

FIRST REGULAR SESSION

# SENATE BILL NO. 115

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHMITT.

Pre-filed January 7, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

0287S.011

## AN ACT

To repeal sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, and to enact in lieu thereof one new section relating to the Missouri employers mutual insurance company, with an effective date for certain sections.

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

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A. Sections 287.902, 287.905, 287.907, 287.909, 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 287.901, to read as follows:

**287.901. 1. Before January 1, 2015, the director of the department of insurance, financial institutions and professional registration shall perform all acts necessary to dissolve the Missouri employers mutual insurance company. As used in this section, the dissolution of the Missouri employers mutual insurance company means the abolition of such company and the orderly sale of its assets and liabilities, the succession to any of the company's rights, and the assumption of its obligations and all processes related to such purposes. The dissolution of the Missouri employers mutual insurance company shall occur no later than January 1, 2015.**

**2. The director of the department of insurance, financial institutions and professional registration is authorized to enter into and consummate an agreement in the name of the state of Missouri for the sale of all of the assets of the Missouri employers mutual insurance company to a qualified purchaser and assumption of all or substantially all of the liabilities of the company by the qualified purchaser subject**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17 to the following conditions:

18 (1) The director shall have received before the effective date of  
19 the transfer an opinion of a nationally recognized investment banking  
20 firm that the consideration for the assets to be transferred is fair from  
21 a financial point of view;

22 (2) The director shall have received before the effective date of  
23 the transfer an opinion of a nationally recognized actuarial firm that  
24 the assets of the Missouri employers mutual insurance company  
25 transferred to a qualified purchaser are adequate to permit the  
26 payment of all liabilities under policies of insurance assumed by the  
27 qualified purchaser based upon sound actuarial principles;

28 (3) The director shall have determined before the effective date  
29 of the transfer that the consideration for the assets to be transferred  
30 is among the highest cash offers by a qualified bidder, is fair from a  
31 financial point of view, and is sufficient such that the credit of the state  
32 shall not have been granted to, nor in aid of any person, association, or  
33 corporation, public or private. A person or entity seeking to purchase  
34 the Missouri employers mutual insurance company shall not include as  
35 part of its bid the existing assets of the company. The director shall  
36 make a determination that the bidder has adequate resources to  
37 capitalize the insurance company, and will operate the company as a  
38 Missouri domestic insurer as provided by law; and

39 (4) The director may consult with or receive information or  
40 recommendations from other state agencies, or any other persons  
41 considered appropriate by the director, for purposes of assisting the  
42 director in making a final decision in evaluating one or more offers  
43 from any person or entity seeking to acquire the Missouri employers  
44 mutual insurance company pursuant to this section.

45 3. The director of the department of insurance, financial  
46 institutions and professional registration, in furtherance of the  
47 transactions permitted under this section, may do any of the following:

48 (1) Sell, convey, lease, exchange, transfer, or otherwise dispose  
49 of the assets and liabilities, including any real or personal property of  
50 the Missouri employers mutual insurance company, wherever situated;

51 (2) Sell, exchange, transfer, or otherwise dispose of bonds and  
52 other obligations, shares or other securities, or interests issued by  
53 others, whether engaged in similar or different businesses, or

54 governmental or other activities, including banking corporations or  
55 trust companies; and

56 (3) Exercise all powers necessary or convenient to effect or  
57 complete the transactions permitted under this section and otherwise  
58 wind up the affairs of the Missouri employers mutual insurance  
59 company.

60 4. The purchaser shall be a Missouri corporation organized and  
61 authorized to transact workers compensation insurance business in this  
62 state. Each debt, claim, and cause of action of the Missouri employers  
63 mutual insurance company, and all property rights, privileges,  
64 franchises, and other interests of the company, shall become the  
65 property of the purchaser. The rights of all policyholders and creditors  
66 and the standing of all claims against the Missouri employers mutual  
67 insurance company shall be preserved and unimpaired and become the  
68 obligation of the purchaser. Each debt, liability, and duty of the  
69 Missouri employers mutual insurance company shall become a debt,  
70 liability, or duty of the purchaser and may be enforced against the  
71 purchaser as if it were incurred or contracted by the purchaser.

72 5. No cause of action on behalf of any holder of a policy of  
73 insurance issued by the Missouri employers mutual insurance company  
74 shall lie against the purchaser arising out of the sale of assets or other  
75 transactions permitted under this section, except that this subsection  
76 shall not limit the rights or remedies of the holder under a policy of  
77 insurance issued by the Missouri employers mutual insurance company  
78 and assumed by the purchaser to contest the insurance coverage  
79 arising under a policy of insurance issued by the Missouri employers  
80 mutual insurance company. No cause of action on behalf of any holder  
81 of a policy of insurance issued by the Missouri employers mutual  
82 insurance company shall lie against the state of Missouri arising out of  
83 the sale of assets or other transactions permitted under this section, or  
84 arising under policies of insurance issued by the Missouri employers  
85 mutual insurance company.

86 6. Effective on the date of the transfer, the purchaser shall  
87 provide for the delivery in this state of workers' compensation  
88 insurance and for the transaction of workers' compensation insurance  
89 business to the same extent as any other insurance carrier transacting  
90 workers' compensation insurance business in this state. The purchaser

91 shall be subject to all of the requirements of the Missouri insurance  
92 statutes and regulations applicable to insurers licensed and authorized  
93 to write workers' compensation insurance in the state of Missouri. The  
94 purchaser shall pay fees and premium taxes in the same manner as  
95 other domestic insurance carriers authorized and admitted by the  
96 director to engage in the business of insurance in this state under a  
97 certificate of authority that includes authorization to write workers'  
98 compensation insurance. The purchaser shall be a member of the  
99 Missouri Property and Casualty Insurance Guaranty Association  
100 established in sections 375.771 to 375.779. Notwithstanding any other  
101 provision of this section, the purchaser is liable only for assessments  
102 by the Missouri Property and Casualty Insurance Guaranty Association  
103 with respect to an insolvency of a company for a claim with a date of  
104 injury that occurs after the date the Missouri employers mutual  
105 insurance company is transferred to the purchaser.

106       7. The consideration in the transaction referred to in subsection  
107 2 of this section shall be the property of the state of Missouri. Upon  
108 receipt of such consideration for the transfer and sale of the assets of  
109 the Missouri employers mutual insurance company, the director of the  
110 department of insurance, financial institutions and professional  
111 registration shall transmit such consideration to the state treasurer,  
112 who shall credit such funds to the general revenue fund.

113       8. Not less than thirty days before the transfer is consummated  
114 with a qualified purchaser, the director shall issue a report to the  
115 general assembly providing the name and address of each bidder, the  
116 amount, terms, and conditions of each respective bid, and the copies of  
117 the opinions required by subdivisions (1) and (2) of subsection 2 of this  
118 section.

119       9. After the date of the dissolution of the Missouri employers  
120 mutual insurance company, the Missouri employers mutual insurance  
121 company shall not transact workers compensation insurance in this  
122 state, and all operations of such company shall cease.

123       10. The director of the department of insurance, financial  
124 institutions and professional registration is authorized to promulgate  
125 rules and regulations to implement the provisions of this section. Any  
126 rule or portion of a rule, as that term is defined in section 536.010 that  
127 is created under the authority delegated in this section shall become

128 **effective only if it complies with and is subject to all of the provisions**  
129 **of chapter 536, and, if applicable, section 536.028. This section and**  
130 **chapter 536 are nonseverable and if any of the powers vested with the**  
131 **general assembly pursuant to chapter 536, to review, to delay the**  
132 **effective date, or to disapprove and annul a rule are subsequently held**  
133 **unconstitutional, then the grant of rulemaking authority and any rule**  
134 **proposed or adopted after August 28, 2013, shall be invalid and void.**

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

2 [287.905. 1. There is created a board of directors for the  
3 company. The board shall be appointed by January 1, 1994, and  
4 shall consist of five members appointed or selected as provided in  
5 this section. The governor shall appoint the initial five members  
6 of the board with the advice and consent of the senate. Each  
7 director shall serve a five-year term. Terms shall be staggered so  
that no more than one director's term expires each year on the first

8 day of July. The five directors initially appointed by the governor  
9 shall determine their initial terms by lot. At the expiration of the  
10 term of any member of the board, the company's policyholders shall  
11 elect a new director in accordance with provisions determined by  
12 the board.

13 2. Any person may be a director who:

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

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

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

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

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

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

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

8 company.

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

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

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

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

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

[287.917. 1. The administrator shall formulate, implement

2 and monitor a workplace safety program for all policyholders.

3 2. The company shall have representatives whose sole  
4 purpose is to develop, with policyholders, a written workplace  
5 accident and injury reduction plan that promotes safe working  
6 conditions and which is based upon clearly stated goals and  
7 objectives. Company representatives shall have reasonable access  
8 to the premises of any policyholder or applicant during regular  
9 working hours. The company shall communicate the importance of  
10 a well-defined safety plan and assist in any way to obtain this  
11 objective.

12 3. The administrator or board may refuse to insure, or may  
13 terminate the insurance of any subscriber who refuses to permit  
14 on-site examinations or disregards the workplace accident and  
15 injury reduction plan.

16 4. Upon the completion of a detailed inspection and  
17 recognition of a high regard for employee work safety, a deviation  
18 may be applied to the rate structure of that insured noting special  
19 recognition of those efforts.]

[287.919. 1. The Missouri employers mutual insurance  
2 company shall not receive any state appropriation, directly or  
3 indirectly, except as provided in section 287.690.

4 2. In order to provide funds for the creation, continued  
5 development and operation of the company, the board is authorized  
6 to issue revenue bonds from time to time, in a principal amount  
7 outstanding not to exceed forty million dollars at any given time,  
8 payable solely from premiums received from insurance policies and  
9 other revenues generated by the company.

10 3. The board may issue bonds to refund other bonds issued  
11 pursuant to this section.

12 4. The bonds shall have a maturity of no more than ten  
13 years from the date of issuance. The board shall determine all  
14 other terms, covenants and conditions of the bonds, except that no  
15 bonds may be redeemed prior to maturity unless the company has  
16 established adequate reserves for the risks it has insured.

17 5. The bonds shall be executed with the manual or facsimile  
18 signature of the administrator or the chairman of the board and



19 attested by another member of the board. The bonds may bear the  
20 seal, if any, of the company.

21 6. The proceeds of the bonds and the earnings on those  
22 proceeds shall be used by the board for the development and  
23 operation of the Missouri employers mutual insurance company, to  
24 pay expenses incurred in the preparation, issuance and sale of the  
25 bonds and to pay any obligations relating to the bonds and the  
26 proceeds of the bonds under the United States Internal Revenue  
27 Code of 1986, as amended.

28 7. The bonds may be sold at a public sale or a private sale.  
29 If the bonds are sold at a public sale, the notice of sale and other  
30 procedures for the sale shall be determined by the administrator or  
31 the company.

32 8. This section is full authority for the issuance and sale of  
33 the bonds and the bonds shall not be invalid for any irregularity or  
34 defect in the proceedings for their issuance and sale and shall be  
35 incontestable in the hands of bona fide purchasers or holders of the  
36 bonds for value.

37 9. An amount of money from the sources specified in  
38 subsection 2 of this section sufficient to pay the principal of and  
39 any interest on the bonds as they become due each year shall be set  
40 aside and is hereby pledged for the payment of the principal and  
41 interest on the bonds.

42 10. The bonds shall be legal investments for any person or  
43 board charged with the investment of public funds and may be  
44 accepted as security for any deposit of public money, and the bonds  
45 and interest thereon are exempt from taxation by the state and any  
46 political subdivision or agency of the state.

47 11. The bonds shall be payable by the company, which shall  
48 keep a complete record relating to the payment of the bonds.

49 12. Not more than fifty percent of the bonds sold shall be  
50 sold to public entities.]

[287.920. 1. The board shall cause an annual audit of the  
2 books of accounts, funds and securities of the company to be made  
3 by a competent and independent firm of certified public  
4 accountants, the cost of the audit to be charged against the

5 company. A copy of the audit report shall be filed with the director  
6 of the department of insurance, financial institutions and  
7 professional registration and the administrator. The audit shall be  
8 open to the public for inspection.

9 2. The board shall submit an annual independently audited  
10 report in accordance with procedures governing annual reports  
11 adopted by the National Association of Insurance Commissioners  
12 by March first of each year and the report shall be delivered to the  
13 governor and the general assembly and shall indicate the business  
14 done by the company during the previous year and contain a  
15 statement of the resources and liabilities of the company.

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

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

31 5. The department of insurance, financial institutions and  
32 professional registration shall conduct an examination of the  
33 company in the manner and under the conditions provided by the  
34 statutes of the insurance code for the examination of insurance  
35 carriers. The board shall pay the cost of the examination as an  
36 expense of the company. The company is subject to all provisions  
37 of the statutes which relate to private insurance carriers and to the  
38 jurisdiction of the department of insurance, financial institutions  
39 and professional registration in the same manner as private  
40 insurance carriers, except as provided by the director.

41           6. For the purpose of ascertaining the correctness of the  
42 amount of payroll reported, the number of employees on the  
43 employer's payroll and for such other information as the  
44 administrator may require in the proper administration of the  
45 company, the records and payrolls of each employer insured by the  
46 company shall always be open to inspection by the administrator  
47 or his duly authorized agent or representative.

48           7. Every employer provided insurance coverage by the  
49 company, upon complying with the underwriting standards adopted  
50 by the company, and upon completing the application form  
51 prescribed by the company, shall be furnished with a policy  
52 showing the date on which the insurance becomes effective.]

Section B. The repeal of sections 287.902, 287.905, 287.907, 287.909,  
2 287.910, 287.912, 287.915, 287.917, 287.919, and 287.920 shall become effective  
3 on the date the Missouri employers mutual insurance company is officially  
4 dissolved or January 1, 2015, whichever occurs first. If the dissolution of the  
5 Missouri employer mutual insurance company occurs prior to January 1, 2015,  
6 the director of the department of insurance, financial institutions and  
7 professional registration shall notify the revisor of statutes of such fact.

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