

FIRST REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 577
95TH GENERAL ASSEMBLY

1575L.08T

2009

AN ACT

To repeal sections 143.441, 147.010, 148.370, 303.024, 374.456, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1057, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, and to enact in lieu thereof forty-nine new sections relating to the regulation of insurance, with penalty provisions.

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

Section A. Sections 143.441, 147.010, 148.370, 303.024, 374.456, 375.020, 375.1025, 2
375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047,
3 375.1050, 375.1052, 375.1057, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373,
4 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043,
5 384.051, 384.057, and 384.062, RSMo, are repealed and forty-nine new sections enacted in lieu
6 thereof, to be known as sections 143.441, 147.010, 148.370, 208.192, 303.024, 374.350,
7 374.351, 374.352, 374.776, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035,
8 375.1037, 375.1038, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1053,
9 375.1054, 375.1056, 375.1057, 376.391, 376.502, 376.1232, 379.1300, 379.1302, 379.1310,

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

10 379.1326, 379.1332, 379.1339, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405,
11 382.407, 382.409, 384.025, 384.043, 384.051, 384.057, and 384.062, to read as follows:

143.441. 1. The term "corporation" means every corporation, association, joint stock
2 company and joint stock association organized, authorized or existing under the laws of this state
3 and includes:

4 (1) Every corporation, association, joint stock company, and joint stock association
5 organized, authorized, or existing under the laws of this state, and every corporation, association,
6 joint stock company, and joint stock association, licensed to do business in this state, or doing
7 business in this state, and not organized, authorized, or existing under the laws of this state, or
8 by any receiver in charge of the property of any such corporation, association, joint stock
9 company or joint stock association;

10 (2) Every railroad corporation or receiver in charge of the property thereof which
11 operates over rails owned or leased by it and every corporation operating any buslines, trucklines,
12 airlines, or other forms of transportation operating over fixed routes owned, leased, or used by
13 it extending from this state to another state or states;

14 (3) Every corporation, or receiver in charge of the property thereof, which owns or
15 operates a bridge between this and any other state; and

16 (4) Every corporation, or receiver in charge of the property thereof, which operates a
17 telephone line or lines extending from this state to another state or states or a telegraph line or
18 lines extending from this state to another state or states.

19 2. The tax on corporations provided in subsection 1 of section 143.431 and section
20 143.071 shall not apply to:

21 (1) A corporation which by reason of its purposes and activities is exempt from federal
22 income tax. The preceding sentence shall not apply to unrelated business taxable income and
23 other income on which chapter 1 of the Internal Revenue Code imposes the federal income tax
24 or any other tax measured by income;

25 (2) An express company which pays an annual tax on its gross receipts in this state;

26 (3) An insurance company which [pays] **is subject to** an annual tax on its gross premium
27 receipts in this state;

28 (4) A Missouri mutual or an extended Missouri mutual insurance company organized
29 under chapter 380, RSMo; and

30 (5) Any other corporation that is exempt from Missouri income taxation under the laws
31 of Missouri or the laws of the United States.

147.010. 1. For the transitional year defined in subsection 4 of this section and each
2 taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation
3 organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state

4 shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to
5 the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding
6 shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or
7 if the outstanding shares of such corporation or any part thereof consist of shares without par
8 value, then, in that event, for the purpose contained in this section, such shares shall be
9 considered as having a value of five dollars per share unless the actual value of such shares
10 exceeds five dollars per share, in which case the tax shall be levied and collected on the actual
11 value and the surplus if the actual value and the surplus exceed two hundred thousand dollars.
12 If such corporation employs a part of its outstanding shares in business in another state or
13 country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one
14 percent of its outstanding shares and surplus employed in this state if its outstanding shares and
15 surplus employed in this state two hundred thousand dollars, and for the purposes of sections
16 147.010 to 147.120, such corporation shall be deemed to have employed in this state that
17 proportion of its entire outstanding shares and surplus that its property and assets employed in
18 this state bears to all its property and assets wherever located. A foreign corporation engaged
19 in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter
20 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares
21 and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall
22 state that fact on the annual report form prescribed by the secretary of state. For all taxable years
23 beginning on or after January 1, 2000, the annual franchise tax shall be equal to one-thirtieth of
24 one percent of the corporation's outstanding shares and surplus if the outstanding shares and
25 surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do
26 not exceed one million dollars shall state that fact on the annual report form prescribed by the
27 director of revenue.

28 2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit,
29 nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express
30 companies, which now pay an annual tax on their gross receipts in this state, nor to insurance
31 companies, which [pay] **are subject to** an annual tax on their premium receipts in this state, nor
32 to state, district, county, town and farmers' mutual companies now organized or that may be
33 hereafter organized pursuant to any of the laws of this state, organized for the sole purpose of
34 writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile
35 insurance and for the purpose of paying any loss incurred by any member by assessment, nor to
36 any mutual insurance corporation not having shares, nor to a company or association organized
37 to transact business of life or accident insurance on the assessment plan for the purpose of mutual
38 protection and benefit to its members and the payment of stipulated sums of moneys to the
39 family, heirs, executors, administrators or assigns of the deceased member, nor to foreign life,

40 fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company
41 of whatever nature coming within the provisions of section 147.050 and doing business in this
42 state, nor to savings and loan associations and domestic and foreign regulated investment
43 companies as defined by Section 170 of the Act of Congress commonly known as the "Revenue
44 Act of 1942", nor to electric and telephone corporations organized pursuant to chapter 351,
45 RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have been declared tax exempt
46 organizations pursuant to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable
47 years beginning after December 31, 1986, to banking institutions subject to the annual franchise
48 tax imposed by sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as
49 funds of the individual depositor left for safekeeping and shall not be considered in computing
50 the amount of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

51 3. A corporation's "taxable year" for purposes of sections 147.010 to 147.120 shall be
52 its taxable year as provided in section 143.271, RSMo.

53 4. A corporation's "transitional year" for the purposes of sections 147.010 to 147.120
54 shall be its taxable year which includes parts of each of the years 1979 and 1980.

55 5. The franchise tax payable for a corporation's transitional year shall be computed by
56 multiplying the amount otherwise due for that year by a fraction, the numerator of which is the
57 number of months between January 1, 1980, and the end of the taxable year and the denominator
58 of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as
59 provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations
60 prescribed by the director of revenue.

61 6. All franchise reports and franchise taxes shall be returned to the director of revenue.
62 All checks and drafts remitted for payment of franchise taxes shall be made payable to the
63 director of revenue.

64 7. Pursuant to section 32.057, RSMo, the director of revenue shall maintain the
65 confidentiality of all franchise tax reports returned to the director.

66 8. The director of the department of revenue shall honor all existing agreements between
67 taxpayers and the director of the department of revenue.

148.370. Every insurance company or association organized under the laws of the state
2 of Missouri and doing business under the provisions of sections 376.010 to 376.670, 379.205 to
3 379.310, 379.650 to 379.790 and chapter 381, RSMo, and every mutual fire insurance company
4 organized under the provisions of sections 379.010 to 379.190, RSMo, shall, as hereinafter
5 provided, quarterly pay, beginning with the year 1983, a tax upon the direct premiums received
6 by it from policyholders in this state, whether in cash or in notes, or on account of business done
7 in this state, **in lieu of the taxes imposed under the provisions of chapters 143 and 147,**
8 **RSMo**, for insurance of life, property or interest in this state, at the rate of two percent per

9 annuam, which amount of taxes shall be assessed and collected as hereinafter provided; provided,
10 that fire and casualty insurance companies or associations shall be credited with canceled or
11 returned premiums actually paid during the year in this state, and that life insurance companies
12 shall be credited with dividends actually declared to policyholders in this state but held by the
13 company and applied to the reduction of premiums payable by the policyholder.

**208.192. 1. By August 28, 2010, the director of the MO HealthNet division shall
2 implement a program under which the director shall make available through its Internet
3 web site nonaggregated information on individuals collected under the federal Medicaid
4 Statistical Information System described in the Social Security Act, Section 1903(r)(1)(F),
5 insofar as such information has been de-identified in accordance with regulations
6 promulgated under the Health Insurance Portability and Accountability Act of 1996, as
7 amended. In implementing such program, the director shall ensure that:**

8 (1) The information made so available is in a format that is easily accessible,
9 useable, and understandable to the public, including individuals interested in improving
10 the quality of care provided to individuals eligible for programs and services under the MO
11 HealthNet program, researchers, health care providers, and individuals interested in
12 reducing the prevalence of waste and fraud under the program;

13 (2) The information made so available is as current as deemed practical by the
14 director and shall be updated at least once per calendar quarter;

15 (3) To the extent feasible, all health care providers, as such term is defined in
16 subdivision (20) of section 376.1350, RSMo, included in such information are identifiable
17 by name to individuals who access the information through such program; and

18 (4) The director periodically solicits comments from a sampling of individuals who
19 access the information through such program on how to best improve the utility of the
20 program.

21 2. For purposes of implementing the program under this section and ensuring the
22 information made available through such program is periodically updated, the director
23 may select and enter into a contract with a public or private entity meeting such criteria
24 and qualifications as the director determines appropriate.

25 3. By August 28, 2011, and annually thereafter, the director shall submit to the
26 general assembly and the MO HealthNet oversight committee, a report on the progress of
27 the program under subsection 1 of this section, including the extent to which information
28 made available through the program is accessed and the extent to which comments
29 received under subdivision (4) of subsection 1 of this section were used during the year
30 involved to improve the utility of the program.

31 **4. By August 28, 2011, the director shall submit to the general assembly and the**
32 **MO HealthNet oversight committee a report on the feasibility, potential costs, and potential**
33 **benefits of making publicly available through an Internet-based program de-identified**
34 **payment and patient encounter information for items and services furnished under Title**
35 **XXI of the Social Security Act which would not otherwise be included in the information**
36 **collected under the federal Medicaid Statistical Information System described in Section**
37 **1903(r)(1)(F) of such act and made available under Section 1942 of such act, as added by**
38 **Section 5008.**

39 **5. Pursuant to section 23.253, RSMo, of the Missouri sunset act:**

40 **(1) The provisions of the new program authorized under this section shall**
41 **automatically sunset six years after the effective date of this section unless reauthorized by**
42 **an act of the general assembly; and**

43 **(2) If such program is reauthorized, the program authorized under this section**
44 **shall automatically sunset twelve years after the effective date of the reauthorization of this**
45 **section; and**

46 **(3) This section shall terminate on September first of the calendar year immediately**
47 **following the calendar year in which the program authorized under this section is sunset.**

303.024. 1. Each insurer issuing motor vehicle liability policies in this state, or an agent
2 of the insurer, shall furnish an insurance identification card to the named insured for each motor
3 vehicle insured by a motor vehicle liability policy that complies with the requirements of sections
4 303.010 to 303.050, 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370.

5 2. The insurance identification card shall include all of the following information:

6 (1) The name and address of the insurer;

7 (2) The name of the named insured;

8 (3) The policy number;

9 (4) The effective dates of the policy, including month, day and year;

10 (5) A description of the insured motor vehicle, including year and make or at least five
11 digits of the vehicle identification number or the word "Fleet" if the insurance policy covers five
12 or more motor vehicles; and

13 (6) The statement "THIS CARD MUST BE CARRIED IN THE INSURED MOTOR
14 VEHICLE FOR PRODUCTION UPON DEMAND" prominently displayed on the card.

15 3. A new insurance identification card shall be issued when the insured motor vehicle
16 is changed, when an additional motor vehicle is insured, and when a new policy number is
17 assigned. A replacement insurance identification card shall be issued at the request of the
18 insured in the event of loss of the original insurance identification card.

39 **7. "Insurer" means any entity licensed by a State to issue contracts of insurance for**
40 **any of the lines of insurance covered by this Act.**

41 **8. "Member" means the person chosen by a Compacting State as its representative**
42 **to the Commission, or his or her designee.**

43 **9. "Non-compacting State" means any State which is not at the time a Compacting**
44 **State.**

45 **10. "Operating Procedures" mean procedures promulgated by the Commission**
46 **implementing a Rule, Uniform Standard or a provision of this Compact.**

47 **11. "Product" means the form of a policy or contract, including any application,**
48 **endorsement, or related form which is attached to and made a part of the policy or**
49 **contract, and any evidence of coverage or certificate, for an individual or group annuity,**
50 **life insurance, disability income or long-term care insurance product that an Insurer is**
51 **authorized to issue.**

52 **12. "Rule" means a statement of general or particular applicability and future**
53 **effect promulgated by the Commission, including a Uniform Standard developed pursuant**
54 **to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy**
55 **or describing the organization, procedure, or practice requirements of the Commission,**
56 **which shall have the force and effect of law in the Compacting States.**

57 **13. "State" means any state, district or territory of the United States of America.**

58 **14. "Third-Party Filer" means an entity that submits a Product filing to the**
59 **Commission on behalf of an Insurer.**

60 **15. "Uniform Standard" means a standard adopted by the Commission for a**
61 **Product line, pursuant to Article VII of this Compact, and shall include all of the Product**
62 **requirements in aggregate; provided, that each Uniform Standard shall be construed,**
63 **whether express or implied, to prohibit the use of any inconsistent, misleading or**
64 **ambiguous provisions in a Product and the form of the Product made available to the**
65 **public shall not be unfair, inequitable or against public policy as determined by the**
66 **Commission.**

67 **ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE**

68 **1. The Compacting States hereby create and establish a joint public agency known**
69 **as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the**
70 **Commission will have the power to develop Uniform Standards for Product lines, receive**
71 **and provide prompt review of Products filed therewith, and give approval to those Product**
72 **filings satisfying applicable Uniform Standards; provided, it is not intended for the**
73 **Commission to be the exclusive entity for receipt and review of insurance product filings.**
74 **Nothing herein shall prohibit any Insurer from filing its product in any State wherein the**

75 Insurer is licensed to conduct the business of insurance; and any such filing shall be subject
76 to the laws of the State where filed.

77 **2. The Commission is a body corporate and politic, and an instrumentality of the**
78 **Compacting States.**

79 **3. The Commission is solely responsible for its liabilities except as otherwise**
80 **specifically provided in this Compact.**

81 **4. Venue is proper and judicial proceedings by or against the Commission shall be**
82 **brought solely and exclusively in a Court of competent jurisdiction where the principal**
83 **office of the Commission is located.**

84 **ARTICLE IV. POWERS OF THE COMMISSION**

85 **The Commission shall have the following powers:**

86 **1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have**
87 **the force and effect of law and shall be binding in the Compacting States to the extent and**
88 **in the manner provided in this Compact;**

89 **2. To exercise its rulemaking authority and establish reasonable Uniform**
90 **Standards for Products covered under the Compact, and Advertisement related thereto,**
91 **which shall have the force and effect of law and shall be binding in the Compacting States,**
92 **but only for those Products filed with the Commission, provided, that a Compacting State**
93 **shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the**
94 **extent and in the manner provided in this Compact, and, provided further, that any**
95 **Uniform Standard established by the Commission for long-term care insurance products**
96 **may provide the same or greater protections for consumers as, but shall not provide less**
97 **than, those protections set forth in the National Association of Insurance Commissioners'**
98 **Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation,**
99 **respectively, adopted as of 2001. The Commission shall consider whether any subsequent**
100 **amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care**
101 **Insurance Model Regulation adopted by the NAIC require amending of the Uniform**
102 **Standards established by the Commission for long-term care insurance products;**

103 **3. To receive and review in an expeditious manner Products filed with the**
104 **Commission, and rate filings for disability income and long-term care insurance Products,**
105 **and give approval of those Products and rate filings that satisfy the applicable Uniform**
106 **Standard, where such approval shall have the force and effect of law and be binding on the**
107 **Compacting States to the extent and in the manner provided in the Compact;**

108 **4. To receive and review in an expeditious manner Advertisement relating to long-**
109 **term care insurance products for which Uniform Standards have been adopted by the**
110 **Commission, and give approval to all Advertisement that satisfies the applicable Uniform**

111 **Standard.** For any product covered under this Compact, other than long-term care
112 insurance products, the Commission shall have the authority to require an insurer to
113 submit all or any part of its Advertisement with respect to that product for review or
114 approval prior to use, if the Commission determines that the nature of the product is such
115 that an Advertisement of the product could have the capacity or tendency to mislead the
116 public. The actions of the Commission as provided in this section shall have the force and
117 effect of law and shall be binding in the Compacting States to the extent and in the manner
118 provided in the Compact;

119 **5.** To exercise its rulemaking authority and designate Products and Advertisement
120 that may be subject to a self-certification process without the need for prior approval by
121 the Commission.

122 **6.** To promulgate Operating Procedures, pursuant to Article VII of this Compact,
123 which shall be binding in the Compacting States to the extent and in the manner provided
124 in this Compact;

125 **7.** To bring and prosecute legal proceedings or actions in its name as the
126 Commission; provided, that the standing of any state insurance department to sue or be
127 sued under applicable law shall not be affected;

128 **8.** To issue subpoenas requiring the attendance and testimony of witnesses and the
129 production of evidence;

130 **9.** To establish and maintain offices;

131 **10.** To purchase and maintain insurance and bonds;

132 **11.** To borrow, accept or contract for services of personnel, including, but not
133 limited to, employees of a Compacting State;

134 **12.** To hire employees, professionals or specialists, and elect or appoint officers, and
135 to fix their compensation, define their duties and give them appropriate authority to carry
136 out the purposes of the Compact, and determine their qualifications; and to establish the
137 Commission's personnel policies and programs relating to, among other things, conflicts
138 of interest, rates of compensation and qualifications of personnel;

139 **13.** To accept any and all appropriate donations and grants of money, equipment,
140 supplies, materials and services, and to receive, utilize and dispose of the same; provided
141 that at all times the Commission shall strive to avoid any appearance of impropriety;

142 **14.** To lease, purchase, accept appropriate gifts or donations of, or otherwise to
143 own, hold, improve or use, any property, real, personal or mixed; provided that at all times
144 the Commission shall strive to avoid any appearance of impropriety;

145 **15.** To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose
146 of any property, real, personal or mixed;

- 147 **16. To remit filing fees to Compacting States as may be set forth in the Bylaws,**
148 **Rules or Operating Procedures;**
- 149 **17. To enforce compliance by Compacting States with Rules, Uniform Standards,**
150 **Operating Procedures and Bylaws;**
- 151 **18. To provide for dispute resolution among Compacting States;**
- 152 **19. To advise Compacting States on issues relating to Insurers domiciled or doing**
153 **business in Non-compacting jurisdictions, consistent with the purposes of this Compact;**
- 154 **20. To provide advice and training to those personnel in state insurance**
155 **departments responsible for product review, and to be a resource for state insurance**
156 **departments;**
- 157 **21. To establish a budget and make expenditures;**
- 158 **22. To borrow money;**
- 159 **23. To appoint committees, including advisory committees comprising Members,**
160 **state insurance regulators, state legislators or their representatives, insurance industry and**
161 **consumer representatives, and such other interested persons as may be designated in the**
162 **Bylaws;**
- 163 **24. To provide and receive information from, and to cooperate with law**
164 **enforcement agencies;**
- 165 **25. To adopt and use a corporate seal; and**
- 166 **26. To perform such other functions as may be necessary or appropriate to achieve**
167 **the purposes of this Compact consistent with the state regulation of the business of**
168 **insurance.**

169 **ARTICLE V. ORGANIZATION OF THE COMMISSION**

170 **1. Membership, Voting and Bylaws**

171 **a. Each Compacting State shall have and be limited to one Member. Each Member**
172 **shall be qualified to serve in that capacity pursuant to applicable law of the Compacting**
173 **State. Any Member may be removed or suspended from office as provided by the law of**
174 **the State from which he or she shall be appointed. Any vacancy occurring in the**
175 **Commission shall be filled in accordance with the laws of the Compacting State wherein**
176 **the vacancy exists. Nothing herein shall be construed to affect the manner in which a**
177 **Compacting State determines the election or appointment and qualification of its own**
178 **Commissioner.**

179 **b. Each Member shall be entitled to one vote and shall have an opportunity to**
180 **participate in the governance of the Commission in accordance with the Bylaws.**
181 **Notwithstanding any provision herein to the contrary, no action of the Commission with**

182 respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3)
183 of the Members vote in favor thereof.

184 c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern
185 its conduct as may be necessary or appropriate to carry out the purposes, and exercise the
186 powers, of the Compact, including, but not limited to:

187 i. Establishing the fiscal year of the Commission;

188 ii. Providing reasonable procedures for appointing and electing members, as well
189 as holding meetings, of the Management Committee;

190 iii. Providing reasonable standards and procedures: (i) for the establishment and
191 meetings of other committees, and (ii) governing any general or specific delegation of any
192 authority or function of the Commission;

193 iv. Providing reasonable procedures for calling and conducting meetings of the
194 Commission that consists of a majority of Commission members, ensuring reasonable
195 advance notice of each such meeting and providing for the right of citizens to attend each
196 such meeting with enumerated exceptions designed to protect the public's interest, the
197 privacy of individuals, and insurers' proprietary information, including trade secrets. The
198 Commission may meet in camera only after a majority of the entire membership votes to
199 close a meeting *en toto* or in part. As soon as practicable, the Commission must make
200 public (i) a copy of the vote to close the meeting revealing the vote of each Member with no
201 proxy votes allowed, and (ii) votes taken during such meeting;

202 v. Establishing the titles, duties and authority and reasonable procedures for the
203 election of the officers of the Commission;

204 vi. Providing reasonable standards and procedures for the establishment of the
205 personnel policies and programs of the Commission. Notwithstanding any civil service or
206 other similar laws of any Compacting State, the Bylaws shall exclusively govern the
207 personnel policies and programs of the Commission;

208 vii. Promulgating a code of ethics to address permissible and prohibited activities
209 of commission members and employees; and

210 viii. Providing a mechanism for winding up the operations of the Commission and
211 the equitable disposition of any surplus funds that may exist after the termination of the
212 Compact after the payment and/or reserving of all of its debts and obligations.

213 d. The Commission shall publish its bylaws in a convenient form and file a copy
214 thereof and a copy of any amendment thereto, with the appropriate agency or officer in
215 each of the Compacting States.

216 2. Management Committee, Officers and Personnel

217 **a. A Management Committee comprising no more than fourteen (14) members shall**
218 **be established as follows:**

219 **i. One (1) member from each of the six (6) Compacting States with the largest**
220 **premium volume for individual and group annuities, life, disability income and long-term**
221 **care insurance products, determined from the records of the NAIC for the prior year;**

222 **ii. Four (4) members from those Compacting States with at least two percent (2%)**
223 **of the market based on the premium volume described above, other than the six (6)**
224 **Compacting States with the largest premium volume, selected on a rotating basis as**
225 **provided in the Bylaws; and**

226 **iii. Four (4) members from those Compacting States with less than two percent**
227 **(2%) of the market, based on the premium volume described above, with one (1) selected**
228 **from each of the four (4) zone regions of the NAIC as provided in the Bylaws.**

229 **b. The Management Committee shall have such authority and duties as may be set**
230 **forth in the Bylaws, including but not limited to:**

231 **i. Managing the affairs of the Commission in a manner consistent with the Bylaws**
232 **and purposes of the Commission;**

233 **ii. Establishing and overseeing an organizational structure within, and appropriate**
234 **procedures for, the Commission to provide for the creation of Uniform Standards and**
235 **other Rules, receipt and review of product filings, administrative and technical support**
236 **functions, review of decisions regarding the disapproval of a product filing, and the review**
237 **of elections made by a Compacting State to opt out of a Uniform Standard; provided that**
238 **a Uniform Standard shall not be submitted to the Compacting States for adoption unless**
239 **approved by two-thirds (2/3) of the members of the Management Committee;**

240 **iii. Overseeing the offices of the Commission; and**

241 **iv. Planning, implementing, and coordinating communications and activities with**
242 **other state, federal and local government organizations in order to advance the goals of the**
243 **Commission.**

244 **c. The Commission shall elect annually officers from the Management Committee,**
245 **with each having such authority and duties, as may be specified in the Bylaws.**

246 **d. The Management Committee may, subject to the approval of the Commission,**
247 **appoint or retain an executive director for such period, upon such terms and conditions**
248 **and for such compensation as the Commission may deem appropriate. The executive**
249 **director shall serve as secretary to the Commission, but shall not be a Member of the**
250 **Commission. The executive director shall hire and supervise such other staff as may be**
251 **authorized by the Commission.**

252 **3. Legislative and Advisory Committees**

253 **a. A legislative committee comprising state legislators or their designees shall be**
254 **established to monitor the operations of, and make recommendations to, the Commission,**
255 **including the Management Committee; provided that the manner of selection and term of**
256 **any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption**
257 **by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or**
258 **other significant matter as may be provided in the Bylaws, the Management Committee**
259 **shall consult with and report to the legislative committee.**

260 **b. The Commission shall establish two (2) advisory committees, one of which shall**
261 **comprise consumer representatives independent of the insurance industry, and the other**
262 **comprising insurance industry representatives.**

263 **c. The Commission may establish additional advisory committees as its Bylaws may**
264 **provide for the carrying out of its functions.**

265 **4. Corporate Records of the Commission**

266 **The Commission shall maintain its corporate books and records in accordance with**
267 **the Bylaws.**

268 **5. Qualified Immunity, Defense and Indemnification**

269 **a. The Members, officers, executive director, employees and representatives of the**
270 **Commission shall be immune from suit and liability, either personally or in their official**
271 **capacity, for any claim for damage to or loss of property or personal injury or other civil**
272 **liability caused by or arising out of any actual or alleged act, error or omission that**
273 **occurred, or that the person against whom the claim is made had a reasonable basis for**
274 **believing occurred within the scope of Commission employment, duties or responsibilities;**
275 **provided, that nothing in this paragraph shall be construed to protect any such person**
276 **from suit and/or liability for any damage, loss, injury or liability caused by the intentional**
277 **or willful and wanton misconduct of that person.**

278 **b. The Commission shall defend any Member, officer, executive director, employee**
279 **or representative of the Commission in any civil action seeking to impose liability arising**
280 **out of any actual or alleged act, error or omission that occurred within the scope of**
281 **Commission employment, duties or responsibilities, or that the person against whom the**
282 **claim is made had a reasonable basis for believing occurred within the scope of**
283 **Commission employment, duties or responsibilities; provided, that nothing herein shall be**
284 **construed to prohibit that person from retaining his or her own counsel; and provided**
285 **further, that the actual or alleged act, error or omission did not result from that person's**
286 **intentional or willful and wanton misconduct.**

287 **c. The Commission shall indemnify and hold harmless any Member, officer,**
288 **executive director, employee or representative of the Commission for the amount of any**

289 settlement or judgment obtained against that person arising out of any actual or alleged
290 act, error or omission that occurred within the scope of Commission employment, duties
291 or responsibilities, or that such person had a reasonable basis for believing occurred within
292 the scope of Commission employment, duties or responsibilities, provided, that the actual
293 or alleged act, error or omission did not result from the intentional or willful and wanton
294 misconduct of that person.

295 **ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION**

296 **1. The Commission shall meet and take such actions as are consistent with the**
297 **provisions of this Compact and the Bylaws.**

298 **2. Each Member of the Commission shall have the right and power to cast a vote**
299 **to which that Compacting State is entitled and to participate in the business and affairs of**
300 **the Commission. A Member shall vote in person or by such other means as provided in the**
301 **Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or**
302 **other means of communication.**

303 **3. The Commission shall meet at least once during each calendar year. Additional**
304 **meetings shall be held as set forth in the Bylaws.**

305 **ARTICLE VII. RULES AND OPERATING PROCEDURES: RULEMAKING**
306 **FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM**
307 **STANDARDS**

308 **1. Rulemaking Authority. The Commission shall promulgate reasonable Rules,**
309 **including Uniform Standards, and Operating Procedures in order to effectively and**
310 **efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the**
311 **event the Commission exercises its rulemaking authority in a manner that is beyond the**
312 **scope of the purposes of this Act, or the powers granted hereunder, then such an action by**
313 **the Commission shall be invalid and have no force and effect.**

314 **2. Rulemaking Procedure. Rules and Operating Procedures shall be made**
315 **pursuant to a rulemaking process that conforms to the Model State Administrative**
316 **Procedure Act of 1981 as amended, as may be appropriate to the operations of the**
317 **Commission. Before the Commission adopts a Uniform Standard, the Commission shall**
318 **give written notice to the relevant state legislative committee(s) in each Compacting State**
319 **responsible for insurance issues of its intention to adopt the Uniform Standard. The**
320 **Commission in adopting a Uniform Standard shall consider fully all submitted materials**
321 **and issue a concise explanation of its decision.**

322 **3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall**
323 **become effective ninety (90) days after its promulgation by the Commission or such later**
324 **date as the Commission may determine; provided, however, that a Compacting State may**

325 opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as
326 any action by a Compacting State to decline to adopt or participate in a promulgated
327 Uniform Standard. All other Rules and Operating Procedures, and amendments thereto,
328 shall become effective as of the date specified in each Rule, Operating Procedure or
329 amendment.

330 **4. Opt Out Procedure.** A Compacting State may opt out of a Uniform Standard,
331 either by legislation or regulation duly promulgated by the Insurance Department under
332 the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt
333 out of a Uniform Standard by regulation, it must (a) give written notice to the Commission
334 no later than ten (10) business days after the Uniform Standard is promulgated, or at the
335 time the State becomes a Compacting State and (b) find that the Uniform Standard does
336 not provide reasonable protections to the citizens of the State, given the conditions in the
337 State. The Commissioner shall make specific findings of fact and conclusions of law, based
338 on a preponderance of the evidence, detailing the conditions in the State which warrant a
339 departure from the Uniform Standard and determining that the Uniform Standard would
340 not reasonably protect the citizens of the State. The Commissioner must consider and
341 balance the following factors and find that the conditions in the State and needs of the
342 citizens of the State outweigh: (i) the intent of the legislature to participate in, and the
343 benefits of, an interstate agreement to establish national uniform consumer protections for
344 the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted
345 by the Commission provides reasonable protections to consumers of the relevant Product.
346 Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this
347 Compact, prospectively opt out of all Uniform Standards involving long-term care
348 insurance products by expressly providing for such opt out in the enacted Compact, and
349 such an opt out shall not be treated as a material variance in the offer or acceptance of any
350 State to participate in this Compact. Such an opt out shall be effective at the time of
351 enactment of this Compact by the Compacting State and shall apply to all existing Uniform
352 Standards involving long-term care insurance products and those subsequently
353 promulgated.

354 **5. Effect of Opt Out.** If a Compacting State elects to opt out of a Uniform
355 Standard, the Uniform Standard shall remain applicable in the Compacting State electing
356 to opt out until such time the opt out legislation is enacted into law or the regulation opting
357 out becomes effective. Once the opt out of a Uniform Standard by a Compacting State
358 becomes effective as provided under the laws of that State, the Uniform Standard shall
359 have no further force and effect in that State unless and until the legislation or regulation
360 implementing the opt out is repealed or otherwise becomes ineffective under the laws of the

361 **State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard**
362 **has been made effective in that State, the opt out shall have the same prospective effect as**
363 **provided under Article XIV for withdrawals.**

364 **6. Stay of Uniform Standard. If a Compacting State has formally initiated the**
365 **process of opting out of a Uniform Standard by regulation, and while the regulatory opt**
366 **out is pending, the Compacting State may petition the Commission, at least fifteen (15)**
367 **days before the effective date of the Uniform Standard, to stay the effectiveness of the**
368 **Uniform Standard in that State. The Commission may grant a stay if it determines the**
369 **regulatory opt out is being pursued in a reasonable manner and there is a likelihood of**
370 **success. If a stay is granted or extended by the Commission, the stay or extension thereof**
371 **may postpone the effective date by up to ninety (90) days, unless affirmatively extended by**
372 **the Commission; provided, a stay may not be permitted to remain in effect for more than**
373 **one (1) year unless the Compacting State can show extraordinary circumstances which**
374 **warrant a continuance of the stay, including, but not limited to, the existence of a legal**
375 **challenge which prevents the Compacting State from opting out. A stay may be terminated**
376 **by the Commission upon notice that the rulemaking process has been terminated.**

377 **7. Not later than thirty (30) days after a Rule or Operating Procedure is**
378 **promulgated, any person may file a petition for judicial review of the Rule or Operating**
379 **Procedure; provided, that the filing of such a petition shall not stay or otherwise prevent**
380 **the Rule or Operating Procedure from becoming effective unless the court finds that the**
381 **petitioner has a substantial likelihood of success. The court shall give deference to the**
382 **actions of the Commission consistent with applicable law and shall not find the Rule or**
383 **Operating Procedure to be unlawful if the Rule or Operating Procedure represents a**
384 **reasonable exercise of the Commission's authority.**

385 **ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT**

386 **1. The Commission shall promulgate Rules establishing conditions and procedures**
387 **for public inspection and copying of its information and official records, except such**
388 **information and records involving the privacy of individuals and insurers' trade secrets.**
389 **The Commission may promulgate additional Rules under which it may make available to**
390 **federal and state agencies, including law enforcement agencies, records and information**
391 **otherwise exempt from disclosure, and may enter into agreements with such agencies to**
392 **receive or exchange information or records subject to nondisclosure and confidentiality**
393 **provisions.**

394 **2. Except as to privileged records, data and information, the laws of any**
395 **Compacting State pertaining to confidentiality or nondisclosure shall not relieve any**
396 **Compacting State Commissioner of the duty to disclose any relevant records, data or**

397 information to the Commission; provided, that disclosure to the Commission shall not be
398 deemed to waive or otherwise affect any confidentiality requirement; and further provided,
399 that, except as otherwise expressly provided in this Act, the Commission shall not be
400 subject to the Compacting State's laws pertaining to confidentiality and nondisclosure with
401 respect to records, data and information in its possession. Confidential information of the
402 Commission shall remain confidential after such information is provided to any
403 Commissioner.

404 **3. The Commission shall monitor Compacting States for compliance with duly**
405 **adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The**
406 **Commission shall notify any non-complying Compacting State in writing of its**
407 **noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-**
408 **complying Compacting State fails to remedy its noncompliance within the time specified**
409 **in the notice of noncompliance, the Compacting State shall be deemed to be in default as**
410 **set forth in Article XIV.**

411 **4. The Commissioner of any State in which an Insurer is authorized to do business,**
412 **or is conducting the business of insurance, shall continue to exercise his or her authority**
413 **to oversee the market regulation of the activities of the Insurer in accordance with the**
414 **provisions of the State's law. The Commissioner's enforcement of compliance with the**
415 **Compact is governed by the following provisions:**

416 **a. With respect to the Commissioner's market regulation of a Product or**
417 **Advertisement that is approved or certified to the Commission, the content of the Product**
418 **or Advertisement shall not constitute a violation of the provisions, standards or**
419 **requirements of the Compact except upon a final order of the Commission, issued at the**
420 **request of a Commissioner after prior notice to the Insurer and an opportunity for hearing**
421 **before the Commission.**

422 **b. Before a Commissioner may bring an action for violation of any provision,**
423 **standard or requirement of the Compact relating to the content of an Advertisement not**
424 **approved or certified to the Commission, the Commission, or an authorized Commission**
425 **officer or employee, must authorize the action. However, authorization pursuant to this**
426 **paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of**
427 **requests for authorization or records of the Commission's action on such requests.**

428 **ARTICLE IX. DISPUTE RESOLUTION**

429 **The Commission shall attempt, upon the request of a Member, to resolve any**
430 **disputes or other issues that are subject to this Compact and which may arise between two**
431 **or more Compacting States, or between Compacting States and Non-compacting States,**

432 and the Commission shall promulgate an Operating Procedure providing for resolution
433 of such disputes.

434 **ARTICLE X. PRODUCT FILING AND APPROVAL**

435 **1. Insurers and Third-Party Filers seeking to have a Product approved by the**
436 **Commission shall file the Product with, and pay applicable filing fees to, the Commission.**
437 **Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from**
438 **filing its Product with the insurance department in any State wherein the insurer is**
439 **licensed to conduct the business of insurance, and such filing shall be subject to the laws**
440 **of the States where filed.**

441 **2. The Commission shall establish appropriate filing and review processes and**
442 **procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding**
443 **any provision herein to the contrary, the Commission shall promulgate Rules to establish**
444 **conditions and procedures under which the Commission will provide public access to**
445 **Product filing information. In establishing such Rules, the Commission shall consider the**
446 **interests of the public in having access to such information, as well as protection of**
447 **personal medical and financial information and trade secrets, that may be contained in a**
448 **Product filing or supporting information.**

449 **3. Any Product approved by the Commission may be sold or otherwise issued in**
450 **those Compacting States for which the Insurer is legally authorized to do business.**

451 **ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS**

452 **1. Not later than thirty (30) days after the Commission has given notice of a**
453 **disapproved Product or Advertisement filed with the Commission, the Insurer or Third**
454 **Party Filer whose filing was disapproved may appeal the determination to a review panel**
455 **appointed by the Commission. The Commission shall promulgate Rules to establish**
456 **procedures for appointing such review panels and provide for notice and hearing. An**
457 **allegation that the Commission, in disapproving a Product or Advertisement filed with the**
458 **Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion**
459 **or otherwise not in accordance with the law, is subject to judicial review in accordance**
460 **with Article III, Section 4.**

461 **2. The Commission shall have authority to monitor, review and reconsider Products**
462 **and Advertisement subsequent to their filing or approval upon a finding that the product**
463 **does not meet the relevant Uniform Standard. Where appropriate, the Commission may**
464 **withdraw or modify its approval after proper notice and hearing, subject to the appeal**
465 **process in Section 1 above.**

466 **ARTICLE XII. FINANCE**

467 **1. The Commission shall pay or provide for the payment of the reasonable expenses**
468 **of its establishment and organization. To fund the cost of its initial operations, the**
469 **Commission may accept contributions and other forms of funding from the National**
470 **Association of Insurance Commissioners, Compacting States and other sources.**
471 **Contributions and other forms of funding from other sources shall be of such a nature that**
472 **the independence of the Commission concerning the performance of its duties shall not be**
473 **compromised.**

474 **2. The Commission shall collect a filing fee from each Insurer and Third Party Filer**
475 **filing a product with the Commission to cover the cost of the operations and activities of**
476 **the Commission and its staff in a total amount sufficient to cover the Commission's annual**
477 **budget.**

478 **3. The Commission's budget for a fiscal year shall not be approved until it has been**
479 **subject to notice and comment as set forth in Article VII of this Compact.**

480 **4. The Commission shall be exempt from all taxation in and by the Compacting**
481 **States.**

482 **5. The Commission shall not pledge the credit of any Compacting State, except by**
483 **and with the appropriate legal authority of that Compacting State.**

484 **6. The Commission shall keep complete and accurate accounts of all its internal**
485 **receipts, including grants and donations, and disbursements of all funds under its control.**
486 **The internal financial accounts of the Commission shall be subject to the accounting**
487 **procedures established under its Bylaws. The financial accounts and reports including the**
488 **system of internal controls and procedures of the Commission shall be audited annually**
489 **by an independent certified public accountant. Upon the determination of the**
490 **Commission, but no less frequently than every three (3) years, the review of the**
491 **independent auditor shall include a management and performance audit of the**
492 **Commission. The Commission shall make an Annual Report to the Governor and**
493 **legislature of the Compacting States, which shall include a report of the independent audit.**
494 **The Commission's internal accounts shall not be confidential and such materials may be**
495 **shared with the Commissioner of any Compacting State upon request provided, however,**
496 **that any work papers related to any internal or independent audit and any information**
497 **regarding the privacy of individuals and insurers' proprietary information, including trade**
498 **secrets, shall remain confidential.**

499 **7. No Compacting State shall have any claim to or ownership of any property held**
500 **by or vested in the Commission or to any Commission funds held pursuant to the**
501 **provisions of this Compact.**

502 **ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT**

- 503 **1. Any State is eligible to become a Compacting State.**
- 504 **2. The Compact shall become effective and binding upon legislative enactment of**
505 **the Compact into law by two Compacting States; provided, the Commission shall become**
506 **effective for purposes of adopting Uniform Standards for, reviewing, and giving approval**
507 **or disapproval of, Products filed with the Commission that satisfy applicable Uniform**
508 **Standards only after twenty-six (26) States are Compacting States or, alternatively, by**
509 **States representing greater than forty percent (40%) of the premium volume for life**
510 **insurance, annuity, disability income and long-term care insurance products, based on**
511 **records of the NAIC for the prior year. Thereafter, it shall become effective and binding**
512 **as to any other Compacting State upon enactment of the Compact into law by that State.**
- 513 **3. Amendments to the Compact may be proposed by the Commission for enactment**
514 **by the Compacting States. No amendment shall become effective and binding upon the**
515 **Commission and the Compacting States unless and until all Compacting States enact the**
516 **amendment into law.**

517 **ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION**

- 518 **1. Withdrawal**
- 519 **a. Once effective, the Compact shall continue in force and remain binding upon**
520 **each and every Compacting State; provided, that a Compacting State may withdraw from**
521 **the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute**
522 **which enacted the Compact into law.**
- 523 **b. The effective date of withdrawal is the effective date of the repealing statute.**
524 **However, the withdrawal shall not apply to any product filings approved or self-certified,**
525 **or any Advertisement of such products, on the date the repealing statute becomes effective,**
526 **except by mutual agreement of the Commission and the Withdrawing State unless the**
527 **approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.**
- 528 **c. The Commissioner of the Withdrawing State shall immediately notify the**
529 **Management Committee in writing upon the introduction of legislation repealing this**
530 **Compact in the Withdrawing State.**
- 531 **d. The Commission shall notify the other Compacting States of the introduction of**
532 **such legislation within ten (10) days after its receipt of notice thereof.**
- 533 **e. The Withdrawing State is responsible for all obligations, duties and liabilities**
534 **incurred through the effective date of withdrawal, including any obligations, the**
535 **performance of which extend beyond the effective date of withdrawal, except to the extent**
536 **those obligations may have been released or relinquished by mutual agreement of the**
537 **Commission and the Withdrawing State. The Commission's approval of Products and**
538 **Advertisement prior to the effective date of withdrawal shall continue to be effective and**

539 be given full force and effect in the Withdrawing State, unless formally rescinded by the
540 Withdrawing State in the same manner as provided by the laws of the Withdrawing State
541 for the prospective disapproval of products or advertisement previously approved under
542 state law.

543 f. Reinstatement following withdrawal of any Compacting State shall occur upon
544 the effective date of the Withdrawing State reenacting the Compact.

545 2. Default

546 a. If the Commission determines that any Compacting State has at any time
547 defaulted ("Defaulting State") in the performance of any of its obligations or
548 responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating
549 Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges
550 and benefits conferred by this Compact on the Defaulting State shall be suspended from
551 the effective date of default as fixed by the Commission. The grounds for default include,
552 but are not limited to, failure of a Compacting State to perform its obligations or
553 responsibilities, and any other grounds designated in Commission Rules. The Commission
554 shall immediately notify the Defaulting State in writing of the Defaulting State's suspension
555 pending a cure of the default. The Commission shall stipulate the conditions and the time
556 period within which the Defaulting State must cure its default. If the Defaulting State fails
557 to cure the default within the time period specified by the Commission, the Defaulting State
558 shall be terminated from the Compact and all rights, privileges and benefits conferred by
559 this Compact shall be terminated from the effective date of termination.

560 b. Product approvals by the Commission or product self-certifications, or any
561 Advertisement in connection with such product, that are in force on the effective date of
562 termination shall remain in force in the Defaulting State in the same manner as if the
563 Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.

564 c. Reinstatement following termination of any Compacting State requires a
565 reenactment of the Compact.

566 3. Dissolution of Compact

567 a. The Compact dissolves effective upon the date of the withdrawal or default of
568 the Compacting State which reduces membership in the Compact to one Compacting State.

569 b. Upon the dissolution of this Compact, the Compact becomes null and void and
570 shall be of no further force or effect, and the business and affairs of the Commission shall
571 be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

572 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

573 **1. The provisions of this Compact shall be severable; and if any phrase, clause,**
574 **sentence or provision is deemed unenforceable, the remaining provisions of the Compact**
575 **shall be enforceable.**

576 **2. The provisions of this Compact shall be liberally construed to effectuate its**
577 **purposes.**

578 **ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS**

579 **1. Other Laws**

580 **a. Nothing herein prevents the enforcement of any other law of a Compacting State,**
581 **except as provided in Paragraph b of this section.**

582 **b. For any Product approved or certified to the Commission, the Rules, Uniform**
583 **Standards and any other requirements of the Commission shall constitute the exclusive**
584 **provisions applicable to the content, approval and certification of such Products. For**
585 **Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard**
586 **or other requirement of the Commission which governs the content of the Advertisement**
587 **shall constitute the exclusive provision that a Commissioner may apply to the content of**
588 **the Advertisement. Notwithstanding the foregoing, no action taken by the Commission**
589 **shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available**
590 **under state law related to breach of contract, tort, or other laws not specifically directed**
591 **to the content of the Product; (iii) state law relating to the construction of insurance**
592 **contracts; or (iv) the authority of the attorney general of the state, including but not limited**
593 **to maintaining any actions or proceedings, as authorized by law.**

594 **c. All insurance products filed with individual States shall be subject to the laws of**
595 **those States.**

596 **2. Binding Effect of this Compact**

597 **a. All lawful actions of the Commission, including all Rules and Operating**
598 **Procedures promulgated by the Commission, are binding upon the Compacting States.**

599 **b. All agreements between the Commission and the Compacting States are binding**
600 **in accordance with their terms.**

601 **c. Upon the request of a party to a conflict over the meaning or interpretation of**
602 **Commission actions, and upon a majority vote of the Compacting States, the Commission**
603 **may issue advisory opinions regarding the meaning or interpretation in dispute.**

604 **d. In the event any provision of this Compact exceeds the constitutional limits**
605 **imposed on the legislature of any Compacting State, the obligations, duties, powers or**
606 **jurisdiction sought to be conferred by that provision upon the Commission shall be**
607 **ineffective as to that Compacting State, and those obligations, duties, powers or**
608 **jurisdiction shall remain in the Compacting State and shall be exercised by the agency**

609 thereof to which those obligations, duties, powers or jurisdiction are delegated by law in
610 effect at the time this Compact becomes effective.

**374.776. During the legislative interim between the first regular session and the
2 second regular session of the ninety-fifth general assembly, the Missouri department of
3 insurance, financial institutions and professional registration shall conduct a study
4 regarding its licensing rules and other policies and procedures governing the bail bond
5 industry within the state of Missouri. The department, in its discretion, may hold public
6 hearings within the state and permit testimony and input from surety insurance companies,
7 general bail bond agents, bail bond agents, legislators, law enforcement agencies, officials
8 from the department, and other interested parties. If public hearings are held, the director
9 shall provide notice to all licensees licensed under sections 374.695 to 374.789 of the date,
10 time, and location of such public hearings. The department shall submit a report of its
11 findings and recommendations to the house of representatives and senate insurance
12 committees no later than January 6, 2010.**

375.020. 1. Beginning January 1, 2008, each insurance producer, unless exempt
2 pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete
3 courses of study as required by this section. Any person licensed to act as an insurance producer
4 shall, during each two years, attend courses or programs of instruction or attend seminars
5 equivalent to a minimum of sixteen hours of instruction. Of the sixteen hours' training required
6 in this subsection, the hours need not be divided equally among the lines of authority in which
7 the producer has qualified. The courses or programs attended by the producer during each
8 two-year period shall include instruction on Missouri law, products offered in any line of
9 authority in which the producer is qualified, producers' duties and obligations to the department,
10 and business ethics, including sales suitability. Course credit shall be given to members of the
11 general assembly as determined by the department.

12 2. Subject to approval by the director, the courses or programs of instruction which shall
13 be deemed to meet the director's standards for continuing educational requirements shall include,
14 but not be limited to, the following:

- 15 (1) American College Courses (CLU, ChFC);
- 16 (2) Life Underwriters Training Council (LUTC);
- 17 (3) Certified Insurance Counselor (CIC);
- 18 (4) Chartered Property and Casualty Underwriter (CPCU);
- 19 (5) Insurance Institute of America (IIA);
- 20 (6) Any other professional financial designation approved by the director by rule;
- 21 (7) An insurance-related course taught by an accredited college or university or qualified
22 instructor who has taught a course of insurance law at such institution;

23 (8) A course or program of instruction or seminar developed or sponsored by any
24 authorized insurer, recognized producer association or insurance trade association, **or any other**
25 **entity engaged in the business of providing education courses to producers.** A local
26 producer group may also be approved if the instructor receives no compensation for services.

27 3. A person teaching any approved course of instruction or lecturing at any approved
28 seminar shall qualify for the same number of classroom hours as would be granted to a person
29 taking and successfully completing such course, seminar or program.

30 4. Excess hours accumulated during any two-year period may be carried forward to the
31 two-year period immediately following the two-year period in which the course, program or
32 seminar was held.

33 5. For good cause shown, the director may grant an extension of time during which the
34 educational requirements imposed by this section may be completed, but such extension of time
35 shall not exceed the period of one calendar year. The director may grant an individual waiver
36 of the mandatory continuing education requirement upon a showing by the licensee that it is not
37 feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be
38 granted for reasons including, but not limited to:

39 (1) Serious physical injury or illness;

40 (2) Active duty in the armed services for an extended period of time;

41 (3) Residence outside the United States; or

42 (4) The licensee is at least seventy years of age.

43 6. Every person subject to the provisions of this section shall furnish in a form
44 satisfactory to the director, written certification as to the courses, programs or seminars of
45 instruction taken and successfully completed by such person. Every provider of continuing
46 education courses authorized in this state shall, within thirty working days of a licensed producer
47 completing its approved course, provide certification to the director of the completion in a format
48 prescribed by the director.

49 7. The provisions of this section shall not apply to those natural persons holding licenses
50 for any kind or kinds of insurance for which an examination is not required by the law of this
51 state, nor shall they apply to any limited lines insurance producer license or restricted license as
52 the director may exempt.

53 8. The provisions of this section shall not apply to a life insurance producer who is
54 limited by the terms of a written agreement with the insurer to transact only specific life
55 insurance policies having an initial face amount of five thousand dollars or less, or annuities
56 having an initial face amount of ten thousand dollars or less, that are designated by the purchaser
57 for the payment of funeral or burial expenses. The director may require the insurer entering into

58 the written agreements with the insurance producers pursuant to this subsection to certify as to
59 the representations of the insurance producers.

60 9. Rules and regulations necessary to implement and administer this section shall be
61 promulgated by the director, including, but not limited to, rules and regulations regarding the
62 following:

63 (1) Course content and hour credits: the insurance advisory board established by section
64 375.019 shall be utilized by the director to assist him in determining acceptable content of
65 courses, programs and seminars to include classroom equivalency;

66 (2) Filing fees for course approval: every applicant seeking approval by the director of
67 a continuing education course under this section shall pay to the director a filing fee of fifty
68 dollars per course. Fees shall be waived for state and local insurance producer groups. Such fee
69 shall accompany any application form required by the director. Courses shall be approved for
70 a period of no more than one year. Applicants holding courses intended to be offered for a
71 longer period must reapply for approval. Courses approved by the director prior to August 28,
72 1993, for which continuous certification is sought should be resubmitted for approval sixty days
73 before the anniversary date of the previous approval.

74 10. All funds received pursuant to the provisions of this section shall be transmitted by
75 the director to the department of revenue for deposit in the state treasury to the credit of the
76 insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds
77 appropriated from the insurance dedicated fund by the legislature.

375.1025. As used in sections 375.1025 to 375.1062, the following terms shall mean:

2 (1) ["Audited financial report" means and includes those items specified in section
3 375.1032;

4 (2) "Accountant" [and] or "independent certified public accountant", an independent
5 certified public accountant or accounting firm in good standing with the American Institute of
6 Certified Public Accountants and in all states in which they are licensed to practice. For
7 Canadian and British companies, it means a Canadian-chartered or British-chartered accountant;

8 (2) **"Affiliate" or "affiliated", a person that directly, or indirectly through one or
9 more intermediaries, controls, or is controlled by, or is under common control with, the
10 person specified;**

11 (3) **"AICPA", the American Institute of Certified Public Accountants;**

12 (4) **"Audit committee", a committee (or equivalent body) established by the board
13 of directors of an entity for the purpose of overseeing the accounting and financial
14 reporting processes of an insurer or group of insurers, and audits of financial statements
15 of the insurer or group of insurers. The audit committee of any entity that controls a
16 group of insurers may be deemed to be the audit committee for one or more of such**

17 **controlled insurers solely for the purposes of sections 375.1025 to 375.1062 at the election**
18 **of the controlling person. Such election shall be exercised under subsection 5 of section**
19 **375.1053. If an audit committee is not designated by the insurer, the insurer's entire board**
20 **of directors shall constitute the audit committee;**

21 **(5) "Audited financial report", includes those items specified in section 375.1032;**

22 **(6) "Department", the department of insurance, financial institutions and**
23 **professional registration;**

24 **[(3)] (7) "Director", the director of the department of insurance, financial institutions and**
25 **professional registration;**

26 **(8) "Group of insurers", those licensed insurers included in the reporting**
27 **requirements of sections 382.010 to 382.300, RSMo, or a set of insurers as identified by**
28 **management, for the purpose of assessing the effectiveness of internal control over**
29 **financial reporting;**

30 **(9) "Indemnification", an agreement of indemnity or a release from liability where**
31 **the intent or effect is to shift or limit in any manner the potential liability of the person or**
32 **firm for failure to adhere to applicable auditing or professional standards, whether or not**
33 **resulting in part from knowing of other misrepresentations made by the insurer or its**
34 **representatives;**

35 **(10) "Independent board member", the same meaning as described in subsection**
36 **3 of section 375.1053;**

37 **[(4)] (11) "Insurer", an insurer certified to do business in this state pursuant to section**
38 **375.161 or 375.831, and to companies authorized to transact business in this state pursuant to**
39 **chapters 354, 376, 377, 378, 379 and 381, RSMo;**

40 **(12) "Internal control over financial reporting", a process effected by an entity's**
41 **board of directors, management and other personnel designed to provide reasonable**
42 **assurance regarding the reliability of the financial statements, i.e., those items specified in**
43 **subsections 2 to 7 of section 375.1032 and includes those policies and procedures that:**

44 **(a) Pertain to the maintenance of records that, in reasonable detail, accurately and**
45 **fairly reflect the transactions and dispositions of assets;**

46 **(b) Provide reasonable assurance that transactions are recorded as necessary to**
47 **permit preparation of financial statements, i.e., those items specified in subsections 2 to 7**
48 **of section 375.1032, and that receipts and expenditures are being made only in accordance**
49 **with authorizations of management and directors; and**

50 **(c) Provide reasonable assurance regarding prevention or timely detection of**
51 **unauthorized acquisition, use or disposition of assets that could have a material effect on**
52 **the financial statements, i.e., those items specified in subsections 2 to 7 of section 375.1032;**

- 53 (13) "NAIC", the National Association of Insurance Commissioners;
- 54 (14) "SEC", the United States Securities and Exchange Commission;
- 55 (15) "Section 404", Section 404 of the Sarbanes-Oxley Act of 2002, as amended, and
- 56 **the SEC's rules and regulations promulgated thereunder;**
- 57 (16) "Section 404 report", management's report on internal control over financial
- 58 **reporting, as defined by the SEC and the related attestation report of the independent**
- 59 **certified public accountant as described in subsection 1 of section 375.1030;**
- 60 (17) "SOX compliant entity", an entity that either is required to be or voluntarily
- 61 **is compliant with all of the following provisions of the Sarbanes-Oxley Act of 2002, as**
- 62 **amended:**
- 63 (a) **The preapproval requirements of Section 201 (Section 10A(i) of the federal**
- 64 **Securities Exchange Act of 1934);**
- 65 (b) **The audit committee independence requirements of Section 301 (Section**
- 66 **10A(m)(3) of the federal Securities Exchange Act of 1934); and**
- 67 (c) **The internal control over financial reporting requirements of Section 404.**
- 375.1028. 1. Sections 375.1025 to 375.1062 shall apply to all insurers as defined by
- 2 section 375.1025. **Insurers having direct premiums written in this state of less than one**
- 3 **million dollars in any calendar year and less than one thousand policyholders or certificate**
- 4 **holders of direct written policies nationwide at the end of the calendar year shall be exempt**
- 5 **from sections 375.1025 to 375.1062, unless the director makes a specific finding that**
- 6 **compliance is necessary for the director to carry out statutory responsibilities; except that,**
- 7 **insurers having assumed premiums under contracts or treaties of reinsurance of one**
- 8 **million dollars or more shall not be so exempt.**
- 9 2. Foreign or alien insurers filing audited financial reports in another state, pursuant to
- 10 such other state's requirement for **filing of** audited financial reports which [are] **have been** found
- 11 by the director to be substantially similar to the requirements herein, are exempt from sections
- 12 [375.1025 to 375.1062] **375.1030 to 375.1050** if:
- 13 (1) A copy of the audited financial report [and the evaluation of accounting procedures
- 14 and systems of internal control report which] , **communication of internal control-related**
- 15 **matters noted in an audit, and the accountant's letter of qualifications that** are filed with
- 16 such other state are filed with the director in accordance with the filing dates specified in sections
- 17 375.1030, **375.1047**, and [375.1052] **375.1040**, respectively. Canadian insurers may submit
- 18 accountant's reports as filed with the [Canadian Dominion Department of Insurance;] **Office of**
- 19 **the Superintendent of Financial Institutions, Canada; and**
- 20 (2) A copy of any notification of adverse financial condition report filed with such other
- 21 state is filed with the director within the time specified in section 375.1045.

22 **3. Foreign or alien insurers required to file management's report of internal control**
23 **over financial reporting in another state are exempt from filing such report in this state,**
24 **provided such other state has substantially similar reporting requirements and such report**
25 **is filed with such other state's chief insurance regulatory official within the time specified.**

26 **4.** Sections 375.1025 to 375.1062 shall not prohibit, preclude or in any way limit the
27 director from ordering [and] , conducting [and] , **or** performing examinations of insurers under
28 any other applicable law.

 375.1030. 1. All insurers shall have an annual audit [performed] by an independent
2 certified public accountant and shall file an audited financial report with the director on or before
3 June first [with respect to the calendar] **for the** year ended December thirty-first immediately
4 preceding. The director may require an insurer to file an audited financial report earlier than
5 June first with ninety days' advance notice to the insurer.

6 2. Extensions of the June first filing date may be granted by the director for thirty-day
7 periods upon a showing by the insurer and its independent certified public accountant **of** the
8 reasons for requesting such extension and determination by the director of good cause for an
9 extension. The request for extension must be submitted in writing not less than [twenty] **ten**
10 days prior to the due date in sufficient detail to permit the director to make an informed decision
11 with respect to the requested extension.

12 **3. If an extension is granted in accordance with the provisions of subsection 2 of**
13 **this section, a similar extension of thirty days is granted to the filing of management's**
14 **report of internal control over financial reporting.**

15 **4. Every insurer required to file an annual audited financial report under sections**
16 **375.1025 to 375.1062 shall designate a group of individuals as constituting its audit**
17 **committee, as defined in section 375.1025. The audit committee of an entity that controls**
18 **an insurer may be deemed to be the insurer's audit committee for purposes of sections**
19 **375.1025 to 375.1062 at the election of the controlling person.**

 375.1032. 1. The annual audited financial report shall report the financial condition of
2 the insurer as of the end of the most recent calendar year and the results of its operation, cash
3 flows and changes in capital and surplus for the previous year ended in conformity with
4 accounting practices prescribed, or otherwise permitted, by law or rule of the department of
5 insurance of the state of domicile of the insurer.

6 2. The annual audited financial report shall include the following:

- 7 (1) Report of independent certified public accountant;
8 (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
9 (3) Statement of [gain or loss from] operations;
10 (4) Statement of cash [flows] **flow**;

- 11 (5) Statement of changes in capital and surplus;
- 12 (6) Notes to financial statements. These notes shall be those required by the
13 **appropriate** National Association of Insurance Commissioners' Annual Statement Instructions
14 [and any other notes required by generally accepted accounting principles] **the NAIC's**
15 **Accounting Practices and Procedures Manual as adopted by the director** and shall include[:
- 16 (a)] a reconciliation of differences, if any, between the audited statutory financial
17 statements and the annual statement filed pursuant to section 375.041 and section 354.105,
18 354.435, RSMo, 376.350, RSMo, 377.100, 377.380, RSMo, 378.350, RSMo, 379.105, RSMo,
19 380.051 or 380.482, RSMo, with a written description of the nature of these differences[;
- 20 (b) A summary of ownership and relationships of the insurer and all affiliated
21 companies; and
- 22 (c) A narrative explanation of all significant intercompany transactions and balances].
- 23 3. The financial statements included in the audited financial report shall be prepared in
24 a form and using language and groupings substantially the same as the relevant sections of the
25 annual statement of the insurer filed with the director[:
- 26 (1)] , **and** the financial statement shall be comparative, presenting the amounts as of
27 December thirty-first of the current year and the amounts as of the immediately preceding
28 December thirty-first. However, in the first year in which an insurer is required to file an audited
29 financial report, the comparative data may be omitted[;
- 30 (2) Amounts may be rounded to the nearest thousand dollars;
- 31 (3) Insignificant amounts may be combined].
- 375.1035. 1. Each insurer required by sections 375.1025 to [375.1057] **375.1062** to file
2 an annual audited financial report shall, within sixty days after becoming subject to such
3 requirement, register with the director in writing the name and address of its independent
4 certified public accountant or accounting firm [(generally referred to in sections 375.1025 to
5 375.1057 as the "accountant")] retained to conduct the annual audit set forth in sections 375.1025
6 to [375.1057] **375.1062**. Any insurer not retaining an independent certified public accountant
7 on the effective date of sections 375.1025 to [375.1057] **375.1062** shall register the name and
8 address of its retained **independent** certified public accountant not less than six months before
9 the date when the first audited financial report is to be filed.
- 10 2. The insurer shall obtain a letter from such accountant, and file a copy with the director
11 stating that the accountant is aware of the provisions of the insurance laws and the rules and
12 regulations of the department of insurance of the state of domicile that relate to accounting and
13 financial matters and affirming that [he] **the accountant** will express his **or her** opinion on the
14 financial statements in [the] terms of their conformity to the statutory accounting practices

15 prescribed or otherwise permitted by that department of insurance, specifying such exceptions
16 as he **or she** may believe appropriate.

17 3. If an accountant who was the accountant for the immediately preceding filed audited
18 financial report is dismissed or resigns, the insurer shall within five business days notify the
19 director of this event. The insurer shall also furnish the director with a separate letter within ten
20 business days of the notification stating whether in the twenty-four months preceding such event
21 there were any disagreements with the former accountant on any matter of accounting principles
22 or practices, financial statement disclosure, or auditing scope or procedure, which disagreements,
23 if not resolved to the satisfaction of the former accountant, would have caused him **or her** to
24 make reference to the subject matter of the disagreement in connection with his **or her** opinion.
25 Disagreements required to be reported by this section include both disagreements resolved to the
26 former accountant's satisfaction, and disagreements not resolved to the former accountant's
27 satisfaction. Disagreements contemplated by this section are those that occur at the
28 decision-making level, between personnel of the insurer responsible for the presentation of its
29 financial statements and personnel of the accounting firm responsible for rendering its report.
30 The insurer shall also in writing request such former accountant to furnish a letter addressed to
31 the [director] **insurer** stating whether the accountant agrees with the statements contained in the
32 insurer's letter and, if not, stating the reasons for which he does not agree, and the insurer shall
33 furnish such responsive letter from the former accountant to the director together with its own.

375.1037. 1. The director shall not recognize [or approve] any person or firm as [an] **a**
2 **qualified** independent certified public accountant [that] **if such person or firm:**

3 (1) Is not in good standing with the American Institute of Certified Public Accountants
4 and in all states in which the accountant is licensed to practice, or, for a Canadian or British
5 company, that is not a chartered accountant;

6 (2) **Has either directly or indirectly entered into an indemnification with respect to**
7 **the audit of the insurer.**

8 2. Except as otherwise provided [herein, a] **in sections 375.1025 to 375.1062, the**
9 **director shall recognize an independent** certified public accountant [shall be recognized as
10 independent] **as qualified** as long as he **or she** conforms to the standards of his **or her**
11 profession, as contained in the code of professional ethics of the American Institute of Certified
12 Public Accountants and rules and regulations and code of ethics and rules of professional
13 conduct of the Missouri state board of accountancy, or similar code.

14 3. [No partner or other person responsible for rendering a report may] **The lead or**
15 **coordinating audit partner or person having primary responsibility for the audit shall not**
16 act in that capacity for more than [seven] **five** consecutive years. [Following any period of
17 service] Such **partner or** person shall be disqualified from acting in that or a similar capacity

18 for the same company or its insurance subsidiaries or affiliates for a period of [two] **five** years.
19 An insurer may make application to the director for relief from the above rotation requirement
20 on the basis of unusual circumstances. **Such application shall be made at least thirty days**
21 **before the end of the calendar year. The insurer shall file, with its annual statement filing,**
22 **the approval, if any, for relief from this subsection with the states that it is licensed in or**
23 **doing business in and with the NAIC. If the nondomestic state accepts electronic filing**
24 **with the NAIC, the insurer shall file the approval in an electronic format acceptable to the**
25 **NAIC.** The director may consider the following factors in determining if the relief should be
26 granted:

27 (1) Number of partners, expertise of the partners or the number of insurance clients in
28 the currently registered firm;

29 (2) Premium volume of the insurer; or

30 (3) Number of jurisdictions in which the insurer transacts business.

31 4. The director shall [not] **neither** recognize as [capable or competent,] a **qualified**
32 **independent** certified public accountant, nor [shall the director] accept any annual audited
33 financial report, prepared in whole or in part by any **natural** person who:

34 (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and
35 Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or
36 practices under federal law or the laws of any state;

37 (2) Has **been found to have** violated the laws of this state with respect to any previous
38 audited financial report submitted pursuant to sections 375.1025 to [375.1057 or the similar laws
39 of any other state] **375.1062**; or

40 (3) Has demonstrated a pattern or practice of failing to detect or disclose material
41 information in previous reports filed under the provisions of sections 375.1025 to [375.1057]
42 **375.1062.**

43 5. The director [shall notify the insurer should he determine that the certified public
44 accountant is not independent or is incapable or incompetent] **may hold a hearing under**
45 **sections 536.100 to 536.140, RSMo, to determine whether an independent certified public**
46 **accountant is qualified and, considering the evidence presented, may rule that the**
47 **accountant is not qualified** for purposes of expressing his **or her** opinion on the financial
48 statements in the annual audited financial report made pursuant to sections 375.1025 to
49 [375.1057. If the insurer contests such determination, the director shall hold a hearing to
50 determine whether the certified public accountant is independent, capable and competent, and,
51 considering the evidence presented, may rule that the accountant is not independent or is
52 incapable or incompetent for purposes of expressing his opinion on the financial statements in
53 the annual audited financial report] **375.1062** and require the insurer to replace the accountant

54 with another whose relationship with the insurer is [independent] **qualified** within the meaning
55 of[, or who is capable or competent to perform the requirements of,] sections 375.1025 to
56 [375.1057] **375.1062**.

57 **6. A qualified independent certified public accountant may enter into an agreement**
58 **with an insurer to have disputes relating to an audit resolved by mediation or arbitration.**
59 **However, in the event of a delinquency proceeding commenced against the insurer under**
60 **sections 375.570 to 375.750, the mediation or arbitration provisions shall operate at the**
61 **option of the statutory successor.**

62 **7. The director shall not recognize as a qualified independent certified public**
63 **accountant, nor accept an annual audited financial report, prepared in whole or in part**
64 **by an accountant who functions in the role of management, audits his or her own work, or**
65 **serves in an advocacy role for the insurer. Without limiting the foregoing, the director**
66 **shall not recognize as a qualified independent certified public accountant, nor accept an**
67 **annual audited financial report, prepared in whole or in part by an accountant who**
68 **provides to an insurer, contemporaneously with the audit, the following nonaudit services:**

69 **(1) Bookkeeping or other services related to the accounting records or financial**
70 **statements of the insurer;**

71 **(2) Financial information systems design and implementation;**

72 **(3) Appraisal or valuation services, fairness opinions, or contribution-in-kind**
73 **reports;**

74 **(4) Actuarially oriented advisory services involving the determination of amounts**
75 **recorded in the financial statements. The accountant may assist an insurer in**
76 **understanding the methods, assumptions, and inputs used in the determination of amounts**
77 **recorded in the financial statement only if it is reasonable to conclude that the services**
78 **provided will not be subject to audit procedures during an audit of the insurer's financial**
79 **statements. An accountant's actuary may also issue an actuarial opinion or certification**
80 **("opinion") on an insurer's reserves if the following conditions have been met:**

81 **(a) Neither the accountant nor the accountant's actuary has performed any**
82 **management functions or made any management decisions;**

83 **(b) The insurer has competent personnel (or engages a third party actuary) to**
84 **estimate the reserves for which management takes responsibility; and**

85 **(c) The accountant's actuary tests the reasonableness of the reserves after the**
86 **insurer's management has determined the amount of the reserves;**

87 **(5) Internal audit outsourcing services;**

88 **(6) Management functions or human resources;**

89 **(7) Broker or dealer, investment adviser, or investment banking services;**

90 (8) Legal services or expert services unrelated to the audit; or

91 (9) Any other services that the director determines, by rule, are impermissible.

92 8. Insurers having direct written and assumed premiums of less than one hundred
93 million dollars in any calendar year may request an exemption from subsection 7 of this
94 section. The insurer shall file with the director a written statement discussing the reasons
95 why the insurer should be exempt from these provisions. If the director finds, upon review
96 of this statement, that compliance with this requirement would constitute a financial or
97 organizational hardship upon the insurer, an exemption may be granted.

98 9. A qualified independent certified public accountant who performs the audit may
99 engage in other nonaudit services, including tax services, that are not described in and do
100 not conflict with subsection 7 of this section, only if the activity is approved in advance by
101 the audit committee, in accordance with subsection 10 of this section.

102 10. All auditing services and nonaudit services provided to an insurer by the
103 qualified independent certified public accountant of the insurer shall be preapproved by
104 the audit committee. The preapproval requirement is waived with respect to nonaudit
105 services if the insurer is a SOX compliant entity or a direct or indirect wholly owned
106 subsidiary of a SOX compliant entity or:

107 (1) The aggregate amount of all such nonaudit services provided to the insurer
108 constitutes not more than five percent of the total amount of fees paid by the insurer to its
109 qualified independent certified public accountant during the fiscal year in which the
110 nonaudit services are provided;

111 (2) The services were not recognized by the insurer at the time of the engagement
112 to be nonaudit services; and

113 (3) The services are promptly brought to the attention of the audit committee and
114 approved prior to the completion of the audit by the audit committee or by one or more
115 members of the audit committee who are the members of the board of directors to whom
116 authority to grant such approvals has been delegated by the audit committee.

117 11. The audit committee may delegate to one or more designated members of the
118 audit committee the authority to grant the preapprovals required by subsection 10 of this
119 section. The decisions of any member to whom this authority is delegated shall be
120 presented to the full audit committee at each of its scheduled meetings.

121 12. The director shall not recognize an independent certified public accountant as
122 qualified for a particular insurer if a member of the board, president, chief executive
123 officer, controller, chief financial officer, chief accounting officer, or any person serving
124 in an equivalent position for that insurer was employed by the independent certified public

125 accountant and participated in the audit of that insurer during the one-year period
126 preceding the date that the most current statutory opinion is due.

127 **13. Subsection 12 of this section shall only apply to partners and senior managers**
128 **involved in the audit. An insurer may make application to the director for relief from**
129 **subsection 12 of this section on the basis of unusual circumstances. The insurer shall file,**
130 **with its annual statement filing, the approval for relief from subsection 12 of this section**
131 **with the states that it is licensed in or doing business in and the NAIC. If the nondomestic**
132 **state accepts electronic filing with the NAIC, the insurer shall file the approval in an**
133 **electronic format acceptable to the NAIC.**

375.1038. An insurer may make written application to the director for approval to
2 **file audited consolidated or combined financial statements in lieu of separate annual**
3 **audited financial statements if the insurer is part of a group of insurance companies that**
4 **utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency**
5 **and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed**
6 **business to the pool. In such cases, a columnar consolidating or combining worksheet shall**
7 **be filed with the report as follows:**

8 **(1) Amounts shown on the consolidated or combined audited financial report shall**
9 **be shown on the worksheet;**

10 **(2) Amounts for each insurer subject to this section shall be stated separately;**

11 **(3) Noninsurance operations may be shown on the worksheet on a combined or**
12 **individual basis;**

13 **(4) Explanations of consolidating and eliminating entries shall be included; and**

14 **(5) A reconciliation shall be included of any differences between the amounts shown**
15 **in the individual insurer columns of the worksheet and comparable amounts shown on the**
16 **annual statements of the insurers.**

375.1040. The accountant shall furnish the insurer in connection with, and for inclusion
2 **in, the filing of the annual audited financial report, a letter stating:**

3 **(1) [That he] Such accountant** is independent with respect to the insurer and conforms
4 to the standards of his **or her** profession as contained in the code of professional ethics and
5 pronouncements of the American Institute of Certified Public Accountants, and the rules of
6 professional conduct of the Missouri board of accountancy, or similar code;

7 **(2) The background and experience in general, and the experience in audits of insurers,**
8 **of the staff assigned to audit the financial statements of the insurer and whether each is an**
9 **independent certified public accountant. Nothing within this requirement shall be construed**
10 **as prohibiting the accountant from utilizing such staff as he or she deems appropriate**

11 **where use is consistent with the standards prescribed by generally accepted auditing**
12 **standards;**

13 (3) That the accountant understands the annual audited financial report and his opinion
14 thereon will be filed in compliance with sections 375.1025 to 375.1062 and that the director will
15 be relying on this information in the monitoring and regulation of the financial position of the
16 insurer;

17 (4) That the accountant consents to the requirements of section 375.1050 and that the
18 accountant consents and agrees to make available for review by the director, [his] **the director's**
19 designee or [his] appointed agent, the workpapers, as defined in section 375.1050;

20 (5) That the accountant is properly licensed by an appropriate state licensing authority
21 and that [he] **the accountant** is a member in good standing in the American Institute of Certified
22 Public Accountants;

23 (6) [That the accountant has liability insurance coverage of the lesser of one million
24 dollars or ten percent of the insurer's admitted assets; and

25 (7)] That the accountant is in compliance with the requirements of section 375.1037.
375.1042. Financial statements of the insurer to be filed pursuant to section 375.1030

2 shall be examined by an independent certified public accountant. The [examination] **audit** by
3 the independent certified public accountant of the insurer's financial statements shall be
4 conducted in accordance with generally accepted auditing standards [and consideration] . **In**
5 **accordance with AU Section 319 of the Professional Standards of the AICPA,**
6 **Consideration of Internal Control in a Financial Statement Audit, the independent**
7 **certified public accountant should obtain an understanding of internal control sufficient**
8 **to plan the audit. To the extent required by AU 319, for those insurers required to file a**
9 **Management's Report of Internal Control over Financial Reporting under section**
10 **375.1056, the independent certified public accountant should consider, as such term is**
11 **defined in Statement on Auditing Standards (SAS) No. 102, Defining Professional**
12 **Requirements in Statements on Auditing Standards or its replacement, the most recently**
13 **available report in planning and performing the audit of the statutory financial statements.**
14 **Consideration** shall be given to procedures illustrated in the Financial Condition Examiner's
15 Handbook promulgated by the National Association of Insurance Commissioners **as the**
16 **independent certified public accountant deems necessary.**

375.1045. 1. The insurer required to furnish the annual audited financial report shall
2 require the independent certified public accountant to report, in writing, within five business days
3 to the board of directors or its audit committee any determination by the independent certified
4 public accountant that the insurer has materially misstated its financial condition as reported to
5 the director as of the balance sheet date currently under [examination] **audit** or that the insurer

6 does not meet the minimum capital and surplus requirement of the law as of that date. An
7 insurer who has received a report pursuant to this subsection shall forward a copy of the report
8 to the director within five business days of receipt of such report and shall provide the
9 independent certified public accountant making the report with evidence of the report being
10 furnished to the director. If the independent certified public accountant fails to receive such
11 evidence within the required five-business-day period, the independent certified public
12 accountant shall furnish to the director a copy of its report within the next five business days.

13 2. No independent public accountant shall be liable in any manner to any person for any
14 statement made in connection with subsection 1 of this section if such statement is made in good
15 faith in compliance with subsection 1 of this section.

16 3. If the accountant, subsequent to the date of the audited financial report filed [pursuant
17 to this section] **under sections 375.1025 to 375.1062**, becomes aware of facts which might have
18 affected his **or her** report, [the department notes the obligation of the] **such** accountant **is**
19 **required** to take such action [under] **as prescribed in** the professional standards of the
20 American Institute of Certified Public Accountants.

375.1047. 1. In addition to the annual audited financial report, each insurer shall furnish
2 the director with a [report of evaluation performed by the accountant, in connection with his
3 examination, of the system of internal accounting controls of the insurer] **written**
4 **communication as to any unremediated material weaknesses in its internal control over**
5 **financial reporting noted during the audit. Such communication shall be prepared by the**
6 **accountant within sixty days after the filing of the annual audited financial report and**
7 **shall contain a description of any unremediated material weakness, as the term material**
8 **weakness is defined by Statement on Auditing Standard 60, Communication of Internal**
9 **Control Related Matters Noted in an Audit, or its replacement, as of December thirty-first**
10 **immediately preceding in the insurer's internal control over financial reporting noted by**
11 **the accountant during the course of their audit of the financial statements. If no**
12 **unremediated material weaknesses were noted, the communication shall so state.**

13 2. [A report of the evaluation by the accountant of the system of internal accounting
14 controls of the insurer, including any remedial action taken or proposed, shall be filed annually
15 by the insurer with the director within sixty days after the filing of the annual audited financial
16 report. This report shall follow generally the form for reports on internal control structure related
17 matters noted in an audit described in Volume 1, Section AU 325 of the professional standards
18 of the American Institute of Certified Public Accountants, as may be amended, or in the event
19 that such standards no longer be published, a similar standard to be designated by the director
20 by duly promulgated regulation] **The insurer is required to provide a description of remedial**

21 **actions taken or proposed to correct unremediated material weaknesses, if the actions are**
22 **not described in the accountant's communication.**

375.1050. 1. As used in this section, "workpapers" are the records kept by the
2 independent certified public accountant of the procedures followed, the tests performed, the
3 information obtained and the conclusions reached pertinent to [his examination] **such**
4 **accountant's audit** of the financial statements of an insurer. Workpapers may include audit
5 planning documentation, work programs, analyses, memoranda, letters of confirmation and
6 representation, abstracts of company documents, [any communications between the accountant
7 and the insurer,] and schedules or commentaries prepared or obtained by the independent
8 certified public accountant in the course of [his examination] **such accountant's audit** of the
9 financial statements of an insurer **and** which [relate to his opinion thereof] **support such**
10 **accountant's opinion.**

11 2. Every insurer required to file an audited financial report pursuant to sections 375.1025
12 to 375.1062 shall require the accountant to make available for review by the examiners of the
13 department of insurance, financial institutions and professional registration all workpapers
14 prepared in the conduct of [his examination] **the accountant's audit** and any communications
15 related to the audit between the accountant and the insurer, at the offices of the insurer, at the
16 department of insurance, financial institutions and professional registration or at any other
17 reasonable place designated by the director. The insurer shall require that the accountant retain
18 the audit workpapers **and communications** until the department has filed a report on
19 examination covering the period of the audit, but no longer than seven years from the date of the
20 audit report.

21 3. In the conduct of any examination or review by the department examiners, it shall be
22 agreed that photocopies of pertinent audit workpapers may be made and retained by the [director]
23 **department.** Such reviews by the [director or his] **department** examiners shall be considered
24 investigations and all working papers and communications obtained during the course of such
25 investigations shall be afforded the same confidentiality as other examination workpapers
26 generated by the department.

375.1052. 1. Upon written application of any insurer, the director may grant a temporary
2 exemption from compliance with sections 375.1025 to 375.1062 if the director finds, upon
3 review of the application, that compliance with sections 375.1025 to 375.1062 would constitute
4 a financial or organizational hardship upon the insurer. An exemption may be granted at any
5 time and from time to time for a specified period or periods. Within ten days from a denial of
6 an insurer's written request for an exemption from sections 375.1025 to 375.1062, such insurer
7 may request in writing a hearing on its application for an exemption. Such hearing shall be held
8 in accordance with the provisions of chapter 536, RSMo, pertaining to administrative hearing

9 procedures and shall be a public meeting as provided by subdivision (3) of section 610.010,
10 RSMo.

11 2. Domestic insurers:

12 **(1) Retaining a certified public accountant on the effective date of this section who**
13 **qualifies as independent shall comply with sections 375.1025 to 375.1062 for the year**
14 **ending December 31, 2009, and each year thereafter unless the director permits otherwise;**

15 **(2) Not retaining a certified public accountant on the effective date of this**
16 **regulation who qualifies as independent**

17

18 shall meet the following schedule for compliance with sections 375.1025 to 375.1062 unless the
19 director permits otherwise:

20 [(1) As of May 1, 1992, with respect to the calendar year ending on December 31, 1991,
21 each domestic insurer shall file with the director:

22 (a) Report of independent certified public accountant;

23 (b) Audited balance sheet;

24 (c) Notes to audited balance sheet;

25 **(2)] (a) As of December 31, 2009, file with the director an audited financial report;**

26 **(b) For the year ending December 31, [1992] 2010, and each year thereafter, such**
27 **insurers shall file with the director all reports and communications required by sections**
28 **375.1025 to 375.1062.**

29 3. Foreign insurers shall comply with sections 375.1025 to 375.1062 for the year ending
30 December 31, 1992, and each year thereafter, unless the director permits otherwise.

31 **4. The requirements of subsection three of section 375.1037 shall be in effect for**
32 **audits of the year beginning January 1, 2010, and thereafter.**

33 **5. The requirements of section 375.1053 are to be in effect January 1, 2010. An**
34 **insurer or group of insurers that is not required to have independent audit committee**
35 **members or only a majority but not a supermajority of independent audit committee**
36 **members, because the total written and assumed premium is below the threshold and**
37 **subsequently becomes subject to one of the independence requirements due to changes in**
38 **premium shall have one year following the year the threshold is exceeded, but not earlier**
39 **than January 1, 2010, to comply with the independence requirements. Likewise, an insurer**
40 **that becomes subject to one of the independence requirements as a result of a business**
41 **combination shall have one calendar year following the date of acquisition or combination**
42 **to comply with the independence requirements.**

43 **6. The requirements of sections 375.1038, 375.1054, and 375.1056 are effective**
44 **beginning with the reporting period ending December 31, 2010, and each year thereafter.**

45 An insurer or group of insurers that is not required to file a report because the total
46 written premium is below the threshold and subsequently becomes subject to the reporting
47 requirements shall have two years following the year the threshold is exceeded to file a
48 report. Likewise, an insurer acquired in a business combination shall have two calendar
49 years following the date of acquisition or combination to comply with the reporting
50 requirements.

375.1053. 1. This section shall not apply to foreign or alien insurers licensed in this
2 state or an insurer that is a SOX compliant entity or a direct or indirect wholly owned
3 subsidiary of a SOX compliant entity.

4 2. The audit committee shall be directly responsible for the appointment,
5 compensation, and oversight of the work of any accountant, including resolution of
6 disagreements between management and the accountant regarding financial reporting, for
7 the purpose of preparing or issuing the audited financial report or related work under
8 sections 375.1025 to 375.1062. Each accountant shall report directly to the audit
9 committee.

10 3. Each member of the audit committee shall be a member of the board of directors
11 of the insurer or a member of the board of directors of an entity elected under subsection
12 6 of this section and subdivision (6) of section 375.1025.

13 4. In order to be considered independent for purposes of this section, a member of
14 the audit committee shall not, other than in his or her capacity as a member of the audit
15 committee, the board of directors, or any other board committee, accept any consulting,
16 advisory, or other compensatory fee from the entity or be an affiliated person of the entity
17 or any subsidiary thereof. However, if law requires board participation by otherwise
18 nonindependent members, such law shall prevail and such members may participate in the
19 audit committee and be designated as independent for audit committee purposes, unless
20 they are an officer or employee of the insurer or one of its affiliates.

21 5. If a member of the audit committee ceases to be independent for reasons outside
22 the member's reasonable control, that person, with notice by the responsible entity to the
23 state, may remain an audit committee member of the responsible entity until the earlier of
24 the next annual meeting of the responsible entity or one year from the occurrence of the
25 event that caused the member to be no longer independent.

26 6. To exercise the election of the controlling person to designate the audit committee
27 for purposes of sections 375.1025 to 375.1062, the ultimate controlling person shall provide
28 written notice to the chief state insurance regulatory officials of the affected insurers.
29 Notification shall be made timely prior to the issuance of the statutory audit report and
30 include a description of the basis for the election. The election can be changed through

31 notice to the director by the insurer, which shall include a description of the basis for the
32 change. The election shall remain in effect for perpetuity, until rescinded.

33 7. (1) The audit committee shall require the accountant that performs for an
34 insurer any audit required by sections 375.1025 to 375.1062 to timely report to the audit
35 committee in accordance with the requirements of the auditing profession, including:

36 (a) All significant accounting policies and material permitted practices;

37 (b) All material alternative treatments of financial information within statutory
38 accounting principles that have been discussed with management officials of the insurer,
39 ramifications of the use of the alternative disclosures and treatments, and the treatment
40 preferred by the accountant; and

41 (c) Other material written communications between the accountant and the
42 management of the insurer, such as any management letter or schedule of unadjusted
43 differences.

44 (2) If an insurer is a member of an insurance holding company system, the reports
45 required by subdivision (1) of this subsection may be provided to the audit committee on
46 an aggregate basis for insurers in the holding company system; provided that any
47 substantial differences among insurers in the system are identified to the audit committee.

48 8. The proportion of independent audit committee members shall meet or exceed
49 the following criteria:

50 (1) If the insurer wrote direct and assumed premiums of zero to three hundred
51 million dollars during the prior calendar year, no minimum requirements are required
52 regarding the number or proportion of audit committee members who shall be
53 independent;

54 (2) If the insurer wrote direct and assumed premiums of three hundred million to
55 five hundred million dollars during the prior calendar year, at least a majority of the
56 members of the audit committee shall be independent; and

57 (3) If the insurer wrote direct and assumed premiums of five hundred million
58 dollars or more during the prior calendar year, a supermajority of at least seventy-five
59 percent of the members of the audit committee shall be independent.

60 9. An insurer with direct written and assumed premium, excluding premiums
61 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less
62 than five hundred million dollars may make application to the director for a waiver from
63 the requirements of this section based upon hardship. The insurer shall file, with its
64 annual statement filing, the approval for relief from this section with the states that it is
65 licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic

66 filing with the NAIC, the insurer shall file the approval in an electronic format acceptable
67 to the NAIC.

375.1054. 1. No director or officer of an insurer shall, directly or indirectly:

2 (1) Make or cause to be made a materially false or misleading statement to an
3 accountant in connection with any audit, review, or communication required under
4 sections 375.1025 to 375.1062; or

5 (2) Omit to state, or cause another person to omit to state, any material fact
6 necessary in order to make statements made, in light of the circumstances under which the
7 statements were made, not misleading to an accountant in connection with any audit,
8 review, or communication required under sections 375.1025 to 375.1062.

9 2. No officer or director of an insurer, or any other person acting under the
10 direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead,
11 or fraudulently influence any accountant engaged in the performance of an audit under
12 sections 375.1025 to 375.1062 if such person knew or should have known that the action,
13 if successful, could result in rendering the insurer's financial statements materially
14 misleading.

15 3. For purposes of subsection 2 of this section, actions that, "if successful, could
16 result in rendering the insurer's financial statements materially misleading" include, but
17 are not limited to, actions taken at any time with respect to the professional engagement
18 period to coerce, manipulate, mislead, or fraudulently influence an accountant:

19 (1) To issue or reissue a report on an insurer's financial statements that is not
20 warranted in the circumstances, due to material violations of statutory accounting
21 principles prescribed by the director, generally accepted auditing standards, or other
22 professional or regulatory standards;

23 (2) Not to perform audit, review, or other procedures required by generally
24 accepted auditing standards or other professional standards;

25 (3) Not to withdraw an issued report; or

26 (4) Not to communicate matters to an insurer's audit committee.

27 4. Any violation of any provision of this section is a level three violation under
28 section 374.049, RSMo.

375.1056. 1. Every insurer required to file an audited financial report under
2 sections 375.1025 to 375.1062 that has annual direct written and assumed premiums,
3 excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal
4 Flood Program, of five hundred million dollars or more shall prepare a report of the
5 insurer's or group of insurers' internal control over financial reporting, as such terms are
6 defined in section 375.1025. The report shall be filed with the director along with the

7 communication of internal control related matters noted in an audit described under
8 section 375.1047. Management's report of internal control over financial reporting shall
9 be as of December thirty-first immediately preceding.

10 2. Notwithstanding the premium threshold in subsection 1 of this section, the
11 director may require an insurer to file management's report of internal control over
12 financial reporting if the insurer is in any RBC level event, or meets any one or more of the
13 standards of an insurer deemed to be in hazardous financial condition as defined in rules
14 adopted by the director.

15 3. An insurer or a group of insurers that is:

16 (1) Directly subject to Section 404;

17 (2) Part of a holding company system whose parent is directly subject to Section
18 404;

19 (3) Not directly subject to Section 404 but is a SOX compliant entity; or

20 (4) A member of a holding company system whose parent is not directly subject to
21 Section 404 but is a SOX compliant entity

22
23 may file its or its parent's Section 404 report and an addendum in satisfaction of the
24 requirement of this section, provided that those internal controls of the insurer or group
25 of insurers having a material impact on the preparation of the insurer's or group of
26 insurers' audited statutory financial statements, namely those items included in
27 subdivisions (2) to (6) of subsection 2 of section 375.1032, were included in the scope of the
28 Section 404 report. The addendum shall be a positive statement by management that there
29 are no material processes with respect to the preparation of the insurer's or group of
30 insurers' audited statutory financial statements excluded from the Section 404 report. If
31 there are internal controls of the insurer or group of insurers that have a material impact
32 on the preparation of the insurer's or group of insurers' audited statutory financial
33 statements and those internal controls were not included in the scope of the Section 404
34 report, the insurer or group of insurers may either file a report under this section, or the
35 Section 404 report and a report under this section for those internal controls that have a
36 material impact on the preparation of the insurer's or group of insurers' audited statutory
37 financial statements not covered by the Section 404 report.

38 4. Management's report of internal control over financial reporting shall include:

39 (1) A statement that management is responsible for establishing and maintaining
40 adequate internal control over financial reporting;

41 (2) A statement that management has established internal control over financial
42 reporting and an assertion, to the best of management's knowledge and belief, after

43 **diligent inquiry, as to whether its internal control over financial reporting is effective to**
44 **provide reasonable assurance regarding the reliability of financial statements in**
45 **accordance with statutory accounting principles;**

46 **(3) A statement that briefly describes the approach or processes by which**
47 **management evaluated the effectiveness of its internal control over financial reporting;**

48 **(4) A statement that briefly describes the scope of work that is included and**
49 **whether any internal controls were excluded;**

50 **(5) Disclosure of any unremediated material weaknesses in the internal control over**
51 **financial reporting identified by management as of December thirty-first immediately**
52 **preceding. Management is not permitted to conclude that the internal control over**
53 **financial reporting is effective to provide reasonable assurance regarding the reliability of**
54 **financial statements in accordance with statutory accounting principles if there is one or**
55 **more unremediated material weaknesses in its internal control over financial reporting;**

56 **(6) A statement regarding the inherent limitations of internal control systems; and**

57 **(7) Signatures of the chief executive officer and the chief financial officer, or the**
58 **equivalent position or title.**

59 **5. Management shall document and make available upon financial condition**
60 **examination the basis upon which its assertions required in subsection 4 of this section are**
61 **made. Management may base its assertions, in part, upon its review, monitoring and**
62 **testing of internal controls undertaken in the normal course of its activities. Management**
63 **shall have discretion as to the nature of the internal control framework used, and the**
64 **nature and extent of documentation, in order to make its assertion in a cost-effective**
65 **manner and, as such, may include assembly of or reference to existing documentation.**
66 **Management's report on internal control over financial reporting, required by subsection**
67 **1 of this section, and any documentation provided in support thereof during the course of**
68 **a financial condition examination, shall be kept confidential by the department.**

69 **6. No officer responsible for financial reporting may be a member of the audit**
70 **committee.**

375.1057. 1. In the case of Canadian and British insurers, the annual audited financial
2 report shall be defined as the annual statement of total business on the form filed by such
3 companies with their [domiciliary supervisory] **supervision** authority duly audited by an
4 independent chartered accountant.

5 2. For such Canadian and British insurers, the letter required by **subsection 2 of** section
6 375.1035 shall state that the accountant is aware of the requirements relating to the annual
7 audited financial report filed with the director pursuant to section 375.1030 and shall affirm that
8 the opinion expressed is in conformity with such requirements.

2 **376.391. A health benefit plan or health carrier, as defined in section 376.1350,**
3 **including but not limited to preferred provider organizations, independent physicians**
4 **associations, third-party administrators, or any entity that contracts with licensed health**
5 **care providers shall not impose any co-payment that exceeds fifty percent of the total cost**
6 **of providing any single chiropractic service to its enrollees.**

2 **376.502. 1. No life insurance company doing business within this state shall deny**
3 **or refuse to accept an application for life insurance, refuse to renew, cancel, restrict, or**
4 **otherwise terminate a policy of life insurance, or charge a different rate for the same life**
5 **insurance coverage, based upon the applicant's or insured's past or future lawful travel**
6 **destinations. Nothing in this section shall prohibit a life insurance company from denying**
7 **an application for life insurance, or restricting or charging a different premium or rate for**
8 **coverage under such a policy based on a specific travel destination where the denial,**
9 **restriction, or rate differential is based upon sound actuarial principles or is related to**
10 **actual or reasonably anticipated experience.**

11 **2. A violation of the provisions of this section shall be unfair trade practice as**
12 **defined by sections 375.930 to 375.948, RSMo, and shall be governed by and subject to all**
13 **of the provisions and penalties provided by such sections.**

14 **3. The provisions of this section shall apply to any life insurance policy issued or**
15 **renewed on or after August 28, 2009.**

2 **376.1232. 1. Each health carrier or health benefit plan that offers or issues health**
3 **benefit plans which are delivered, issued for delivery, continued, or renewed in this state**
4 **on or after January 1, 2010, shall offer coverage for prosthetic devices and services,**
5 **including original and replacement devices, as prescribed by a physician acting within the**
6 **scope of his or her practice.**

7 **2. For the purposes of this section, "health carrier" and "health benefit plan" shall**
8 **have the same meaning as defined in section 376.1350.**

9 **3. The amount of the benefit for prosthetic devices and services under this section**
10 **shall be no less than the annual and lifetime benefit maximums applicable to the basic**
11 **health care services required to be provided under the health benefit plan. If the health**
12 **benefit plan does not include any annual or lifetime maximums applicable to basic health**
13 **care services, the amount of the benefit for prosthetic devices and services shall not be**
14 **subject to an annual or lifetime maximum benefit level. Any copayment, coinsurance,**
15 **deductible, and maximum out-of-pocket amount applied to the benefit for prosthetic**
16 **devices and services shall be no more than the most common amounts applied to the basic**
17 **health care services required to be provided under the health benefit plan.**

17 **4. The provisions of this section shall not apply to a supplemental insurance policy,**
18 **including a life care contract, accident-only policy, specified disease policy, hospital policy**
19 **providing a fixed daily benefit only, Medicare supplement policy, long-term care policy,**
20 **short-term major medical policies of six months or less duration, or any other**
21 **supplemental policy as determined by the director of the department of insurance,**
22 **financial institutions and professional registration.**

379.1300. As used in sections 379.1300 to 379.1350, the following terms shall mean:

2 (1) "Affiliated company", any company in the same corporate system as a parent, an
3 industrial insured, or a member organization by virtue of common ownership, control, operation,
4 or management;

5 (2) "Alien captive insurance company", any insurance company formed to write
6 insurance business for its parents and affiliates and licensed under the laws of an alien
7 jurisdiction that imposes statutory or regulatory standards in a form acceptable to the director on
8 companies transacting the business of insurance in such jurisdiction;

9 (3) "Annuity", a contract issued for a valuable consideration under which the obligations
10 are assumed with respect to periodic payments for a specified term or terms or where the making
11 or continuance of all or of some of such payments, or the amount of any such payments, is
12 dependent upon the continuance of human life;

13 (4) "Association", any legal association of individuals, corporations, limited liability
14 companies, partnerships, associations, or other entities that has been in continuous existence for
15 at least one year, the member organizations of which or which does itself, whether or not in
16 conjunction with some or all of the member organizations:

17 (a) Own, control, or hold with power to vote all of the outstanding voting securities of
18 an association captive insurance company incorporated as a stock insurer; or

19 (b) Have complete voting control over an association captive insurance company
20 incorporated as a mutual insurer; or

21 **(c) Constitute all of the subscribers of an association captive insurance company**
22 **formed as a reciprocal insurer;**

23 (5) "Association captive insurance company", any company that insures risks of the
24 member organizations of the association and their affiliated companies; **except that, association**
25 **captive insurance company shall not include, without limitation, any reciprocal insurer**
26 **that has not chosen to apply for and is not licensed as a captive insurance company under**
27 **section 379.1302;**

28 (6) "Branch business", any insurance business transacted by a branch captive insurance
29 company in this state;

30 (7) "Branch captive insurance company", any alien captive insurance company licensed
31 by the director to transact the business of insurance in this state through a business unit with a
32 principal place of business in this state;

33 (8) "Branch operations", any business operations of a branch captive insurance company
34 in this state;

35 (9) "Captive insurance company", any pure captive insurance company, association
36 captive insurance company, or industrial insured captive insurance company formed or licensed
37 under sections 379.1300 to 379.1350. For purposes of sections 379.1300 to 379.1350, a branch
38 captive insurance company shall be a pure captive insurance company with respect to operations
39 in this state, unless otherwise permitted by the director;

40 (10) "Controlled unaffiliated business", any company:

41 (a) That is not in the corporate system of a parent and affiliated companies;

42 (b) That has an existing contractual relationship with a parent or affiliated company; and

43 (c) Whose risks are managed by a pure captive insurance company in accordance with
44 section 379.1338;

45 (11) "Director", the director of the department of insurance, financial institutions and
46 professional registration;

47 (12) "Excess workers' compensation insurance", in the case of an employer that has
48 insured or self-insured its workers' compensation risks in accordance with applicable state or
49 federal law, insurance in excess of a specified per-incident or aggregate limit established by the
50 director;

51 (13) "Industrial insured", an insured:

52 (a) Who procures the insurance of any risk or risks by use of the services of a full-time
53 employee acting as an insurance manager or buyer;

54 (b) Whose aggregate annual premiums for insurance on all risks total at least twenty-five
55 thousand dollars; and

56 (c) Who has at least twenty-five full-time employees;

57 (14) "Industrial insured captive insurance company", any company that insures risks of
58 the industrial insureds that comprise the industrial insured group and their affiliated companies;

59 (15) "Industrial insured group", any group of industrial insureds that collectively:

60 (a) Own, control, or hold with power to vote all of the outstanding voting securities of
61 an industrial insured captive insurance company incorporated as a stock insurer; or

62 (b) Have complete voting control over an industrial insured captive insurance company
63 incorporated as a mutual insurer;

64 (16) "Member organization", any individual, corporation, limited liability company,
65 partnership, association, or other entity that belongs to an association;

66 (17) "Mutual corporation", a corporation organized without stockholders and includes
67 a nonprofit corporation with members;

68 (18) "Parent", a corporation, limited liability company, partnership, other entity, or
69 individual that directly or indirectly owns, controls, or holds with power to vote more than fifty
70 percent of the outstanding voting:

71 (a) Securities of a pure captive insurance company organized as a stock corporation; or

72 (b) Membership interests of a pure captive insurance company organized as a nonprofit
73 corporation;

74 (19) "Pure captive insurance company", any company that insures risks of its parent and
75 affiliated companies or controlled unaffiliated business.

379.1302. 1. Any captive insurance company, when permitted by its articles of
2 association, charter, or other organizational document, may apply to the director for a license to
3 do any and all insurance and annuity contracts comprised in section 376.010, RSMo, and
4 subsection 1 of section 379.010, other than workers' compensation and employers' liability;
5 provided, however, that:

6 (1) No pure captive insurance company shall insure any risks other than those of its
7 parent and affiliated companies or controlled unaffiliated business;

8 (2) No association captive insurance company shall insure any risks other than those of
9 the member organizations of its association and their affiliated companies;

10 (3) No industrial insured captive insurance company shall insure any risks other than
11 those of the industrial insureds that comprise the industrial insured group and their affiliated
12 companies;

13 (4) No captive insurance company shall provide personal motor vehicle or homeowner's
14 insurance coverage or any component thereof;

15 (5) No captive insurance company shall accept or cede reinsurance except as provided
16 in section 379.1320;

17 (6) Any captive insurance company may provide excess workers' compensation
18 insurance to its parent and affiliated companies, unless prohibited by the federal law or laws of
19 the state having jurisdiction over the transaction. Any captive insurance company, unless
20 prohibited by federal law, may reinsure workers' compensation of a qualified self-insured plan
21 of its parent and affiliated companies, provided that sections 379.1300 to 379.1350 shall not
22 divest the division of workers' compensation of any jurisdiction, as authorized by law, over
23 workers' compensation self-insured plans;

24 (7) Any captive insurance company which insures life and accident and health risks
25 described in section 376.010, RSMo, and subdivision (4) of subsection 1 of section 379.010,
26 shall comply with all applicable state and federal laws; and

27 (8) No captive insurance company shall transact business as a risk retention group under
28 sections 375.1080 to 375.1105, RSMo.

29 2. No captive insurance company shall do any insurance business in this state unless:

30 (1) It first obtains from the director a license authorizing it to do insurance business in
31 this state;

32 (2) Its board of directors [or] , committee of managers, **or in the case of a reciprocal**
33 **insurer, its subscribers' advisory committee**, holds at least one meeting each year in this state;

34 (3) It maintains its principal place of business in this state; **and**

35 (4) It appoints a registered agent to accept service of process and to otherwise act on its
36 behalf in this state; provided that, whenever such registered agent cannot with reasonable
37 diligence be found at the registered office of the captive insurance company, the secretary of state
38 shall be an agent of such captive insurance company upon whom any process, notice, or demand
39 may be served[; and

40 (5) It holds at least thirty-five percent of its assets either directly in this state or through
41 a financial institution located in this state and approved by the director].

42 3. (1) Before receiving a license, a captive insurance company shall:

43 (a) File with the director a certified copy of its organizational documents, a statement
44 under oath of its president and secretary showing its financial condition, and any other statements
45 or documents required by the director; and

46 (b) Submit to the director for approval a description of the coverages, deductibles,
47 coverage limits, and rates, together with such additional information as the director may
48 reasonably require. In the event of any subsequent material change in any item in such
49 description, the captive insurance company shall submit to the director for approval an
50 appropriate revision and shall not offer any additional kinds of insurance until a revision of such
51 description is approved by the director. The captive insurance company shall inform the director
52 of any material change in rates within thirty days of the adoption of such change.

53 (2) Each applicant captive insurance company shall also file with the director evidence
54 of the following:

55 (a) The amount and liquidity of its assets relative to the risks to be assumed;

56 (b) The adequacy of the expertise, experience, and character of the person or persons
57 who will manage it;

58 (c) The overall soundness of its plan of operation;

59 (d) The adequacy of the loss prevention programs of its insureds; and

60 (e) Such other factors deemed relevant by the director in ascertaining whether the
61 proposed captive insurance company will be able to meet its policy obligations.

62 (3) Information submitted under this subsection shall be and remain confidential, and
63 shall not be made public by the director or an employee or agent of the director without the
64 written consent of the company; except that:

65 (a) Such information may be discoverable by a party in a civil action or contested case
66 to which the captive insurance company that submitted such information is a party, upon a
67 showing by the party seeking to discover such information that:

68 a. The information sought is relevant to and necessary for the furtherance of such action
69 or case;

70 b. The information sought is unavailable from other nonconfidential sources; and

71 c. A subpoena issued by a judicial or administrative officer of competent jurisdiction has
72 been submitted to the director; and

73 (b) The director may, in the director's discretion, disclose such information to a public
74 officer having jurisdiction over the regulation of insurance in another state, provided that:

75 a. Such public official shall agree in writing to maintain the confidentiality of such
76 information;

77 b. The laws of the state in which such public official serves require such information to
78 be and to remain confidential; and

79 (c) The director may disclose information to the director of the division of workers'
80 compensation regarding any captive insurance company issuing excess workers' compensation
81 insurance provided that the director for the division of workers' compensation agrees in writing
82 to maintain the confidentiality of such information provided by the director.

83 (4) Each captive insurance company shall pay to the director a nonrefundable license fee
84 of seven thousand five hundred dollars for examining, investigating, and processing its
85 application for license, and the director is authorized to retain legal, financial, and examination
86 services from outside the department, the reasonable cost of which may be charged against the
87 applicant. The provisions of sections 374.160 to 374.162 and sections 374.202 to 374.207,
88 RSMo, shall apply to examinations, investigations, and processing conducted under the authority
89 of this section. In addition, each captive insurance company shall pay a renewal fee for each year
90 thereafter of seven thousand five hundred dollars. Each captive insurance company may deduct
91 the license and renewal fee paid from the premium taxes payable under section 379.1326.

92 (5) If the director is satisfied that the documents and statements that such captive
93 insurance company has filed comply with the provisions of sections 379.1300 to 379.1350, the
94 director may grant a license authorizing it to do insurance business in this state until April first,
95 which license may be renewed.

379.1310. 1. A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders as a nonprofit corporation with one or more members, or as a manager-managed limited liability company.

2. An association captive insurance company or an industrial insured captive insurance company may be:

(1) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders;

(2) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by its insureds; [or]

(3) Organized as a manager-managed limited liability company; **or**

(4) Organized as a reciprocal insurer in accordance with sections 379.650 to 379.790.

3. A captive insurance company incorporated or organized in this state shall have not less than three incorporators or three organizers of whom not less than one shall be a resident of this state.

4. In the case of a captive insurance company:

(1) Formed as a corporation, before the articles of incorporation are transmitted to the secretary of state, the incorporators shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed corporation will promote the general good of the state. In arriving at such a finding the director shall consider:

(a) The character, reputation, financial standing and purposes of the incorporators;

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) Such other aspects as the director shall deem advisable.

The articles of incorporation, such certificate, and the organization fee shall be transmitted to the secretary of state, who shall thereupon record both the articles of incorporation and the certificate;

(2) Formed as a limited liability company, before the articles of organization are transmitted to the secretary of state, the organizers shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed company will promote the general good of the state. In arriving at such a finding, the director shall consider the items set forth in paragraphs (a) to (c) of subdivision (1) of this subsection;

(3) Formed as a reciprocal insurer, the organizers shall petition the director to issue a certificate setting the director's finding that the establishment and maintenance of the proposed association will promote the general good of the state. In arriving at such a

36 **finding the director shall consider the items set forth in paragraphs (a) to (c) of subdivision**
37 **(1) of this subsection.**

38 5. The capital stock of a captive insurance company incorporated as a stock insurer may
39 be authorized with no par value.

40 6. In the case of a captive insurance company:

41 (1) Formed as a corporation, at least one of the members of the board of directors shall
42 be a resident of this state;

43 (2) Formed as a limited liability company, at least one of the managers shall be a resident
44 of this state;

45 **(3) Formed as a reciprocal insurer, at least one of the members of the subscribers'**
46 **advisory committee shall be a resident of this state.**

47 7. Other than captive insurance companies formed as limited liability companies under
48 chapter 347, RSMo, or as nonprofit corporations under chapter 355, RSMo, captive insurance
49 companies formed as corporations under sections 379.1300 to 379.1350 shall have the privileges
50 and be subject to chapter 351, RSMo, as well as the applicable provisions contained in sections
51 379.1300 to 379.1308. In the event of conflict between the provisions of such general
52 corporation law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.

53 8. Captive insurance companies formed under sections 379.1300 to 379.1350:

54 (1) As limited liability companies shall have the privileges and be subject to the
55 provisions of chapter 347, RSMo, as well as the applicable provisions contained in sections
56 379.1300 to 379.1350. In the event of a conflict between chapter 347, RSMo, and sections
57 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control; or

58 (2) As nonprofit corporations shall have the privileges and be subject to the provisions
59 of chapter 355, RSMo, as well as the applicable provisions contained in sections 379.1300 to
60 379.1350. In the event of conflict between chapter 355, RSMo, and sections 379.1300 to
61 379.1350, sections 379.1300 to 379.1350 shall control.

62 9. The provisions of section 375.355, RSMo, **section 375.908, RSMo**, sections 379.980
63 to 379.988, and chapter 382, RSMo, pertaining to mergers, consolidations, conversions,
64 mutualizations, redomestications, and mutual holding companies shall apply in determining the
65 procedures to be followed by captive insurance companies in carrying out any of the transactions
66 described therein; except that:

67 (1) The director may waive or modify the requirements for public notice and hearing in
68 accordance with rules which the director may adopt addressing categories of transactions. If a
69 notice of public hearing is required, but no one requests a hearing, then the director may cancel
70 the hearing;

71 (2) An alien insurer may be a party to a merger **or a redomestication** authorized under
72 this subsection, if approved by the director.

73 10. The articles of incorporation or bylaws of a captive insurance company formed as
74 a corporation may authorize a quorum of its board of directors to consist of no fewer than
75 one-third of the full board of directors determined, provided that a quorum shall not consist of
76 fewer than two directors.

77 **11. Captive insurance companies formed as reciprocal insurers under the**
78 **provisions of sections 379.1300 to 379.1350 shall have the privileges and be subject to the**
79 **provisions of sections 379.650 to 379.790 in addition to the applicable provisions of sections**
80 **379.1300 to 379.1350. In the event of a conflict between the provisions of sections 379.650**
81 **to 379.790 and the provisions of sections 379.1300 to 379.1350, the latter shall control, to**
82 **the extent a reciprocal insurer is made subject to other provisions of chapters 374, 375, and**
83 **379 under sections 379.650 to 379.790, such provisions shall not be applicable to a**
84 **reciprocal insurer formed under sections 379.1300 to 379.1350 unless such provisions are**
85 **expressly made applicable to captive insurance companies under sections 379.1300 to**
86 **379.1350.**

87 **12. The subscribers' agreement or other organizing document of a captive**
88 **insurance company formed as a reciprocal insurer may authorize a quorum of its**
89 **subscribers' advisory committee to consist of no fewer than one-third of the number of its**
90 **members.**

379.1326. 1. Each captive insurance company shall pay to the director of revenue, on
2 or before May first of each year, a premium tax at the rate of thirty-eight-hundredths of one
3 percent on the first twenty million dollars and two hundred eighty-five-thousandths of one
4 percent on the next twenty million dollars and nineteen-hundredths of one percent on the next
5 twenty million dollars and seventy-two-thousandths of one percent on each dollar thereafter on
6 the direct premiums collected or contracted for on policies or contracts of insurance written by
7 the captive insurance company during the year ending December thirty-first next preceding, after
8 deducting from the direct premiums subject to the tax the amounts paid to policyholders as return
9 premiums which shall include dividends on unabsorbed premiums or premium deposits returned
10 or credited to policyholders; provided, however, that no tax shall be due or payable as to
11 considerations received for annuity contracts.

12 2. Each captive insurance company shall pay to the director of revenue on or before May
13 first of each year a premium tax at the rate of two hundred fourteen-thousandths of one percent
14 on the first twenty million dollars of assumed reinsurance premium, and one hundred
15 forty-three-thousandths of one percent on the next twenty million dollars and
16 forty-eight-thousandths of one percent on the next twenty million dollars and

17 twenty-four-thousandths of one percent of each dollar thereafter. However, no reinsurance
18 premium tax applies to premiums for risks or portions of risks which are subject to taxation on
19 a direct basis under subsection 1 of this section. No reinsurance premium tax shall be payable
20 in connection with the receipt of assets in exchange for the assumption of loss reserves and other
21 liabilities of another insurer under common ownership and control if such transaction is part of
22 a plan to discontinue the operations of such other insurer, and if the intent of the parties to such
23 transaction is to renew or maintain such business with the captive insurance company.

24 3. The annual minimum aggregate tax to be paid by a captive insurance company
25 calculated under subsections 1 and 2 of this section shall be seven thousand five hundred dollars,
26 and the annual maximum aggregate tax shall be two hundred thousand dollars.

27 4. Every captive insurance company shall, on or before February first each year, make
28 a return on a form provided by the director, verified by the affidavit of the company's president
29 and secretary or other authorized officers, to the director stating the amount of all direct
30 premiums received and assumed reinsurance premiums received, whether in cash or in notes,
31 during the year ending on December thirty-first next preceding. Upon receipt of such returns,
32 the director of the department of insurance, financial institutions and professional registration
33 shall verify the same and certify the amount of tax due from the various companies on the basis
34 and at the rate provided in subsections 1 to 3 of this section, and shall certify the same to the
35 director of revenue, on or before March thirty-first of each year. The director of revenue shall
36 immediately thereafter notify and assess each company the amount of tax due.

37 5. A captive insurance company failing to make returns as required by subsection 4 of
38 this section or failing to pay within the time required all taxes assessed by this section shall be
39 subject to the provisions of sections 148.375 and 148.410, RSMo.

40 6. Two or more captive insurance companies under common ownership and control shall
41 be taxed as though they were a single captive insurance company.

42 7. For the purposes of this section, "common ownership and control" shall mean:

43 (1) In the case of stock corporations, the direct or indirect ownership of eighty percent
44 or more of the outstanding voting stock of two or more corporations by the same shareholder or
45 shareholders; and

46 (2) In the case of mutual or nonprofit corporations, the direct or indirect ownership of
47 eighty percent or more of the surplus and the voting power of two or more corporations by the
48 same member or members.

49 8. The tax provided for in this section shall constitute all taxes collectible under the laws
50 of this state from any captive insurance company, and no other occupation tax or other taxes
51 shall be levied or collected from any captive insurance company by the state or any county, city,

52 or municipality within this state, except ad valorem taxes on real and personal property used in
53 the production of income.

54 9. [The state treasurer shall annually transfer the premium tax revenues collected under
55 this section to the general revenue fund, except as provided in section 379.1332] **Upon receiving**
56 **the taxes collected under this section from the director of revenue, the state treasurer shall**
57 **receipt ten percent thereof into the insurance dedicated fund established under section**
58 **374.150, RSMo, subject to a maximum of three percent of the current fiscal year's**
59 **appropriation from such fund, and he or she shall place the remainder of such taxes**
60 **collected to the general revenue fund of the state.**

61 10. The tax provided for in this section shall be calculated on an annual basis,
62 notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a
63 multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for
64 purposes of determining the tax under this section.

65 11. A captive insurance company may deduct from premium taxes payable to this state,
66 in addition to all other credits allowed by law, license fees and renewal fees payable under
67 section 379.1302. A deduction for fees which exceeds a captive insurance company's premium
68 tax liability for the same tax year shall not be refundable, but may be carried forward to any
69 subsequent tax year, not to exceed five years, until the full deduction is claimed.

379.1332. 1. (1) The insurance dedicated fund under section 374.150, RSMo, shall be
2 adequately funded through the collection of fees and taxes for the purpose of providing the
3 financial means for the director of the department of insurance, financial institutions and
4 professional registration to administer sections 379.1300 to 379.1350 and for reasonable
5 expenses incurred in promoting the captive insurance industry in Missouri. All fees and
6 assessments received by the department for the administration of sections 379.1300 to 379.1350
7 shall be paid into the fund. [In addition, the transfer of twenty percent of the premium tax under
8 section 375.1014, RSMo, shall be made to the insurance dedicated fund until two hundred
9 thousand dollars has been transferred. Thereafter, up to ten percent of the premium tax under
10 section 379.1326 may be transferred to the insurance dedicated fund for the administration of
11 sections 379.1300 to 379.1350, and up to two percent of the premium tax under section 379.1326
12 may be transferred to the department of economic development, with approval of the
13 commissioner of administration, for promotional expenses.] All fees received by the department
14 from reinsurers who assume risk solely from captive insurance companies and are subject to the
15 provisions of section 375.246, RSMo, shall be deposited into the insurance dedicated fund.

16 (2) All payments from the insurance dedicated fund for the maintenance of staff and
17 expenses associated with the administration of sections 379.1300 to 379.1350, including
18 contractual services as necessary, shall be disbursed from the state treasury only upon warrants

19 issued by the director, after receipt of proper documentation regarding services rendered and
20 expenses incurred.

21 2. The director may anticipate receipts to the insurance dedicated fund through the
22 administration of sections 379.1300 to 379.1350 and issue warrants based thereon.

**379.1339. 1. An association captive insurance company or industrial insured
2 captive insurance company formed as a stock or mutual corporation may be converted to
3 or merged with and into a reciprocal insurer in accordance with a plan therefor and the
4 provisions of this section.**

5 **2. Any plan for such conversion or merger shall provide a fair and equitable plan
6 for purchasing, retiring, or otherwise extinguishing the interests of the stockholders and
7 policyholders of a stock insurer, and the members and policyholders of a mutual insurer,
8 including a fair and equitable provision for the rights and remedies of dissenting
9 stockholders, members, or policyholders.**

10 **3. In the case of a conversion authorized under subsection 1 of this section:**

11 **(1) Such conversion shall be accomplished under such reasonable plan and
12 procedure as may be approved by the director; provided, however, that the director shall
13 not approve any such plan of conversion unless such plan:**

14 **(a) Satisfies the provisions of subsection 2 of this section;**

15 **(b) Provides for a hearing, of which notice is given or to be given to the captive
16 insurance company, its directors, officers, and policyholders, and in the case of a stock
17 insurer, its stockholders, and in the case of a mutual insurer, its members, all of which
18 persons shall be entitled to attend and appear at such hearing; provided, however, that if
19 notice of a hearing is given and no director, officer, policyholder, member, or stockholder
20 requests a hearing, the director may cancel such hearing;**

21 **(c) Provides a fair and equitable plan for the conversion of stockholder, member,
22 or policyholder interests into subscriber interests in the resulting reciprocal insurer
23 substantially proportionate to the corresponding interests in the stock or mutual insurer;
24 provided, however, that this requirement shall not preclude the resulting reciprocal insurer
25 from applying underwriting criteria that could affect ongoing ownership interests; and**

26 **(d) Is approved:**

27 **a. In the case of a stock insurer, by a majority of the shares entitled to vote
28 represented in person or by proxy at a duly called regular or special meeting at which a
29 quorum is present; and**

30 **b. In the case of a mutual insurer, by a majority of the voting interests of
31 policyholders represented in person or by proxy at a duly called regular or special meeting
32 thereof at which a quorum is present;**

33 (2) The director shall approve such plan of conversion if the director finds that the
34 conversion will promote the general good of the state in conformity with those standards
35 set forth in subdivision (1) of subsection 4 of section 379.1310;

36 (3) If the director approves the plan, the director shall amend the converting
37 insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue such
38 amended certificate of authority to the company's attorney-in-fact;

39 (4) Upon the issuance of an amended certificate of authority of a reciprocal insurer
40 by the director, the conversion shall be effective; and

41 (5) Upon the effectiveness of such conversion the corporate existence of the
42 converting insurer shall cease and the resulting reciprocal insurer shall notify the secretary
43 of state of such conversion.

44 4. A merger authorized under subsection 1 of this section shall be accomplished
45 substantially in accordance with such procedures and plan of merger adopted by the board
46 of directors of the captive insurance company and as authorized by the director; except
47 that, solely for purposes of such merger:

48 (1) The plan of merger shall satisfy the provisions of subsection 2 of this section;

49 (2) The subscribers' advisory committee of a reciprocal insurer shall be equivalent
50 to the board of directors of a stock or mutual insurance company;

51 (3) The subscribers of a reciprocal insurer shall be the equivalent of the
52 policyholders of a mutual insurance company;

53 (4) If a subscribers' advisory committee does not have a president or secretary, the
54 officers of such committee having substantially equivalent duties shall be deemed the
55 president or secretary of such committee;

56 (5) The director shall approve the articles of merger if the director finds that the
57 merger will promote the general good of the state in conformity with those standards set
58 forth in subdivision (1) of subsection 4 of section 379.1310. If the director approves the
59 articles of merger, the director shall endorse the director's approval thereon and the
60 surviving insurer shall present the same to the secretary of state at the secretary of state's
61 office;

62 (6) Notwithstanding section 379.1306, the director may permit the formation,
63 without surplus, of a captive insurance company organized as a reciprocal insurer into
64 which an existing captive insurance company may be merged for the purpose of facilitating
65 a transaction under this section; provided, however, that there shall be no more than one
66 authorized insurance company surviving such merger; and

67 **(7) An alien insurer may be a party to a merger authorized under subsection 1 of**
68 **this section; provided that such alien insurer shall be treated as a foreign insurer and such**
69 **other jurisdictions shall be the equivalent of a state.**

70 **5. To the extent such effects are not inconsistent with the provisions of sections**
71 **379.1300 to 379.1350, a conversion or merger under this section shall have all of the**
72 **following effects:**

73 **(1) The several insurers which are parties to the agreement of merger or**
74 **consolidation shall be a single insurer which such single insurer shall have all of the rights,**
75 **privileges, immunities, and powers and shall be subject to all of the duties and liabilities**
76 **of an insurer organized under sections 379.1300 to 379.1350;**

77 **(2) Such single insurer shall thereupon and thereafter possess all the rights,**
78 **privileges, immunities, powers, and franchises of a public as well as of a private nature of**
79 **each of the insurers so merged or consolidated; and all property, real, personal, and mixed,**
80 **and all debts due on whatever account, including subscriptions to shares of capital stock,**
81 **and all other choices in action and all and every other interest of or belonging to or due to**
82 **each of the insurers so merged or consolidated shall be taken and deemed to be transferred**
83 **to and vested in such single insurer without further act or deed; and the title to any real**
84 **estate, or any interest therein, under the laws of this state vested in any of such insurers**
85 **shall not revert or be in any way impaired by reason of such merger or consolidation; and**

86 **(3) Such single insurer shall thenceforth be responsible and liable for all the**
87 **liabilities and obligations of each of the insurers so merged or consolidated in the same**
88 **manner and to the same extent as if such single insurer had itself incurred the same or**
89 **contracted therefor; and any claim existing or action or proceeding pending by or against**
90 **any of such insurers may be prosecuted to judgment as if such merger or consolidation had**
91 **not taken place. Neither the rights of creditors nor any liens upon the property of any such**
92 **insurers shall be impaired by such merger or consolidation, but such liens shall be limited**
93 **to the property upon which they were liens immediately prior to the time of such merger**
94 **or consolidation, unless otherwise provided in the agreement of merger or consolidation.**

 379.1373. 1. Activities of a SPLRC must be limited to those necessary to accomplish
2 its purpose as outlined in its plan of operation.

3 2. The name must not be deceptively similar to or likely to be confused with another
4 existing business name registered in the state.

5 3. The SPLRC must have at least three incorporators or organizers of whom not fewer
6 than [two] **one** must be [residents] **a resident** of the state.

7 4. The capital stock of a SPLRC incorporated as a stock company must be issued at not
8 less than par value.

379.1388. 1. A SPLRC may recognize as an admitted asset on its financial statements
2 filed with the director:

3 (1) Permitted investments;

4 (2) Letters of credit [issued without recourse to the SPLRC];

5 (3) Financial guarantee policies issued for the sole benefit of the ceding company
6 [without recourse to the SPLRC] by an insurer having a rating of no less than AAA by Standard
7 and Poor's or less than AAA by Moody's Investor Service; and

8 (4) Surety bonds issued for the sole benefit of the ceding company [without recourse to
9 the SPLRC] by an insurer having a rating of no less than AAA by Standard and Poor's or no less
10 than AAA by Moody's Investors Service.

11 2. (1) The assets of a SPLRC shall be valued in the same manner as the assets of a
12 Missouri domestic life insurer[. Notwithstanding the preceding, the director may by order
13 authorize a SPLRC to value one or more of its assets through an alternative method] ; **however,**
14 **letters of credit, financial guarantee policies, and surety bonds issued without recourse to**
15 **the SPLRC, or with recourse to the SPLRC with a priority no higher than afforded to class**
16 **7 claims under section 375.1218, RSMo, shall be valued as follows.** Letters of credit shall be
17 valued at the amount available for drawings by the SPLRC or its ceding company as of the time
18 of valuation. A financial guarantee policy shall be valued at the amount available to pay
19 aggregate claims as of the time of valuation. A surety bond shall be valued at the amount
20 available to pay aggregate claims as of the time of valuation.

21 (2) **Notwithstanding the preceding, the director may by order authorize a SPLRC**
22 **to value one or more of its assets through an alternative method.**

379.1412. 1. Each SPLRC shall pay to the director of revenue on or before May first of
2 each year a premium tax at the rate of two hundred fourteen thousandths of one percent on the
3 first twenty million dollars of assumed reinsurance premium, and one hundred forty-three
4 thousandths of one percent on the next twenty million dollars and forty-eight thousandths of one
5 percent on the next twenty million dollars and twenty-four thousandths of one percent of each
6 dollar thereafter. No reinsurance premium tax shall be payable in connection with the receipt
7 of assets in exchange for the assumption of loss reserves and other liabilities of another insurer
8 under common ownership and control if such transaction is part of a plan to discontinue the
9 operations of such other insurer, and if the intent of the parties to such transaction is to renew
10 or maintain such business with the captive insurance company.

11 2. The premium tax imposed by subsection 1 of this section shall constitute all taxes
12 collectible under the laws of this state from any SPLRC, and no other occupation tax or other
13 taxes shall be levied or collected from any captive insurance company by the state or any county,

14 city, or municipality within this state, except ad valorem taxes on real and personal property used
15 in the production of income.

16 3. The annual minimum aggregate tax to be paid by a SPLRC calculated under
17 subsection 1 of this section shall be seven thousand five hundred dollars, and the annual
18 maximum aggregate tax shall be two hundred thousand dollars.

19 4. A SPLRC may deduct from premium taxes payable to this state, in addition to all
20 other credits allowed by law, application fees payable under section 379.1359 and license fees
21 and renewal fees payable under section 379.1364. A deduction for fees which exceeds a
22 SPLRC's premium tax liability for the same tax year shall not be refundable, but may be carried
23 forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed.

24 5. Every SPLRC shall, on or before February first each year, make a return on a form
25 provided by the director, verified by the affidavit of the company's president and secretary or
26 other authorized officers, to the director stating the amount of all direct premiums received and
27 assumed reinsurance premiums received, whether in cash or in notes, during the year ending on
28 December thirty-first next preceding. Upon receipt of such returns, the director shall verify the
29 same and certify the amount of tax due from the various companies on the basis and at the rate
30 provided in this section, and shall certify the same to the director of revenue, on or before March
31 thirty-first of each year. The director of revenue shall immediately thereafter notify and assess
32 each company the amount of tax due.

33 6. A SPLRC failing to make returns as required by subsection 5 of this section, or failing
34 to pay within the time required all taxes assessed by this section, shall be subject to the
35 provisions of sections 148.375 and 148.410, RSMo.

36 **7. Upon receiving the taxes collected under this section from the director of**
37 **revenue, the state treasurer shall receipt ninety percent thereof into the general revenue**
38 **fund of the state and the state treasurer shall place the remainder of such taxes collected**
39 **to the credit of the insurance dedicated fund established under section 374.150, RSMo,**
40 **subject to a maximum of three percent of the current fiscal year's appropriation from such**
41 **fund, and he or she shall place the remainder of such taxes collected to the general revenue**
42 **fund of the state.**

382.400. As used in sections 382.400 to [382.410] **382.409**, the following terms mean:

2 (1) "Accredited state", a state in which the insurance department or regulatory agency
3 has qualified as meeting the minimum financial regulatory standards promulgated and
4 established from time to time by the National Association of Insurance Commissioners;

5 (2) ["Broker", an insurance broker or brokers as defined in section 375.012, RSMo;

6 (3)] "Control" or "controlled" has the meaning prescribed by section 382.010;

7 [(4)] (3) "Controlled insurer", a licensed insurer which is controlled, directly or
8 indirectly, by a [broker] **producer**;

9 [(5)] (4) "Controlling [broker] **producer**", a [broker] **producer** who, directly or
10 indirectly, controls an insurer;

11 [(6)] (5) "Licensed insurer" or "insurer", any person, firm, association or corporation
12 duly licensed to transact a property or casualty insurance business in this state. The following
13 are not licensed insurers for the purposes of sections 382.400 to 382.410:

14 (a) All risk retention groups as defined in the federal Superfund Amendments
15 Reauthorization Act of 1986, as amended, and the federal Risk Retention Act, 15 U.S.C. section
16 3901, et seq., as amended, and sections 375.1080 to 375.1105, RSMo;

17 (b) All residual market pools and joint underwriting authorities or associations; and

18 (c) All captive insurers. For the purposes of sections 382.400 to 382.410, "captive
19 insurers" are insurance companies owned by another organization whose exclusive purpose is
20 to insure risks of the parent organization and affiliated companies or, in the case of groups and
21 associations, insurance organizations owned by the insureds whose exclusive purpose is to insure
22 risks to member organizations and group members and their affiliates;

23 (6) "**Producer**", **an insurance broker or brokers or any other person, firm,**
24 **association, or corporation, when, for any compensation, commission, or other thing of**
25 **value, the person, firm, association, or corporation acts or aids in any manner in soliciting,**
26 **negotiating, or procuring the making of an insurance contract on behalf of an insured**
27 **other than the person, firm, association, or corporation.**

382.402. Sections 382.400 to [382.410] **382.409** shall apply to licensed insurers either
2 domiciled in this state or domiciled in a state that is not an accredited state having in effect laws
3 substantially similar to the provisions of sections 382.400 to [382.410] **382.409**. All provisions
4 of this chapter, to the extent they are not superseded by sections 382.400 to [382.410] **382.409**,
5 shall continue to apply to all parties within holding company systems subject to sections 382.400
6 to [382.410] **382.409**.

382.405. 1. (1) The provisions of this section shall apply if in any calendar year the
2 aggregate amount of gross written premium on business placed with a controlled insurer by
3 controlling [broker] **producer** is equal to or greater than five percent of the admitted assets of
4 the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of
5 September thirtieth of the prior year.

6 (2) Notwithstanding the provisions of subdivision (1) of this subsection, the provisions
7 of this section shall not apply if:

8 (a) The controlling [broker] **producer**:

9 a. Places insurance only with the controlled insurer, or only with the controlled insurer
10 and a number of members of the controlled insurer's holding company system, or the controlled
11 insurer's parent, affiliate or subsidiary and receives no compensation based upon the amount of
12 premiums written in connection with such insurance; and

13 b. Accepts insurance placements only from nonaffiliated subproducers, and not directly
14 from insureds; and

15 (b) The controlled insurer, except for insurance business written through a residual
16 market facility such as the joint underwriting association prescribed by section 303.200, RSMo,
17 accepts insurance business only from a controlling [broker] **producer**, a [broker] **producer**
18 controlled by the controlled insurer, or a [broker] **producer** that is a subsidiary of the controlled
19 insurer.

20 2. A controlled insurer shall not accept business from a controlling [broker] **producer**
21 and a controlling [broker] **producer** shall not place business with a controlled insurer unless
22 there is a written contract between the controlling [broker] **producer** and the insurer specifying
23 the responsibilities of each party, which contract has been approved by the board of directors of
24 the insurer and contains the following minimum provisions:

25 (1) The controlled insurer may terminate the contract for cause, upon written notice to
26 the controlling [broker] **producer**. The controlled insurer shall suspend the authority of the
27 controlling [broker] **producer** to write business during the pendency of any dispute regarding
28 the cause for the termination;

29 (2) The controlling [broker] **producer** shall render accounts to the controlled insurer
30 detailing all material transactions, including information necessary to support all commissions,
31 charges and other fees received by, or owing to, the controlling [broker] **producer**;

32 (3) The controlling [broker] **producer** shall remit all funds due under the terms of the
33 contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that
34 premiums or installments thereof collected shall be remitted no later than ninety days after the
35 effective date of any policy placed with the controlled insurer under the contract;

36 (4) All funds collected for the controlled insurer's account shall be held by the
37 controlling [broker] **producer** in a fiduciary capacity, in one or more appropriately identified
38 bank accounts in banks that are members of the Federal Reserve System, in accordance with the
39 provisions of applicable insurance law; however, funds of a controlling [broker] **producer** not
40 required to be licensed in this state shall be maintained in compliance with the requirements of
41 the controlling [broker's] **producer's** domiciliary jurisdiction;

42 (5) The controlling [broker] **producer** shall maintain separately identifiable records of
43 business written for the controlled insurer;

44 (6) The contract shall not be assigned in whole or in part by the controlling [broker]
45 **producer**;

46 (7) The controlled insurer shall provide the controlling [broker] **producer** with its
47 underwriting standards, rules and procedures, manuals setting forth the rates to be charged, and
48 the conditions for the acceptance or rejection of risks. The controlling [broker] **producer** shall
49 adhere to the standards, rules, procedures, rates and conditions. The standards, rules, procedures,
50 rates and conditions shall be the same as those applicable to comparable business placed with
51 the controlled insurer by a [broker] **producer** other than the controlling [broker] **producer**;

52 (8) The rates and terms of the controlling [broker's] **producer's** commissions, charges
53 or other fees and the purposes for those charges or fees. The rates of the commissions, charges
54 and other fees shall be no greater than those applicable to comparable business placed with the
55 controlled insurer by [brokers] **producers** other than controlling [brokers] **producers**. For
56 purposes of this subdivision and subdivision (7) of this subsection, examples of comparable
57 business includes the same lines of insurance, same kinds of insurance, same kinds of risks,
58 similar policy limits, and similar quality of business;

59 (9) If the contract provides that the controlling [broker] **producer**, on insurance business
60 placed with the insurer, is to be compensated contingent upon the insurer's profits on that
61 business, then such compensation shall not be determined and paid until at least five years after
62 the premiums on liability insurance are earned and at least one year after the premiums are
63 earned on any other insurance. In no event shall the commissions be paid until the adequacy of
64 the controlled insurer's reserves on remaining claims has been independently verified pursuant
65 to subsection 1 of this section;

66 (10) A limit on the controlling [broker's] **producer's** writings in relation to the controlled
67 insurer's surplus and total writings. The insurer may establish a different limit for each line or
68 subline of business. The controlled insurer shall notify the controlling [broker] **producer** when
69 the applicable limit is approached and shall not accept business from the controlling [broker]
70 **producer** if the limit is reached. The controlling [broker] **producer** shall not place business
71 with the controlled insurer if it has been notified by the controlled insurer that the limit has been
72 reached; and

73 (11) The controlling [broker] **producer** may negotiate but shall not bind reinsurance on
74 behalf of the controlled insurer, except that the controlling [broker] **producer** may bind
75 facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract
76 with the controlled insurer contains underwriting guidelines including, but both reinsurance
77 assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the
78 coverages and amounts or percentages that may be reinsured and commission schedules.

79 3. Every controlled insurer shall have an audit committee of the board of directors
80 composed of independent directors. The audit committee shall annually meet with management,
81 the insurer's independent certified public accountants, and an independent casualty actuary or
82 other independent loss reserve specialist acceptable to the director to review the adequacy of the
83 insurer's loss reserves.

84 4. (1) In addition to any other required loss reserve certification, the controlled insurer
85 shall annually, on April first of each year, file with the director an opinion of an independent
86 casualty actuary, or such other independent loss reserve specialist acceptable to the director,
87 reporting loss ratios for each line of business written and attesting to the adequacy of loss
88 reserves established for losses incurred and outstanding as of year-end, including incurred but
89 not reported, on business placed by the [broker] **producer**; and

90 (2) The controlled insurer shall annually report to the director the amount of
91 commissions paid to the [broker] **producer**, the percentage such amount represents of the net
92 premiums written and comparable amounts and percentage paid to noncontrolling [brokers]
93 **producers** for placements of the same kinds of insurance.

382.407. The [broker] **producer**, prior to the effective date of the policy, shall deliver
2 written notice to the prospective insured disclosing the relationship between the [broker]
3 **producer** and the controlled insurer, except that if the business is placed through a subproducer
4 who is not a controlling [broker] **producer**, the controlling [broker] **producer** shall retain in his
5 records a signed commitment from the subproducer that the subproducer is aware of the
6 relationship between the insurer and the [broker] **producer** and that the subproducer has or will
7 notify the insured.

382.409. 1. (1) If the director believes that the controlling [broker] **producer** or any
2 other person has not materially complied with sections 382.400 to 382.410, or any regulation or
3 order promulgated hereunder, after notice and opportunity to be heard, the director may order the
4 controlling [broker] **producer** to cease placing business with the controlled insurer; and

5 (2) If it was found that because of such material noncompliance that the controlled
6 insurer or any policyholder thereof has suffered any loss or damage, the director may maintain
7 a civil action or intervene in an action brought by or on behalf of the insurer or policyholder for
8 recovery of compensatory damages for the benefit of the insurer or policyholder or other
9 appropriate relief.

10 2. If an order of liquidation or rehabilitation of the controlled insurer has been entered
11 pursuant to sections 375.1150 to 375.1246, RSMo, and the receiver appointed under that order
12 believes that the controlling [broker] **producer** or any other person has not materially complied
13 with sections 382.400 to 382.410, or any regulation or order promulgated hereunder, and the

14 insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for
15 recovery of damages or other appropriate sanctions for the benefit of the insurer.

16 3. Nothing contained in this section shall affect the right of the director to impose any
17 other penalties provided for by law.

18 4. Nothing contained in this section is intended to or shall in any manner alter or affect
19 the rights of policyholders, claimants, creditors or other third parties.

384.025. 1. If at any time the director has reason to believe that an eligible surplus lines
2 insurer:

3 (1) Is in unsound financial condition;

4 (2) Is no longer eligible under section 384.021;

5 (3) Has willfully violated the laws of this state; or

6 (4) Does not make reasonably prompt payment of just losses and claims in this state or
7 elsewhere;

8 the director may declare it ineligible.

9 2. The director shall promptly [mail] **publish** notice of all such declarations [to each
10 surplus lines licensee] **in any public electronic format.**

384.043. 1. No insurance producer shall procure any contract of surplus lines insurance
2 with any nonadmitted insurer, unless he possesses a current surplus lines insurance license issued
3 by the director.

4 2. The director shall issue a surplus lines license to any qualified holder of a current
5 resident or nonresident property and casualty insurance producer license but only when the
6 licensee has:

7 (1) Remitted the one hundred dollar initial fee to the director;

8 (2) Submitted a completed license application on a form supplied by the director; and

9 (3) Passed a qualifying examination approved by the director, except that all holders of
10 a license prior to July 1, 1987, shall be deemed to have passed such an examination.

11 3. Each surplus lines license shall be renewed [annually] **for a term of two years** on the
12 **biennial** anniversary date of issuance and continue in effect until refused, revoked or suspended
13 by the director in accordance with section 384.065; except that if the [annual] **biennial** renewal
14 fee for the license is not paid on or before the anniversary date, the license terminates. The
15 [annual] **biennial** renewal fee is [fifty] **one hundred** dollars.

384.051. 1. Every insured in this state who procures or causes to be procured or
2 continues or renews insurance in any surplus lines insurer, or any self-insurer in this state who
3 so procures or continues with, any surplus lines insurer, excess of loss, catastrophe or other
4 insurance, upon a subject of insurance resident, located or to be performed within this state, other
5 than insurance procured through a surplus lines broker pursuant to sections 384.011 to 384.071,

6 shall before March second of the year next succeeding the year in which the insurance was so
7 procured, continued or renewed, file a written report of the same with the director on forms
8 prescribed by the director and furnished to such an insured upon request. The report shall show:

- 9 (1) The name and address of the insured or insureds;
- 10 (2) The name and address of the insurer or insurers;
- 11 (3) The subject of the insurance;
- 12 (4) A general description of the coverage;
- 13 (5) The amount of premium currently charged therefor;
- 14 (6) Such additional pertinent information as may be reasonably requested by the director.

15 2. If any such insurance covers also a subject of insurance resident, located or to be
16 performed outside this state, for the purposes of this section, a proper pro rata portion of the
17 entire premium payable for all such insurance shall be allocated as to the subjects of insurance
18 resident, located or to be performed in this state.

19 3. Any insurance in a surplus lines insurer procured through negotiations or an
20 application in whole or in part occurring or made within or from within this state, or for which
21 premiums in whole or in part are remitted directly or indirectly from within this state, shall be
22 deemed to be insurance procured or continued or renewed in this state within the intent of
23 subsection 1 of this section.

24 4. For the general support of the government of this state there is levied upon the insured
25 **or self-insurer** who procures insurance pursuant to subsections 1 and 3 of this section a tax at
26 the rate of five percent of the net amount of the premium in respect of risks located in this state.
27 Before April sixteenth of the year next succeeding the year in which the insurance was so
28 procured, continued or renewed, the insured shall remit to the [director] **department of revenue**
29 the amount of the tax. The [director before June first of each year shall certify and transmit to
30 the director of revenue the sums so collected] **department of revenue shall notify the director**
31 **of the sums collected from each insured or self-insurer.**

384.057. 1. Before March second of each year, each surplus lines broker shall report
2 under oath to the director on forms prescribed by him **or her** a statement showing, **with respect**
3 **to the year ending the immediately preceding December thirty-first:**

- 4 (1) The gross amounts charged for surplus lines insurance with respect to risks located
5 within this state, exclusive of sums collected for the payment of federal, state or local taxes;
- 6 (2) The amount of net premiums with respect to the insurance. For the purpose of this
7 section, "net premiums" means the gross amount of charges for surplus lines insurance with
8 respect to risks located within this state, exclusive of sums collected for the payment of federal,
9 state and local taxes, less returned premiums.

10 **2. No later than within forty-five days after the end of each calendar quarter ending**
11 **March thirty-first, June thirtieth, September thirtieth, and December thirty-first each**
12 **surplus lines broker shall report under oath to the director on forms prescribed by him or**
13 **her a statement showing, with respect to each respective calendar quarter:**

14 **(1) The gross amounts charged for surplus lines insurance with respect to risks**
15 **located within this state, exclusive of sums collected for the payment of federal, state, or**
16 **local taxes;**

17 **(2) The amount of net premiums with respect to the insurance. For the purpose of**
18 **this section, "net premiums" means the gross amount of charges for surplus lines**
19 **insurance with respect to risks located within this state, exclusive of sums collected for the**
20 **payment of federal, state, and local taxes, less returned premiums.**

 384.062. 1. If [the tax collectible] **any tax, penalty, or interest payable** by a surplus
2 lines licensee under the provisions of sections 384.011 to 384.071 [has been collected and] is not
3 paid within the time prescribed, the same shall be recoverable in a suit brought by the director
4 against the surplus lines licensee.

5 2. All taxes, penalties, and interest or delinquent taxes levied pursuant to this chapter
6 shall be paid to the [director] **department of revenue**, who shall [obtain such taxes, penalties
7 and interest by civil action against the insured or the surplus lines licensee, and the director shall
8 remit such taxes when collected to the director of revenue] **notify the director of the sums**
9 **collected from each surplus lines licensee.** All checks and drafts remitted for the payment of
10 such taxes, penalties and interest shall be made payable to the director of revenue.

11 3. Taxes collected pursuant to this chapter are taxes collected by the director of revenue
12 within the meaning of section 139.031, RSMo.

 [374.456. 1. The director of the department of insurance, financial
2 institutions and professional registration shall personally report to the appropriate
3 committees of the general assembly by March first of each year on the status of
4 all actions initiated, maintained by the director, or which have been concluded,
5 during the preceding year to enforce the provisions of this act. The director shall
6 answer all questions regarding such actions, or regarding other matters that are
7 related to the provisions of this act.

8 2. The report to the appropriate committees of the general assembly shall
9 cover enforcement actions related to sections 354.500 to 354.636, RSMo, relating
10 to health maintenance organizations, sections 374.500 to 374.515 relating to
11 utilization review agents, and sections 376.1350 to 376.1399, RSMo, relating to
12 all managed care health benefit plans.]

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 [384.031. Within thirty days after the placing of any surplus lines
2 insurance, each surplus lines licensee shall file with the director a written report,

3 on a form prescribed by the director, which shall be kept confidential, regarding
4 the insurance with the director, including the following:
5 (1) The name and address of the insured;
6 (2) The identity of the insurer or insurers;
7 (3) A description of the subject and location of the risk;
8 (4) The amount of premium charged for the insurance; and
9 (5) Such other pertinent information as the director may reasonably
10 require.]

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