, but not limited to, any homeowner's, mobile homeowner's, farm owner's, condominium association,**

**condominium unit owner's, tenant's, or apartment building policy, or any other policy covering a residential structure or its contents issued by any authorized insurer, including any basic property insurance policy issued under sections 379.810 to 379.880. "Covered policy" does not include any policy that specifically excludes coverage for covered losses;**

**(4) "Director", the director of the department of insurance, financial institutions and professional registration, or his or her designee;**

**(5) "Fund", the Missouri catastrophe fund created under section 379.957;**

**(6) "Losses", direct incurred losses under covered policies in a calendar year, excluding losses attributable to additional living expense coverages not to exceed forty percent of the insured value of a residential structure or its contents, and excluding loss adjustment expenses and fair rental value losses and business interruption losses;**

**(7) "Retention", the amount of losses below which an insurer is not entitled to reimbursement from the fund. An insurer's retention shall be calculated as follows:**

**(a) The department of insurance, financial institutions and professional registration shall calculate and report to each insurer the retention multiples for that year. For the contract year beginning January 1, 2011, the retention multiple shall be equal to two billion dollars divided by the total estimated reimbursement premium for the contract year; for subsequent years, the retention multiple shall be equal to two billion dollars, adjusted to reflect the percentage growth in premium for covered policies since 2011, divided by the total estimated reimbursement premium for the contract year;**

**(b) The retention multiple as determined under paragraph (a) of this subdivision shall be adjusted to reflect the coverage level elected by the insurer. For insurers electing the ninety percent coverage level, the adjusted retention multiple is one hundred percent of the amount determined under paragraph (a) of this subdivision. For insurers electing the seventy-five percent coverage level, the retention multiple is one hundred twenty percent of the amount determined under paragraph (a) of this subdivision. For insurers electing the forty-five percent coverage level, the adjusted retention multiple is two hundred**

**percent of the amount determined under paragraph (a) of this subdivision;**

**(c) An insurer shall determine its provisional retention by multiplying its provisional reimbursement premium by the applicable adjusted retention multiple and shall determine its actual retention by multiplying its actual reimbursement premium by the applicable adjusted retention multiple;**

**(d) To the extent the Missouri catastrophe fund collects federal backdrop or reinsurance moneys designed to provide protection above the financial capacity of the fund as provided in sections 379.955 to 379.969, the insurer elected coverage levels shall automatically become one hundred percent.**

**379.957. 1. There is hereby created the "Missouri Catastrophe Fund" within the state treasury to be administered by the director. Moneys in the fund may not be expended, loaned, or appropriated except to pay obligations of the fund arising out of reimbursement contracts entered into under section 379.959, payment of debts including obligations arising out of revenue bonds issued under section 379.963, costs of the mitigation program under section 379.965, costs of procuring reinsurance, and costs of administration of the fund. The director shall invest the moneys in the fund under section 30.260. Except as otherwise provided in sections 379.955 to 379.969, earnings from all investments shall be retained in the fund. Notwithstanding the provisions of section 33.080 to the contrary, moneys in the trust fund shall not revert to the credit of the general revenue fund at the end of the biennium. The director may employ or contract with such staff and professionals as it deems necessary for the administration of the fund.**

**2. The director shall promulgate such rules as are reasonable and necessary to implement sections 379.955 to 379.969. The director is authorized to adopt those rules that are reasonable and necessary to accomplish the limited duties specifically delegated within sections 379.955 to 379.969. Any rule or portion of a rule, as that term is defined in section 536.010, that is promulgated under the authority delegated in sections 379.955 to 379.969 shall become effective only if it has been promulgated under the provisions of chapter 536. This section and chapter 536 are nonseverable and if any of the powers vested with the**

**general assembly under chapter 536 to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after the effective date of this section shall be invalid and void.**

**379.959. 1. The director shall enter into a contract with each insurer writing covered policies in this state to provide to the insurer the reimbursement described in subsection 2 of this section, in exchange for the reimbursement premium paid into the fund under section 379.961. As a condition of doing business in this state, each such insurer shall enter into such a contract.**

**2. The contract shall require the director to reimburse the insurer for forty-five percent, seventy-five percent, or ninety percent of its losses from each covered event in excess of the insurer's retention, plus ten percent of the reimbursed losses to cover loss adjustment expenses.**

**3. The insurer shall elect one of the payment percentage coverage levels specified in this section and may, upon renewal of a reimbursement contract:**

**(1) Elect a lower percentage coverage level; or**

**(2) Elect a higher percentage if it pays to the fund an actuarially appropriate equalization charge as determined by the director.**

**4. All members of an insurer group must elect the same percentage coverage level. The Missouri basic property insurance inspection and placement program under section 379.810 shall elect the ninety percent coverage level.**

**5. The contract shall provide that reimbursement amounts shall not be reduced by reinsurance paid or payable to the insurer from other sources; however, recoveries from such other sources, taken together with reimbursements under the contract, may not exceed one hundred percent of the insurer's losses from covered events. If such recoveries and reimbursements exceed one hundred percent of the insurer's losses from covered events, and if there is no agreement between the insurer and the reinsurer to the contrary, any amount in excess of one hundred percent of the insurer's losses shall be returned to the fund.**

**6. The contract shall also provide that the obligation of the**

**director with respect to all contracts covering a particular year shall not exceed the balance of the fund, together with the maximum amount that the director is able to raise through the issuance of revenue bonds under section 379.963. The contract shall require the director to annually notify insurers of the fund's anticipated borrowing capacity for the next year, the current balance of the fund, and the insurer's estimated share of total reimbursement premium to be paid to the fund. For all regulatory and reinsurance purposes, an insurer may calculate its projected payout from the fund as its share of the total fund multiplied by the sum of the current fund balance and the bonding capacity as reported under this subsection. In May and October of each year, the director shall publish in the Missouri register a statement of the fund's anticipated borrowing capacity and the current balance of the fund.**

**7. (1) The contract shall require the insurer to report the insurer's losses from covered events for the year to the director on December thirty-first of each year, and quarterly thereafter. The contract shall require the director to determine and pay, as soon as practicable after receiving these reports, the initial amount of reimbursement due and adjustments to this amount based on later loss information. The adjustments to reimbursement amounts shall require the director to pay, or the insurer to return, amounts reflecting the most recent calculation of losses.**

**(2) If the director determines that the projected year-end balance of the fund, together with the amount that the director determines that it is possible to raise through revenue bonds issued under section 379.963, are insufficient to pay reimbursement to all insurers at the level promised in the contract, the director shall:**

**(a) Pay to each insurer the amount of reimbursement it is owed, up to an amount equal to the projected payout determined under subsection 2 of this section; and**

**(b) Thereafter, establish the prorated reimbursement level at the highest level for which any remaining fund balance or bond proceeds are sufficient.**

**8. The contract shall provide that if an insurer demonstrates to the director that it is likely to qualify for reimbursement under the contract, and demonstrates to the director that the immediate receipt**

**of moneys is likely to prevent the insurer from becoming insolvent, the director shall advance the insurer, at market interest rates, the amounts necessary to maintain the solvency of the insurer, up to fifty percent of the director's estimate of the reimbursement due the insurer. The insurer's reimbursement shall be reduced by an amount equal to the amount of the loan and interest thereon.**

**9. The contract shall provide that in the event of the insolvency of an insurer, the fund shall pay directly to the Missouri Property and Casualty Insurance Guaranty Association, established under sections 375.771 to 375.779, the amount of reimbursement moneys that would otherwise be owed to the insurer related to the claims paid by the guaranty association.**

**10. The director shall adopt the initial contract form no later than September 1, 2010, and shall adopt the initial premium formula no later than October 1, 2010. Initial reimbursement contracts must be entered into no earlier than November 1, 2010, and no later than December 15, 2010.**

**379.961. 1. Each reimbursement contract shall require the insurer to annually pay to the fund an actuarially indicated premium for the reimbursement promised.**

**2. The director shall select an independent consultant to develop a formula for determining the actuarially indicated premium to be paid to the fund. The formula shall specify, for each zip code or other limited geographical area, the amount of premium to be paid by an insurer for each one thousand dollars of insured value under covered policies in that zip code or other area. In establishing premiums, the director shall consider the coverage elected under subsection 2 of section 379.959 and any factors that tend to enhance the actuarial sophistication of ratemaking for the fund, including deductibles, type of construction, type of coverage provided, relative concentration of risks, and other such factors deemed by the director to be appropriate. The director may, at any time, revise the formula under the procedure provided in this subsection.**

**3. No later than September first of each year, each insurer shall notify the director of its insured values under covered policies by zip code, as of June thirtieth of that year. On the basis of these reports, the director shall calculate the premium due from the insurer, based on**

**the formula adopted under subsection 2 of this section. The insurer shall pay the required annual premium under a periodic payment plan specified in the contract. The director shall provide for payment of reimbursement premium in periodic installments and for the adjustment of provisional premium installments collected prior to submission of the exposure report to reflect data in the exposure report.**

**4. All premiums paid to the fund under reimbursement contracts shall be treated as premium for approved reinsurance for all accounting and regulatory purposes.**

**5. In order to provide startup moneys for the administration of the fund, each insurer subject to sections 379.955 to 379.969 shall pay to the fund an advance premium of one thousand dollars no later than January 1, 2011. The insurer shall receive a credit against future premiums for the advance payment.**

**379.963. 1. Upon the occurrence of a covered event and a determination that the moneys in the fund are or will be insufficient to pay reimbursement at the levels promised in the reimbursement contracts, the director may take the necessary steps for the issuance of revenue bonds for the benefit of the fund. The bonds shall not be general obligation bonds and shall not constitute debts of this state or any agency, political corporation, or political subdivision and are not a pledge of the full faith and credit or the taxing authority of the state. The terms of the bond may not exceed thirty years. The proceeds of such revenue bonds may be used to make reimbursement payments under reimbursement contracts; to pay interest on bonds; to fund reserves for the bonds; to pay expenses incident to the issuance or sale of such bonds; or for other purposes related to the financial obligations of the fund as the director may determine.**

**2. If the director determines that the amount of revenue produced under section 379.961 is insufficient to fund revenue bonds to pay reimbursement at the levels promised in the reimbursement contracts, the director shall levy an emergency assessment on each insurer writing property and casualty business in this state. The assessment shall be specified as a percentage of future premium collections and is subject to annual adjustments by the director to reflect changes in premiums subject to assessments collected under this**

**subsection in order to meet debt obligations. The same percentage shall apply to all policies in lines of business subject to the assessment issued or renewed during the twelve-month period beginning on the effective date of the assessment. A premium is not subject to an annual assessment under this subsection in excess of six percent of premium with respect to obligations arising out of losses attributable to any one contract year, and a premium is not subject to an aggregate annual assessment under this subsection in excess of ten percent of premium. An annual assessment under this subsection shall continue until the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund the bonds, unless adequate provision has been made for the payment of the bonds under the documents authorizing issuance of the bonds. With respect to each insurer collecting premiums that are subject to the assessment, the insurer shall collect the assessment at the same time as it collects the premium payment for each policy and shall remit the assessment collected to the fund or authority as provided in the order issued by the director. The director shall verify the accurate and timely collection and remittance of emergency assessments and shall maintain reports and report his findings to the director. Each insurer collecting assessments shall provide the information with respect to premiums and collections as may be required by the director of the department of insurance, financial institutions and professional registration to enable the director to monitor and verify compliance with this subsection.**

**379.965. 1. The director may procure reinsurance from reinsurers for the purpose of maximizing the capacity of the fund.**

**2. In each fiscal year in which there are no outstanding obligations of the fund, the general assembly may appropriate from the investment income of the Missouri catastrophe fund an amount no less than ten percent and not more than thirty-five percent of the investment income from the prior fiscal year for the purpose of providing funding for local governments, state agencies, public and private educational institutions, and nonprofit organizations to support programs intended to improve catastrophe preparedness, reduce potential losses in the event of a covered event, provide research into means to reduce such losses, educate or inform the public as to means**

**to reduce covered losses, assist the public in determining the appropriateness of particular upgrades to structures or in the financing of such upgrades, or protect local infrastructure from potential damage from a covered loss. Moneys shall first be available for appropriation under this subsection in fiscal year 2012. Moneys in excess of the ten percent specified in this subsection shall not be available for appropriation under this subsection if the director finds that an appropriation of investment income from the fund would jeopardize the actuarial soundness of the fund.**

**3. The director may allow insurers to comply with reporting requirements and reporting format requirements by using alternative methods of reporting if the proper administration of the fund is not thereby impaired and if the alternative methods produce data which are consistent with the purposes of sections 379.955 to 379.969.**

**4. In order to assure the equitable operation of the fund, the director may impose a reasonable fee on an insurer to recover costs involved in reprocessing inaccurate, incomplete, or untimely exposure data submitted by the insurer.**

**379.967. 1. There is established in the department of insurance, financial institutions and professional registration, the "Missouri Catastrophe Fund Advisory Council". The advisory council shall consist of thirteen members, appointed by the governor with the advice and consent of the senate.**

**2. Each of these members shall be appointed for a term of three years, except that, of the members first appointed, four shall serve for terms of one year, four shall serve for terms of two years and five shall serve for terms of three years. Of these members, one shall be an actuary, one shall be a meteorologist, one shall be an engineer, one shall be a representative of insurers, one shall be a representative of insurance producers, one shall be a representative of reinsurers, one shall be a consumer representative, one shall be a representative of organized labor, one shall be a representative of law enforcement, one shall be a representative of firefighters, one shall be a seismologist, one shall be a representative of the state emergency management agency, and one shall be a member of the public at large. A majority of the membership of the council shall constitute a quorum for the transaction of council business. Action may be taken and motions and**

**resolutions adopted by the council at any meeting thereof by the affirmative vote of a majority of the full membership of the council. The council shall meet regularly as it may determine, and shall also meet at the call of the director. The council shall appoint a chairperson from among its members and such other officers as may be necessary. In addition to providing the director with information and advice in connection with his duties with respect to the fund generally, the council shall be specifically charged with developing prevention and mitigation standards that prevent or significantly reduce the potential damage from the natural or manmade covered loss. Members of the advisory council shall serve without compensation for their services, but shall be paid any necessary expenses incurred in attending meetings of the council or committee thereof or in the performance of other duties authorized by the council.**

**379.969. Upon the creation of a federal or multistate catastrophic insurance or reinsurance program intended to serve purposes similar to the purposes of the fund created by section 379.957, the director shall promptly make recommendations to the general assembly for coordination with the federal or multistate program, for termination of the fund, or for such other actions as the director finds appropriate in the circumstances.**

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