GOVERNOR OF MISSOURI

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TO THE CHIEF CLERK OF THE
HOUSE OF REPRESENTATIVES
98th GENERAL ASSEMBLY
SECOND REGULAR SESSION
STATE OF MISSOURI

Herewith I return to you House Bill No. 1763 entitled:

AN ACT

To amend chapter 375, RSMo, by adding thereto one new section relating to workers' compensation large deductible policies, with an emergency clause.

I disapprove House Bill No. 1763. My reasons for disapproval are as follows:

House Bill No. 1763 contains drafting errors that would make an exemption in the bill ineffectual and create ambiguity regarding the rules applicable to the orderly distribution of assets in insurance delinquency proceedings. For those reasons, it cannot receive my approval.

The bill relates to large deductible workers' compensation policies, which are insurance products that obligate an insurer to pay an injured worker's claim in full and then seek reimbursement from the insured for the deductible amount. The drafting error occurs in a provision that exempts certain policies: "Large deductible policies do not include policies, endorsements, or agreements which provide that the initial portion of any covered claim shall be self-insured and further that the insur***ed*** shall have no payment obligation within the self-insured retention." [Emphasis added.]

Because House Bill No. 1763 uses the term "insured" instead of the term "insurer" when describing the self-insurance policies it seeks to exempt, it incorrectly describes a self-insurance policy as one in which the insured has no obligation to pay the self-insured portion of a policy. Such a description is nonsensical and would fail to exempt the self-insurance policies the legislation seeks to exclude from the bill's reach - namely, policies in which the insured is responsible for the initial portion of any covered claim and the insur<u>er</u> has no payment obligation within the self-insured retention.

Guaranty Associations are statutorily obligated to pay policyholder claims on behalf of insolvent insurance companies. Under House Bill No. 1763, Guaranty Associations would be given priority status to collect the reimbursement and the collateral that secures it under those policies, for the amount the Guaranty Associations paid on the deductible portion of a claim. To that extent, the bill would change the current priority in which creditors of insolvent insurance companies are paid, but only for a specific category of assets related to a specific type of policy.

While House Bill No. 1763 is intended to apply to large deductible workers' compensation policies, the typographical error in the bill would frustrate that purpose by inaccurately describing a specific type of policy that is exempt. Not only would this technical error fail to exempt self-insurance policies as intended, it would create the potential for much broader and unintended consequences. Insurance insolvencies involve lengthy proceedings where courts must ultimately determine the legal rights of creditors, including injured workers with covered claims, and distribute the assets accordingly. Rules of statutory construction in Missouri require that courts presume that the legislature intended each word, clause, sentence and provision of a statute have effect and be given meaning. Courts also presume that the legislature did not insert superfluous language or idle verbiage in a statute.

By incorrectly describing the elements of a self-insurance policy when attempting to exempt those policies, House Bill No. 1763 would substantively change the intended exemption and create the potential for inconsistent interpretations and unintended outcomes. And, because House Bill No. 1763 contains an emergency clause, the uncertainty that the typographical error would interject into insurance delinquency proceedings would take effect immediately, applying to all pending delinquency proceedings for which there is no final order of liquidation.

Finally, House Bill No. 1763 appears to also contain an omission. The legislation specifically uses the term "large deductible policy" to describe the policies within its purview, which connotes that its provisions are not intended to apply to all deductible policies and that only deductible policies that exceed a certain dollar threshold would be considered "large" for purposes of the bill. Indeed, similar legislation filed during the 2015 legislative session, House Bill No. 609 and Senate Bill No. 402, defined "large deductible policy" as "any policy with a deductible of fifty thousand dollars or more." A monetary trigger would also be consistent with the model language on this subject. However, House Bill No. 1763 fails to include any monetary threshold and thus all deductible policies – regardless of the size of the deductible – would be considered "large" and subject to the provisions of the bill.

House Bill No. 1763 contains errors that would create ambiguity within an already complex area of law dealing with insurance delinquency proceedings. As a result, House Bill No. 1763 does not receive my approval.

Respectfully submitted,

Jeremiah W. (Jay) Nixon
Governor