

FIRST REGULAR SESSION
[PERFECTED]
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NOS. 337, 259, & 575
99TH GENERAL ASSEMBLY

0799H.05P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 375.1025, 375.1052, 375.1053, and 375.1056, RSMo, and to enact in lieu thereof fourteen new sections relating to financial accreditation standards for insurance companies, with a delayed effective date and a penalty provision.

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

Section A. Sections 375.1025, 375.1052, 375.1053, and 375.1056, RSMo, are repealed
2 and fourteen new sections enacted in lieu thereof, to be known as sections 375.1025, 375.1052,
3 375.1053, 375.1056, 375.1058, 382.600, 382.605, 382.610, 382.615, 382.620, 382.625, 382.630,
4 382.635, and 382.640, to read as follows:

375.1025. As used in sections 375.1025 to 375.1062, the following terms shall mean:
2 (1) "Accountant" or "independent certified public accountant", an independent certified
3 public accountant or accounting firm in good standing with the American Institute of Certified
4 Public Accountants and in all states in which they are licensed to practice. For Canadian and
5 British companies, it means a Canadian-chartered or British-chartered accountant;

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

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

10 (4) "Audit committee", a committee (or equivalent body) established by the board of
11 directors of an entity for the purpose of overseeing the accounting and financial reporting
12 processes of an insurer or group of insurers, **the internal audit function of any insurer or**
13 **group of insurers (if applicable)**, and **external** audits of financial statements of the insurer or
14 group of insurers. The audit committee of any entity that controls a group of insurers may be

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.

15 deemed to be the audit committee for one or more of such controlled insurers solely for the
16 purposes of sections 375.1025 to 375.1062 at the election of the controlling person. Such
17 election shall be exercised under subsection ~~[5]~~ 6 of section 375.1053. If an audit committee is
18 not designated by the insurer, the insurer's entire board of directors shall constitute the audit
19 committee;

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

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

23 (7) "Director", the director of the department of insurance, financial institutions and
24 professional registration;

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

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

32 (10) "Independent board member", the same meaning as described in subsection ~~[3]~~ 4
33 of section 375.1053;

34 **(11) "Internal audit function", a person or persons that provide independent,**
35 **objective, and reasonable assurance designed to add value and improve an organization's**
36 **operations and accomplish its objectives by bringing a systematic, disciplined approach to**
37 **evaluate and improve the effectiveness of risk management control and governance**
38 **processes;**

39 ~~[(11)]~~ (12) "Insurer", an insurer certified to do business in this state pursuant to section
40 375.161 or 375.831, and to companies authorized to transact business in this state pursuant to
41 chapters 354, 376, 377, 378, 379 and 381;

42 ~~[(12)]~~ (13) "Internal control over financial reporting", a process effected by an entity's
43 board of directors, management and other personnel designed to provide reasonable assurance
44 regarding the reliability of the financial statements, i.e., those items specified in ~~[subsections 2~~
45 ~~to 7]~~ **subdivisions (2) to (6) of subsection 2 and subsection 3** of section 375.1032 and includes
46 those policies and procedures that:

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

49 (b) Provide reasonable assurance that transactions are recorded as necessary to permit
50 preparation of financial statements, i.e., those items specified in ~~[subsections 2 to 7]~~

51 **subdivisions (2) to (6) of subsection 2 and subsection 3** of section 375.1032, and that receipts
52 and expenditures are being made only in accordance with authorizations of management and
53 directors; and

54 (c) Provide reasonable assurance regarding prevention or timely detection of
55 unauthorized acquisition, use or disposition of assets that could have a material effect on the
56 financial statements, i.e., those items specified in ~~subsections 2 to 7~~ **subdivisions (2) to (6) of**
57 **subsection 2 and subsection 3** of section 375.1032;

58 ~~[(13)]~~ **(14)** "NAIC", the National Association of Insurance Commissioners;

59 ~~[(14)]~~ **(15)** "SEC", the United States Securities and Exchange Commission;

60 ~~[(15)]~~ **(16)** "Section 404", Section 404 of the Sarbanes-Oxley Act of 2002, as amended,
61 and the SEC's rules and regulations promulgated thereunder;

62 ~~[(16)]~~ **(17)** "Section 404 report", management's report on internal control over financial
63 reporting, as defined by the SEC and the related attestation report of the independent certified
64 public accountant as described in subsection 1 of section 375.1030;

65 ~~[(17)]~~ **(18)** "SOX compliant entity", an entity that either is required to be or voluntarily
66 is compliant with all of the following provisions of the Sarbanes-Oxley Act of 2002, as amended:

67 (a) The preapproval requirements of Section 201 (Section 10A(i) of the federal Securities
68 Exchange Act of 1934);

69 (b) The audit committee independence requirements of Section 301 (Section 10A(m)(3)
70 of the federal Securities Exchange Act of 1934); and

71 (c) The internal control over financial reporting requirements of Section 404.

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 pertaining to administrative hearing procedures
9 and shall be a public meeting as provided by subdivision (3) of section 610.010.

10 2. Domestic insurers:

11 (1) Retaining a certified public accountant on August 28, 2009, who qualifies as
12 independent shall comply with sections 375.1025 to 375.1062 for the year ending December 31,
13 2009, and each year thereafter unless the director permits otherwise;

14 (2) Not retaining a certified public accountant on ~~[the effective date of this regulation]~~
15 **August 28, 2009**, who qualifies as independent shall meet the following schedule for compliance
16 with sections 375.1025 to 375.1062 unless the director permits otherwise:

17 (a) As of December 31, 2009, file with the director an audited financial report;

18 (b) For the year ending December 31, 2010, and each year thereafter, such insurers shall
19 file with the director all reports and communications required by sections 375.1025 to 375.1062.

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

22 4. The requirements of subsection 3 of section 375.1037 shall be in effect for audits of
23 the year beginning January 1, 2010, and thereafter.

24 5. The requirements of section 375.1053 are to be in effect January 1, 2010. An insurer
25 or group of insurers that is not required to have independent audit committee members or only
26 a majority but not a supermajority of independent audit committee members, because the total
27 written and assumed premium is below the threshold and subsequently becomes subject to one
28 of the independence requirements due to changes in premium shall have one year following the
29 year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the
30 independence requirements. Likewise, an insurer that becomes subject to one of the
31 independence requirements as a result of a business combination shall have one calendar year
32 following the date of acquisition or combination to comply with the independence requirements.

33 6. The requirements of sections 375.1038, 375.1054, and 375.1056 are effective
34 beginning with the reporting period ending December 31, 2010, and each year thereafter. An
35 insurer or group of insurers that is not required to file a report because the total written premium
36 is below the threshold and subsequently becomes subject to the reporting requirements shall have
37 two years following the year the threshold is exceeded to file a report. Likewise, an insurer
38 acquired in a business combination shall have two calendar years following the date of
39 acquisition or combination to comply with the reporting requirements.

40 **7. The requirements of section 375.1058 are effective beginning January 1, 2018.**
41 **If an insurer or group of insurers that is exempt from section 375.1058 requirements no**
42 **longer qualifies for that exemption, it shall have one year after the year the threshold is**
43 **exceeded to comply with the requirements of section 375.1058.**

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

4 2. The audit committee shall be directly responsible for the appointment, compensation,
5 and oversight of the work of any accountant, including resolution of disagreements between
6 management and the accountant regarding financial reporting, for the purpose of preparing or

7 issuing the audited financial report or related work under sections 375.1025 to 375.1062. Each
8 accountant shall report directly to the audit committee.

9 **3. The audit committee of an insurer or group of insurers shall be responsible for**
10 **overseeing the insurer's internal audit function and granting the person or persons**
11 **performing the internal audit function suitable authority and resources to fulfill their**
12 **responsibilities if required by section 375.1058.**

13 ~~[3-]~~ 4. Each member of the audit committee shall be a member of the board of directors
14 of the insurer or a member of the board of directors of an entity elected under subsection ~~[6]~~ 7
15 of this section and subdivision ~~[(6)]~~ (4) of section 375.1025.

16 ~~[4-]~~ 5. In order to be considered independent for purposes of this section, a member of
17 the audit committee shall not, other than in his or her capacity as a member of the audit
18 committee, the board of directors, or any other board committee, accept any consulting, advisory,
19 or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary
20 thereof. However, if law requires board participation by otherwise nonindependent members,
21 such law shall prevail and such members may participate in the audit committee and be
22 designated as independent for audit committee purposes, unless they are an officer or employee
23 of the insurer or one of its affiliates.

24 ~~[5-]~~ 6. If a member of the audit committee ceases to be independent for reasons outside
25 the member's reasonable control, that person, with notice by the responsible entity to the state,
26 may remain an audit committee member of the responsible entity until the earlier of the next
27 annual meeting of the responsible entity or one year from the occurrence of the event that caused
28 the member to be no longer independent.

29 ~~[6-]~~ 7. To exercise the election of the controlling person to designate the audit committee
30 for purposes of sections 375.1025 to 375.1062, the ultimate controlling person shall provide
31 written notice to the chief state insurance regulatory officials of the affected insurers.
32 Notification shall be made timely prior to the issuance of the statutory audit report and include
33 a description of the basis for the election. The election can be changed through notice to the
34 director by the insurer, which shall include a description of the basis for the change. The election
35 shall remain in effect for perpetuity, until rescinded.

36 ~~[7-]~~ 8. (1) The audit committee shall require the accountant that performs for an insurer
37 any audit required by sections 375.1025 to 375.1062 to timely report to the audit committee in
38 accordance with the requirements of the auditing profession, including:

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

40 (b) All material alternative treatments of financial information within statutory
41 accounting principles that have been discussed with management officials of the insurer,

42 ramifications of the use of the alternative disclosures and treatments, and the treatment preferred
43 by the accountant; and

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

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

50 [8.] 9. The proportion of independent audit committee members shall meet or exceed the
51 following criteria:

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

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

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

61 [9.] 10. An insurer with direct written and assumed premium, excluding premiums
62 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than five
63 hundred million dollars may make application to the director for a waiver from the requirements
64 of this section based upon hardship. The insurer shall file, with its annual statement filing, the
65 approval for relief from this section with the states that it is licensed in or doing business in and
66 the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file
67 the approval in an electronic format acceptable to the NAIC.

375.1056. 1. Every insurer required to file an audited financial report under sections
2 375.1025 to 375.1062 that has annual direct written and assumed premiums, excluding premiums
3 reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of five
4 hundred million dollars or more shall prepare a report of the insurer's or group of insurers'
5 internal control over financial reporting, as such terms are defined in section 375.1025. The
6 report shall be filed with the director along with the communication of internal control-related
7 matters noted in an audit described under section 375.1047. Management's report of internal
8 control over financial reporting shall be as of December thirty-first immediately preceding.

9 2. Notwithstanding the premium threshold in subsection 1 of this section, the director
10 may require an insurer to file management's report of internal control over financial reporting if

11 the insurer is in any RBC level event, or meets any one or more of the standards of an insurer
12 deemed to be in hazardous financial condition as defined in ~~[rules adopted by the director]~~
13 **section 375.539.**

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

15 (1) Directly subject to Section 404;

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

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

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

20

21 may file its or its parent's Section 404 report and an addendum in satisfaction of the requirement
22 of this section, provided that those internal controls of the insurer or group of insurers having a
23 material impact on the preparation of the insurer's or group of insurers' audited statutory financial
24 statements, namely those items included in subdivisions (2) to (6) of subsection 2 **and**
25 **subsection 3** of section 375.1032, were included in the scope of the Section 404 report. The
26 addendum shall be a positive statement by management that there are no material processes with
27 respect to the preparation of the insurer's or group of insurers' audited statutory financial
28 statements excluded from the Section 404 report. If there are internal controls of the insurer or
29 group of insurers that have a material impact on the preparation of the insurer's or group of
30 insurers' audited statutory financial statements and those internal controls were not included in
31 the scope of the Section 404 report, the insurer or group of insurers may either file a report under
32 this section, or the Section 404 report and a report under this section for those internal controls
33 that have a material impact on the preparation of the insurer's or group of insurers' audited
34 statutory financial statements not covered by the Section 404 report.

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

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

38 (2) A statement that management has established internal control over financial reporting
39 and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to
40 whether its internal control over financial reporting is effective to provide reasonable assurance
41 regarding the reliability of financial statements in accordance with statutory accounting
42 principles;

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

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

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

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

54 (7) Signatures of the chief executive officer and the chief financial officer, or the
55 equivalent position or title.

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

66 6. No officer responsible for financial reporting may be a member of the audit
67 committee.

375.1058. 1. An insurer is exempt from the requirements of this section if:

2 (1) The insurer has annual direct written and unaffiliated assumed premium,
3 including international direct and assumed premium but excluding premiums reinsured
4 with the Federal Crop Insurance Corporation and Federal Flood Program, totaling less
5 than five hundred million dollars; and

6 (2) The insurer is a member of a group of insurers that has annual direct written
7 and unaffiliated assumed premium, including international direct and assumed premium
8 but excluding premiums reinsured with the Federal Crop Insurance Corporation and
9 Federal Flood Program, totaling less than one billion dollars.

10 2. The insurer or group of insurers shall establish an internal audit function
11 providing independent, objective, and reasonable assurance to the audit committee and
12 insurer management regarding the insurer's governance, risk management, and internal
13 controls. This assurance shall be provided by performing general and specific audits,
14 reviews, and tests and by employing other techniques deemed necessary to protect assets,

15 evaluate control effectiveness and efficiency, and evaluate compliance with policies and
16 regulations.

17 3. In order to ensure that internal auditors remain objective, the internal audit
18 function shall be organizationally independent. Specifically, the internal audit function
19 shall not defer ultimate judgment on audit matters to others and shall appoint an
20 individual to head the internal audit function who will have direct and unrestricted access
21 to the board of directors. Organizational independence does not preclude dual-reporting
22 relationships.

23 4. The head of the internal audit function shall report to the audit committee
24 regularly, but no less than annually, on the periodic audit plan, factors that may adversely
25 impact the internal audit function's independence or effectiveness, material findings from
26 completed audits, and the appropriateness of corrective actions implemented by
27 management as a result of audit findings.

28 5. If an insurer is a member of an insurance holding company system or included
29 in a group of insurers, the insurer may satisfy the internal audit function requirements set
30 forth in this section at the ultimate controlling parent level, an intermediate holding
31 company level, or the individual legal entity level.

382.600. 1. The purpose of sections 382.600 to 382.640 is to:

2 (1) Provide the director a summary of an insurer or insurance group's corporate
3 governance structure, policies, and practices to permit the director to gain and maintain
4 an understanding of the insurer or insurance group's corporate governance framework;

5 (2) Outline the requirements for completing a Corporate Governance Annual
6 Disclosure with the director; and

7 (3) Provide for the confidential treatment of the Corporate Governance Annual
8 Disclosure and related information that will contain confidential and sensitive information
9 related to an insurer or insurance group's internal operations and proprietary and trade
10 secret information which if made public could potentially cause the insurer or insurance
11 group competitive harm or disadvantage.

12 2. Nothing in sections 382.600 to 382.640 shall be construed to prescribe or impose
13 corporate governance standards and internal procedures beyond that which are required
14 under applicable state corporate law. Notwithstanding the foregoing, nothing in sections
15 382.600 to 382.640 shall be construed to limit the director's authority or the rights or
16 obligations of third-parties under chapter 374 relating to the examination of insurers.

17 3. The requirements of sections 382.600 to 382.640 shall apply to all insurers
18 domiciled in this state.

382.605. As used in sections 382.600 to 382.640, the following terms shall mean:

2 (1) “Corporate Governance Annual Disclosure” or “CGAD”, a confidential report
3 filed by the insurer or insurance group made in accordance with the requirements of
4 sections 382.600 to 382.640;

5 (2) “Director”, the director of the department of insurance, financial institutions
6 and professional registration, his or her deputies, or the department of insurance, financial
7 institutions and professional registration, as applicable;

8 (3) “Insurance group”, those insurers and affiliates included within an insurance
9 holding company system as defined in section 382.010;

10 (4) “Insurer”, an insurance company as defined in section 375.012; except that, it
11 shall not include agencies, authorities or instrumentalities of the United States, its
12 possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia,
13 or a state or political subdivision of a state;

14 (5) “NAIC”, the National Association of Insurance Commissioners;

15 (6) “ORSA Summary Report”, the report filed in accordance with sections 382.500
16 to 382.550.

382.610. 1. An insurer, or the insurance group of which the insurer is a member,
2 shall, before June first of each calendar year, submit to the director a CGAD that contains
3 the information described in subsection 2 of section 382.615. Notwithstanding any request
4 from the director made under subsection 3 of this section, if the insurer is a member of an
5 insurance group, the insurer shall submit the report required by this section to the director
6 or commissioner of the lead state for the insurance group, in accordance with the laws of
7 the lead state, as determined by the procedures outlined in the most recent Financial
8 Analysis Handbook adopted by the NAIC. An insurer which is a member of an insurance
9 group, however, shall not be required to submit the report required by this section to the
10 director until the lead state for such insurance group has adopted the National Association
11 of Insurance Commissioners Corporate Governance Annual Disclosure Model Act and
12 National Association of Insurance Commissioners Corporate Governance Annual
13 Disclosure Model Regulations.

14 2. The CGAD shall include a signature of the insurer or insurance group’s chief
15 executive officer or corporate secretary, attesting to the best of that individual’s belief and
16 knowledge that the insurer has implemented the corporate governance practices and that
17 a copy of the disclosure has been provided to the insurer’s board of directors or the
18 appropriate committee thereof.

19 3. An insurer not required to submit a CGAD under this section shall do so upon
20 the director’s request.

21 **4. For purposes of completing the CGAD, the insurer or insurance group may**
22 **provide information regarding corporate governance at the ultimate controlling person**
23 **level, an intermediate holding company level, or the individual legal entity level depending**
24 **upon how the insurer or insurance group has structured its system of corporate**
25 **governance. The insurer or insurance group is encouraged to make the CGAD disclosures**
26 **at the level at which the insurer or insurance group's risk appetite is determined; or at**
27 **which the earnings, capital, liquidity, operations, and reputation of the insurer are**
28 **overseen collectively and at which the supervision of those factors is coordinated and**
29 **exercised; or the level at which legal liability for failure of general corporate governance**
30 **duties would be placed. If the insurer or insurance group determines the level of reporting**
31 **based on these criteria, it shall indicate which of the three criteria was used to determine**
32 **the level of reporting and explain any subsequent changes in level of reporting.**

33 **5. The review of the CGAD and any additional requests for information shall be**
34 **made through the lead state as determined by the procedures within the most recent**
35 **Financial Analysis Handbook referenced in subsection 1 of this section.**

36 **6. Insurers providing information substantially similar to the information required**
37 **by sections 382.600 to 382.640 in other documents provided to the director, including proxy**
38 **statements filed in conjunction with annual registration requirements or other state or**
39 **federal filings provided to the department of insurance, financial institutions and**
40 **professional registration, shall not be required to duplicate that information in the CGAD**
41 **but shall only be required to cross-reference the document in which the information is**
42 **included.**

382.615. 1. The insurer or insurance group shall have discretion over the responses
2 **to the CGAD inquiries; provided that, the CGAD shall contain the material information**
3 **necessary to permit the director to gain an understanding of the insurer or insurance**
4 **group's corporate governance structure, policies, and practices. The director may request**
5 **additional information that he or she deems material and necessary to provide the director**
6 **with a clear understanding of the corporate governance policies and the reporting or**
7 **information system or controls implementing those policies.**

8 **2. Notwithstanding subsection 1 of this section, the CGAD shall be prepared**
9 **consistent with regulations promulgated by the director. Documentation and supporting**
10 **information shall be maintained and made available upon examination or upon request of**
11 **the director.**

382.620. 1. Documents, materials, or other information, including the CGAD, in
2 **the possession or control of the department of insurance, financial institutions and**
3 **professional registration that are obtained by, created by, or disclosed to the director or**

4 any other person under sections 382.600 to 382.640 are recognized by this state as being
5 proprietary and contains trade secrets. All such documents, material, or other information
6 shall be confidential by law and privileged, shall not be subject to disclosure under chapter
7 610, shall not be subject to subpoena, and shall not be subject to discovery or admissible
8 in evidence in any private civil action. However, the director is authorized to use the
9 documents, materials, or other information in the furtherance of any regulatory or legal
10 action brought as a part of the director's official duties. The director shall not otherwise
11 make the documents, materials, or other information public without the prior written
12 consent of the insurer. Nothing in this section shall be construed to require written consent
13 of the insurer before the director may share or receive confidential documents, materials,
14 or other CGAD-related information under subsection 3 of this section to assist in the
15 performance of the director's regular duties.

16 2. Neither the director nor any person who receives documents, materials, or other
17 CGAD-related information through examination or otherwise while acting under the
18 authority of the director or with whom such documents, materials, or other information
19 are shared under sections 382.600 to 382.640 shall be permitted or required to testify in any
20 private civil action concerning any confidential documents, materials, or information
21 subject to subsection 1 of this section.

22 3. In order to assist in the performance of the director's regulatory duties, the
23 director:

24 (1) May, upon request, share documents, materials, or other CGAD-related
25 information, including the confidential and privileged documents, materials, or
26 information subject to subsection 1 of this section, including proprietary and trade secret
27 documents and materials, with other state, federal, and international financial regulatory
28 agencies, including members of any supervisory college as defined in section 382.225, with
29 the NAIC, and with third-party consultants under section 382.625; provided that, the
30 recipient agrees in writing to maintain the confidentiality and privileged status of the
31 CGAD-related documents, materials, or other information and has verified in writing the
32 legal authority to maintain confidentiality; and

33 (2) May receive documents, materials, or other CGAD-related information,
34 including otherwise confidential and privileged documents, materials, or information,
35 including proprietary and trade secret information or documents, from regulatory officials
36 of other state, federal, and international financial regulatory agencies, including members
37 of any supervisory college as defined in section 382.225, and from the NAIC, and shall
38 maintain as confidential or privileged any documents, materials, or information received
39 with notice or the understanding that it is confidential or privileged under the laws of the
40 jurisdiction that is the source of the documents, material, or information.

41 **4. The sharing of information and documents by the director under sections**
42 **382.600 to 382.640 shall not constitute a delegation of regulatory authority or rulemaking,**
43 **and the director is solely responsible for the administration, execution, and enforcement**
44 **of the provisions of sections 382.600 to 382.640.**

45 **5. No waiver of any applicable privilege or claim of confidentiality in the**
46 **documents, proprietary and trade secret materials, or other CGAD-related information**
47 **shall occur as a result of disclosure of such CGAD-related information or documents to the**
48 **director under this section or as a result of sharing as authorized under sections 382.600**
49 **to 382.640.**

382.625. 1. The director may retain, at the insurer's expense, third-party
2 **consultants, including attorneys, actuaries, accountants, and other experts not otherwise**
3 **a part of the director's staff, as may be reasonably necessary to assist the director in**
4 **reviewing the CGAD and related information or the insurer's compliance with sections**
5 **382.600 to 382.640.**

6 **2. Any persons retained under subsection 1 of this section shall be under the**
7 **direction and control of the director and shall act in a purely advisory capacity.**

8 **3. The NAIC and third-party consultants shall be subject to the same**
9 **confidentiality standards and requirements as the director.**

10 **4. As part of the retention process, a third-party consultant shall verify to the**
11 **director, with notice to the insurer, that it is free of a conflict of interest and that it has**
12 **internal procedures in place to monitor compliance with a conflict and to comply with the**
13 **confidentiality standards and requirements of sections 382.600 to 382.640.**

14 **5. A written agreement with the NAIC or a third-party consultant governing**
15 **sharing and use of information provided under sections 382.600 to 382.640 shall contain**
16 **the following provisions and expressly require the written consent of the insurer prior to**
17 **making public information provided under sections 382.600 to 382.640:**

18 **(1) Specific procedures and protocols for maintaining the confidentiality and**
19 **security of CGAD-related information shared with the NAIC or a third-party consultant**
20 **under sections 382.600 to 382.640;**

21 **(2) Procedures and protocols for sharing by the NAIC only with other state**
22 **regulators from states in which the insurance group has domiciled insurers. The**
23 **agreement shall provide that the recipient agrees in writing to maintain the confidentiality**
24 **and privileged status of the CGAD-related documents, materials, or other information and**
25 **has verified in writing the legal authority to maintain confidentiality;**

26 **(3) A provision specifying that ownership of the CGAD-related information shared**
27 **with the NAIC or a third-party consultant remains with the department of insurance,**

28 financial institutions and professional registration, and the NAIC's or third-party
29 consultant's use of the information is subject to the direction of the director;

30 (4) A provision that prohibits the NAIC or a third-party consultant from storing
31 the information shared under sections 382.600 to 382.640 in a permanent database after
32 the underlying analysis is completed;

33 (5) A provision requiring the NAIC or a third-party consultant to provide prompt
34 notice to the director and to the insurer or insurance group regarding any subpoena,
35 request for disclosure, or request for production of the insurer's CGAD-related
36 information; and

37 (6) A provision requiring the NAIC or a third-party consultant to consent to
38 intervention by an insurer in any judicial or administrative action in which the NAIC or
39 a third-party consultant may be required to disclose confidential information about the
40 insurer shared with the NAIC or a third-party consultant under sections 382.600 to
41 382.640.

382.630. 1. Any insurer failing without just cause to timely file a CGAD as
2 required under sections 382.600 to 382.640 commits a level two violation under section
3 374.049 for each day's delay; provided that, the total maximum penalty under this section
4 is five thousand dollars. The director may reduce the penalty if the insurer demonstrates
5 to the director that the imposition of the penalty would constitute a financial hardship to
6 the insurer.

7 2. The director may enforce the provisions of sections 382.600 to 382.640 under
8 sections 374.046 to 374.049.

382.635. The director may, upon notice and opportunity for all interested persons
2 to be heard, issue such rules, regulations, and orders as shall be necessary to carry out the
3 provisions of sections 382.600 to 382.640. Any rule or portion of a rule, as that term is
4 defined in section 536.010, that is created under the authority delegated in this section shall
5 become effective only if it complies with and is subject to all of the provisions of chapter
6 536 and, if applicable, section 536.028.

382.640. If any provision of sections 382.600 to 382.640 or the application thereof
2 to any person or circumstance is held invalid under the Constitution of the United States
3 or the Constitution of the state of Missouri, such determination shall not affect the
4 provisions or applications of sections 382.600 to 382.640, which may be given effect without
5 the invalid provision or application, and to that end the provisions of sections 382.600 to
6 382.640, with the exception of section 382.620, are severable.

Section B. This act shall become effective on January 1, 2018.

✓