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SENATE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1568

AN ACT

To repeal sections 375.246, 375.330, 375.1202, 376.311, 376.671, 376.951, 376.952, 376.955, 376.957 and 379.080, RSMo, and to enact in lieu thereof fourteen new sections relating to insurance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

Section A. Sections 375.246, 375.330, 375.1202, 376.311, 376.671, 376.951, 376.952, 376.955, 376.957 and 379.080, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 375.246, 375.330, 375.1202, 376.311, 376.671, 376.951, 376.952, 376.955, 376.957, 376.1121, 376.1124, 376.1127, 376.1130 and 379.080, to read as follows:

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a **[**deduction**]** reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1) to **[**(4)**]** (5) of this subsection. **[**If meeting the requirements of subdivision (3) or (4) of this subsection, the requirements of subdivision (5) must also be met.**]** Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through

which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) have been satisfied.

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**]** that is licensed to transact insurance in this state;

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**]** that is accredited as a reinsurer in this state. An accredited reinsurer is one **[**which**]** that:

(a) Files with the director evidence of its submission to this state's jurisdiction;

(b) Submits to the authority of the department of insurance to examine its books and records;

(c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(e) **[**Either:

a.**]** Maintains a surplus as regards policyholders in an amount **[**which is**]** not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

**[**b.**]** (f) Maintains a surplus as regards policyholders in an

amount less than twenty million dollars and whose accreditation has been approved by the director[;

c. The requirements in subparagraphs a and b of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system;].

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that is domiciled [and licensed] in, or in the case of a United States branch of an alien assuming insurer is entered through, a state [which] that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(a) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; except that this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and

(b) Submits to the authority of the department of insurance to examine its books and records;

(4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer [which] that maintains a trust fund in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section, for the payment of the valid claims of its United States [policyholders and]

ceding insurers, their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers [to enable the director to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers or any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the director an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

(b) In the case of a group of incorporated insurers under common administration which complies with the filing requirements

contained in the previous paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the authority of the department of insurance to examine its books and records and bears the expense of such examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust shall be in an amount equal to the group's several liabilities attributable to United States business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers or any member of the group as additional security for any such liabilities, and each member of the group shall make available to the director an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant;

(c) Such trust shall be established in a form approved by the director of insurance**]**. The assuming insurer shall submit to examination of its books and records by the director.

(b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the form of the trust and any amendments to the trust have been approved by:

a. The commissioner or director of the state agency regulating insurance in the state where the trust is domiciled; or

b. The commissioner or director of another state who, pursuant to the terms of the trust instrument, has accepted

principal regulatory oversight of the trust.

(c) The form of the trust and any trust amendments shall also be filed with the commissioner or director in every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in **[**the trustees of the trust for its United States policyholders and**]** its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(d) The trust **[**described herein must**]** shall remain in effect for as long as the assuming insurer **[**shall have**]** has outstanding obligations due under the reinsurance agreements subject to the trust**[**;

(d)**]**. No later than February twenty-eighth of each year the trustees of the trust shall report to the director in writing **[**setting forth**]** the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust **[**shall**]** will not expire prior to the next following December thirty-first**[**;**]**.

(e) The following requirements apply to the following categories of assuming insurers:

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming

insurer's liabilities attributable to reinsurance ceded by the United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars;

b. In the case of a group of incorporated and individual unincorporated underwriters:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business in the United States; and

(iii) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account;

c. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's domiciliary regulator as are

the unincorporated members;

d. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group;

(5) Credit:

(a) Shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this subsection, but only as to the insurance of risks located in a jurisdiction of the United States where the reinsurance is required by applicable law or regulation of that jurisdiction;

(b) May be allowed in the discretion of the director when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this subsection, but only as to the insurance of risks located in a foreign country where the reinsurance is required by applicable law or regulation of that country;

**[**(5)**]** (6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the

reinsurance agreement, the assuming insurer, at the request of the ceding insurer shall submit to the jurisdiction of the courts of this state, will comply with all requirements necessary to give such courts jurisdiction, and will abide by the final decisions of such courts or of any appellate courts in this state in the event of an appeal; and

(b) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This **[**provision**]** paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if **[**such an**]** this obligation is created in the agreement and the jurisdiction and situs of the arbitration is **[**the state of Missouri**]**, with respect to any receivership of the ceding company, any jurisdiction of the United States;

(7) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3) of ths subsection, the credit permitted by subdivision (4) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (e) of subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply

with an order of the commissioner or director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner or director with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner or director with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the commissioner or director with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner or director with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

2. **[**A**]** An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection 1 of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer **[**and such**]**. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with **[**such**]** the assuming insurer as

security for the payment of obligations thereunder, if [such] the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section. This security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) (a) Clean, irrevocable, unconditional letters of credit, as defined in subdivision (1) of subsection 3 of this section, issued or confirmed by a qualified United States financial institution no later than December thirty-first [with respect to] of the year for which filing is being made, and in the possession of, or in trust for, the ceding company on or before the filing date of its annual statement.

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, shall continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs;

(4) Any other form of security acceptable to the director [and approved by the attorney general].

3. (1) For purposes of subdivision (3) of subsection 2 of

this section, a "qualified United States financial institution" means an institution that:

(a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the director, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(a) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

4. The director may adopt rules and regulations implementing the provisions of this section.

5. (1) The director shall disallow any credit as an asset

or as a deduction from liability for any reinsurance found by him to have been arranged for the purpose principally of deception as to the ceding company's financial condition as of the date of any financial statement of the company. Without limiting the general purport of this provision, reinsurance of any substantial part of the company's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the assuming insurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception within the intent of this provision.

(2) (a) The director shall also disallow as an asset or deduction from liability to any ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company, and if it be impaired or insolvent to its **[**rehabilitator or**]** receiver, by the assuming insurer on the basis of the liability of the ceding company under the contracts reinsured without diminution because of the insolvency of the ceding company.

(b) Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

a. Where the contract of insurance or reinsurance specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

b. Where the assuming insurer, with the consent of it and

the direct insured or insureds in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for such claim payment.

(d) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense in the proceeding where such claim is to be adjudicated

any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

6. **[**After an insurer has been declared insolvent the liquidator or receiver of such insurer shall file with the director a statement which shall reflect the claims reserves (including incurred but not reported losses) and unearned premium reserves which have been established by the liquidator or receiver and which shall also set forth the amounts of such reserves that are allocable to particular reinsurers of the insolvent company. Each such statement shall be filed by each liquidator or receiver not less frequently than annually and shall be considered for all intents and purposes as the annual statement which was required to be filed by the insurer with the director prior to the liquidation proceedings.**]** To the extent that any reinsurer of an insurance company in liquidation would have been required under any agreement pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon **[**a**]** the last financial statement **[**required to post letters of credit or other security to cover such**]** filed with a regulatory authority

immediately prior to receivership, such reinsurer shall be required to post letters of credit or other security to cover reserves after a company has been placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other security as required by a reinsurance agreement or the provisions of this [section] subsection, the director may [issue an order barring such reinsurer from thereafter reinsuring any insurance company which is incorporated under the laws of the state of Missouri or admitted to do business in] consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded to such reinsurer by a ceding insurance company that is incorporated under the laws of the state of Missouri.

7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated in accordance with the laws of Missouri.

8. The provisions of this section shall become effective on January 1, [1992] 2003, and shall be applicable to the financial statements of a reinsurer as of December 31, [1991] 2002.

375.330. 1. No insurance company formed under the laws of this state shall be permitted to purchase, hold or convey real estate, excepting for the purpose and in the manner herein set forth, to wit:

(1) Such as shall be necessary for its accommodation in the transaction of its business; provided that before the purchase of real estate for any such purpose, the approval of the director of the department of insurance must be first had and obtained, and [in no event shall] except with the approval of the director, the

value of such real estate, together with all appurtenances thereto, purchased for such purpose**[**:

(a) If a stock company, exceed the amount of its capital stock;

(b) If a fire or casualty company, but not a stock company, exceed sixty percent of its surplus or ten percent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the director of the department of insurance, whichever is the lesser; or

(c) If any other type or kind of insurance company, exceed sixty percent of its surplus or five percent of its admitted assets, as shown by its last annual statement, whichever is the lesser**]** shall not exceed twenty percent of the insurance company's capital and surplus as shown by its last annual statement; or

(2) Such as shall have been mortgaged in good faith by way of security for loans previously contracted, or for moneys due; or

(3) Such as shall have been conveyed to it in satisfaction of debts contracted in the course of its dealings; or

(4) Such as shall have been purchased at sales upon the judgments, decrees or mortgages obtained or made for such debts; or

(5) Such as shall be necessary and proper for carrying on its legitimate business under the provisions of the Urban Redevelopment Corporations Act; or

(6) Such as shall have been acquired under the provisions of the Urban Redevelopment Corporations Act permitting such

company to purchase, own, hold or convey real estate; or

(7) Such real estate, or any interest therein, as may be acquired or held by it by purchase, lease or otherwise, as an investment for the production of income, which real estate or interest therein may thereafter be held, improved, developed, maintained, managed, leased, sold or conveyed by it as real estate necessary and proper for carrying on its legitimate business; or

(8) A reciprocal or interinsurance exchange may, in its own name, purchase, sell, mortgage, hold, encumber, lease, convey, or otherwise affect the title to real property for the purposes and objects of the reciprocal or interinsurance exchange. Such deeds, notes, mortgages or other documents relating to real property may be executed by the attorney in fact of the reciprocal or interinsurance exchange. This provision shall be retroactive and shall apply to real estate owned or sold by a reciprocal insurer prior to August 28, 1990.

2. The investments acquired under subdivision (7) of subsection 1 of this section may be in either existing or new business or industrial properties, or for new residential properties or new housing purposes.

3. Provided, no such insurance company shall invest more than ten percent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the director of the department of insurance of the state of Missouri, in the total amount of real estate acquired under subdivision (7) of subsection 1, nor more under subdivision (7) of subsection 1 than one percent of its admitted assets or ten

percent of its capital and surplus, whichever is greater, in any one property, nor more under subdivision (7) of subsection 1 than one percent of its admitted assets or ten percent of its capital and surplus, whichever is greater, in total properties leased or rented to any one individual, partnership or corporation.

4. It shall not be lawful for any company incorporated as aforesaid to purchase, hold or convey real estate in any other case or for any other purpose; and all such real estate acquired in payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor, shall be sold and disposed of within ten years after such company shall have acquired absolute title to the same, unless the company owning such real estate or interest therein shall elect to hold it pursuant to subdivision (7) of subsection 1.

5. The director of the department of insurance may, for good cause shown, extend the time for holding such real estate acquired in paying of a debt, by foreclosure or otherwise, and real estate exchanged therefor, and not held by the company under subdivision (7) of subsection 1, for such period as he may find to be to the best interests of the policyholders of said company.

6. If a life insurance company depositing under section 376.170, RSMo, becomes the owner of real estate pursuant to this section, the company may execute its own deed for the real estate to the director of the department of insurance, as trustee. The deed may be deposited with the director as proper security, under and according to the provisions of sections 376.010 to 376.670, RSMo, the value to be subject to the approval of the director.

375.1202. 1. The amount recoverable by the liquidator from

reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate except where:

(1) The reinsurance contract specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the ceding insurer's insolvency; or

(2) The assuming insurer, with the consent of the direct insured or insureds, has directly assumed the ceding insurer's policy obligations to the payees under such policies in substitution for the ceding insurer's obligations to such payees.

2. Notwithstanding subsection 1 of this section, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for said claim payment.

376.311. 1. In addition to the investments permitted by other provisions of the laws, the capital reserve and surplus of

all life insurance companies of whatever kind and character, organized or doing business pursuant to this chapter, may be invested in an investment pool meeting the requirements set out below, and any other provision of law relating to investments made by life insurance companies.

2. As used in this section, the following terms mean:

(1) "Business entity", a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, including such an entity when organized as a not-for-profit entity;

(2) "Qualified bank", a national bank, state bank or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States banking regulators and that is either regulated by state banking laws or is a member of the Federal Reserve System.

3. (1) Qualified investment pools shall invest only in investments which an insurer may acquire pursuant to this chapter and other provisions of law. The insurer's proportionate interest in these investments may not exceed the applicable limits of this section and other provisions of law.

(2) An insurer shall not acquire an investment in an investment pool pursuant to this subsection if, after giving effect to the investment, the aggregate amount of investments in all investment pools then held by the insurer would exceed thirty percent of its assets.

(3) For an investment in an investment pool to be qualified pursuant to this chapter, the investment pool shall not:

(a) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;

(b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions;

(c) Lend money or other assets to participants in the pool.

(4) For an investment pool to be qualified pursuant to this chapter, the manager of the investment pool shall:

(a) Be organized pursuant to the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(b) Be the insurer; an affiliated insurer; a business entity affiliated with the insurer; a qualified bank; a business entity registered pursuant to the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.) as amended; or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact.

(5) The pool manager, or an agent designated by the pool manager, shall compile and maintain detailed accounting records setting forth:

(a) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(b) A complete description of all underlying assets of the investment pool including amount, interest rate, maturity date (if any) and other appropriate designations; and

(c) Other records which, on a daily basis, allow third parties to verify each participant's investments in the investment pool.

(6) The pool manager shall maintain the assets of the investment pool in one or more custody [account] accounts, in the name of or on behalf of the investment pool, under [a] one or more custody [agreement] agreements with a qualified bank. [All custodial agreements shall be filed with the department of insurance for prior approval. The] Each custody agreement shall:

(a) State and recognize the claims and rights of each participant;

(b) Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(c) Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the qualified bank or any other person.

(7) The pooling agreement for each investment pool shall be in writing and shall provide that:

(a) An insurer and its [affiliated insurers] affiliates shall, at all times, hold one hundred percent of the interests in the investment pool;

(b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;

(c) The aggregate amount of each pool participant's interest in the investment pool shall be in proportion to:

a. Each participant's undivided interest in the underlying assets of the investment pool; and

b. The underlying assets of the investment pool held solely

for the benefit of each participant;

(d) A participant or, in the event of the participant's insolvency, bankruptcy or receivership, its trustee, receiver, conservator or other successor-in-interest may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter, provided:

a. In the case of publicly traded securities, settlement shall not exceed five business days; and

b. In the case of all other securities and investments, settlement shall not exceed ten business days.

Distributions pursuant to this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool.

(8) The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(a) In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool; or

(b) In-kind, a pro rata share of each underlying asset; or

(c) In a combination of cash and in-kind distributions, a pro rata share in each underlying asset;

(9) The pool manager shall make the records of the investment pool available for inspection by the director.

4. The pooling agreement and any other arrangements or agreements relating to an investment pool, and any amendments thereto, shall be submitted to the department of insurance for prior approval pursuant to section 382.195, RSMo. Individual financial transactions between the pool and its participants in the ordinary course of the investment pool's operations shall not be subject to the provisions of section 382.195, RSMo. Investment activities of pools and transactions between pools and participants shall be reported annually in the registration statement required by section 382.100, RSMo.

376.671. 1. This section shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

2. In the case of contracts issued on or after the operative date of this section as defined in subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding

provisions which in the opinion of the director are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract:

(1) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9;

(2) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six months after demand therefor with surrender of the contract;

(3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits;

(4) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior

withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

(1) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payment shall be equal to an accumulation up to such time at a rate of interest of three percent per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of

(a) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent per annum; and

(b) The amount of any indebtedness to the company on the

contract, including interest due and accrued and increased by any existing additional amounts credited by the company to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars and less a collection charge of one dollar and twenty-five cents per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent of the net consideration for the first contract year and eighty-seven and one-half percent of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent;

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(a) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent of the net consideration for the first contract year plus twenty-two and one-half percent of the excess of the net

consideration for the first contract year over the lesser of the net considerations for the second and third contract years;

(b) The annual contract charge shall be the lesser of thirty dollars or ten percent of the gross annual consideration;

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent, and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars;

(4) Notwithstanding any other provision of this subsection, for any contract issued on or after July 1, 2002 and before July 1, 2004, the interest rate at which net considerations, prior withdrawals and partial surrenders shall be accumulated, for the purpose of determining minimum nonforfeiture amounts, shall be one and one-half percent per annum.

4. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

5. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit

which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

6. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present

values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

7. For the purpose of determining the benefits calculated under subsections 5 and 6, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity date, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

8. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

9. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

10. For any contract which provides, within the same contract by rider or supplemental contract provision, both

annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections 4, 5, 6, 7, and 9, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

11. After September 28, 1979, any company may file with the director a written notice of its election to comply with the provisions of this section after a specified date before September 28, 1981. After the filing of such notice, then upon such specified date, which shall be the operative date of this section for such company, this section shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this section for such company shall be September 28, 1981.

376.951. 1. Sections 376.951 to 376.958 and sections 376.1121 to 376.1133 may be known and cited as the "Long-term Care Insurance Act".

2. As used in sections 376.951 to 376.958 and sections 376.1121 to 376.1133, unless the context requires otherwise, the following terms mean:

(1) "Applicant":

(a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and

(b) In the case of a group long-term care insurance policy, the proposed certificate holder;

(2) "Certificate", any certificate **[**or evidence of coverage**]** issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in this state;

(3) "Director", the director of the department of insurance of this state;

(4) "Group long-term care insurance", a long-term care insurance policy which is delivered or issued for delivery in this state and issued to:

(a) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organization; or

(b) Any professional, trade or occupational association for its members or former or retired members, or combination thereof,

if such association;

a. Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and

b. Has been maintained in good faith for purposes other than obtaining insurance; or

(c) An association or a trust or the trustee of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the director that the association or associations have at the outset a minimum of one hundred persons and have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws which provide that:

a. The association or associations hold regular meetings not less than annually to further purposes of the members;

b. Except for credit unions, the association or associations collect dues or solicit contributions from members; and

c. The members have voting privileges and representation on the governing board and committees. Thirty days after such filing the association or associations shall be deemed to satisfy such organizational requirements, unless the director makes a finding that the association or associations do not satisfy those organizational requirements;

(d) A group other than as described in paragraph (a), (b)

or (c) of subdivision (4) of this subsection, subject to a finding by the director that:

a. The issuance of the group policy is not contrary to the best interest of the public;

b. The issuance of the group policy would result in economies of acquisition or administration; and

c. The benefits are reasonable in relation to the premiums charged;

(5) "Long-term care insurance", any insurance policy**[**, contract, certificate, evidence of coverage**]** or rider advertised, marketed, offered or designed to provide coverage for not less than twelve consecutive months for each covered person on an expense-incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance of personal care services, provided in a setting other than an acute care unit of a hospital. Such term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. Such term also includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. Long-term care insurance also includes qualified long-term care insurance contracts. Long-term care insurance may be issued by insurers; fraternal benefit societies; health services corporations; prepaid health plans; **[**and**]** health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy

which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage. With regard to life insurance, long-term care insurance does not include life insurance policies that accelerate the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and that provide the option of a lump-sum payment for those benefits and neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other provision of sections 376.951 to 376.958 and sections 376.1121 to 376.1133 to the contrary, any product advertised, marketed, or offered as long-term care insurance shall be subject to the provisions of sections 376.951 to 376.958 and sections 376.1121 to 376.1133;

(6) "Policy", any policy, **[**contract, certificate, evidence of coverage,**]** subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; health services corporation; prepaid health plan or health maintenance organization, or any similar organization;

(7) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract", the portion of a life insurance contract that provides long-term care

insurance coverage by rider or as part of the contract that satisfies the requirements of Section 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended. Qualified long-term care insurance contract also includes an individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:

(a) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(b) The contract does not pay or reimburse expenses incurred for services or items to the extent that the expenses are reimbursable under Title XVIII of the Social Security Act, as amended, or would be so reimbursable but for the application of a deductible or coinsurance amount. The requirements of this paragraph do not apply to expenses that are reimbursable under Title XVIII of the Social Security Act only as a secondary payor. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the period to which the payments relate;

(c) The contract is guaranteed renewable within the meaning of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986, as amended;

(d) The contract does not provide for a cash surrender

value or other money that can be paid, assigned, pledged as collateral for a loan, or borrowed except as provided in paragraph (e) of this subdivision;

(e) All refunds of premiums and all policyholder dividends or similar amounts under the contract are to be applied as a reduction in future premiums or to increase future benefits; except that a refund on the event of death of the insured or a complete surrender or cancellation of the contract shall not exceed the aggregate premiums paid under the contract; and

(f) The contract meets the consumer protection provisions set forth in Section 7702B(g) of the Internal Revenue Code of 1986, as amended.

376.952. 1. The provisions of sections 376.951 to 376.958 and sections 376.1121 to 376.1133 shall apply to policies delivered or issued for delivery in this state on or after August 28, **[**1990**]** 2002. Sections 376.951 to 376.958 and sections 376.1121 to 376.1133 are not intended to supersede the obligations of entities subject to the provisions of sections 376.951 to 376.958 and sections 376.1122 to 376.1133 to comply with the substance of other applicable insurance laws insofar as they do not conflict with the provisions of sections 376.951 to 376.958 and sections 376.1122 to 376.1133, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

2. The purposes of the provisions of sections 376.951 to 376.958 and sections 376.1122 to 376.1133 are to promote the public interest, to promote the availability of long-term care

insurance policies, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to establish standards for long-term care insurance, to facilitate public understanding and comparison of long-term care insurance policies, and to facilitate flexibility and innovation in the development of long-term care insurance coverage.

3. Any policy or rider advertised, marketed or offered as long-term care or nursing home insurance shall comply with the provisions of sections 376.951 to 376.958 and sections 376.1122 to 376.1133.

376.955. 1. The director may adopt regulations that include standards for full and fair disclosure setting forth the manner, content and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions and definitions of terms. Regulations adopted pursuant to sections 376.951 to 376.958 and sections 376.1122 to 376.1133 shall be in accordance with the provisions of chapter 536, RSMo.

2. No long-term care insurance policy may:

(1) Be canceled, nonrenewed or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder; or

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than for lower levels of care.

3. No long-term care insurance policy or certificate other than a policy or certificate thereunder issued to a group as defined in paragraph (a) of subdivision (4) of subsection 2 of section 376.951:

(1) Shall use a definition of preexisting condition which is more restrictive than the following: "Preexisting condition" means a condition for which medical advice or treatment was recommended by, or received from, a provider of health care services, within six months preceding the effective date of coverage of an insured person;

(2) May exclude coverage for a loss or confinement which is the result of a preexisting condition unless such loss or confinement begins within six months following the effective date of coverage of an insured person.

4. The director may extend the limitation periods set forth in subdivisions (1) and (2) of subsection 3 of this section as to specific age group categories in specific policy forms upon findings that the extension is in the best interest of the public.

5. The definition of preexisting condition provided in

subsection 3 of this section does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a preexisting condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in subdivision (2) of subsection 3 of this section expires. No long-term care insurance policy or certificate may exclude or use waivers or riders of any kind to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period described in subdivision (2) of subsection 3 of this section.

6. No long-term care insurance policy may be delivered or issued for delivery in this state if such policy:

(1) Conditions eligibility for any benefits on a prior hospitalization requirement; or

(2) Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or

(3) Conditions eligibility for any benefits **[**on a prior institutionalization requirement, except in the case of**]** <u>other than</u> waiver of premium, post-confinement, post-acute care or recuperative benefits <u>on a prior institutionalization requirement</u>.

7. A long-term care insurance policy containing post-confinement, post-acute care or recuperative benefits shall

clearly label in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits" such limitations or conditions, including any required number of days of confinement.

8. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty days.

9. No long-term care insurance policy or rider which provides benefits only following institutionalization shall condition such benefits upon admission to a facility for the same or related conditions within a period of less than thirty days after discharge from the institution.

10. The director may adopt regulations establishing loss ratio standards for long-term care insurance policies provided that a specific reference to long-term care insurance policies is contained in the regulation.

11. Long-term care insurance applicants shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined

in paragraph (a) of subdivision (4) of subsection 2 of section 376.951, the applicant is not satisfied for any reason. This subsection shall also apply to denials of applications and any refund must be made within thirty days of the return or denial.

376.957. 1. An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose. The director shall prescribe a standard format, including style, arrangement and overall appearance, and the content of an outline of coverage. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an **[**applicant**]** application or enrollment form. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form. In the case of a policy issued to a group defined in section 376.951, an outline of coverage shall not be required to be delivered; provided that the information described in subdivisions (1) to (6) of subsection 2 of this section is contained in other materials relating to enrollment. Upon request, such other materials shall be made available to the director.

2. The outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions, and limitations contained in the policy;

(3) A statement of the terms under which the policy or

certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change the premium. Continuation or conversion provisions of group coverage shall be specifically described;

(4) A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;

(5) A description of the terms under which the policy or certificate may be returned and premium refunded; **[**and**]**

(6) A brief description of the relationship of cost of care and benefits; and

(7) A statement that discloses to the policyholder or certificate holder whether the policy is intended to be a federally tax-qualified long-term care insurance contract under Section 7702B(b) of the Internal Revenue Code of 1986, as amended.

3. A certificate issued pursuant to a group long-term care insurance policy which policy is delivered or issued for delivery in this state shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the principal exclusions, reductions and limitations contained in the policy; and

(3) A statement that the group master policy determines governing contractual provisions.

4. If an application for a long-term care insurance contract or certificate is approved, the issuer shall deliver the contract or certificate of insurance to the applicant no later

than thirty days after the date of approval.

5. At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of request shall make such delivery no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

(1) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

(2) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;

(3) Any exclusions, reductions and limitations on benefits of long-term care; **[**and**]**

(4) A statement that any long-term care inflation protection option that may be required by the laws of this state is not available under the policy; and

(5) If applicable to the policy type, the summary shall also include:

(a) A disclosure of the effects of exercising other rights under the policy;

(b) A disclosure of guarantees related to long-term care costs of insurance charges **[**or notice that such guarantees are included in the policy or rider; and**]**;

(c) Current and projected maximum lifetime benefits; and

(d) The provisions of the policy summary listed in paragraphs (a) to (c) of this subdivision may be incorporated into a basic illustration required to be delivered in accordance with sections 375.1509, RSMo, or into the life insurance policy summary required to be delivered in accordance with section 376.706.

376.1121. If a claim under a long-term care insurance contract is denied, the issuer shall, within sixty days of the date of a written request by the policyholder or certificate holder, or a representative thereof:

(1) Provide a written explanation of the reasons for the denial; and

(2) Make available all information directly related to the denial.

376.1124. 1. For a policy or certificate that has been in force less than six months, an insurer may rescind a long-term care insurance policy or certificate, or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is material to the acceptance for coverage.

2. For a policy or certificate that has been in force for at least six months but less than two years, an insurer may rescind a long-term care insurance policy or certificate, or deny an otherwise valid long-term care insurance claim upon a showing of misrepresentation that is both material to the acceptance of coverage and which pertains to the conditions for which benefits are sought.

3. After a policy or certificate has been in force for two

years, such policy or certificate is not contestable upon the grounds of misrepresentation alone. Such policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

4. No long-term care insurance policy or certificate shall be field issued based on medical or health status. For purposes of this subsection, "field issued" means a policy or certificate issued by an agent or third-party administrator pursuant to the underwriting authority granted to the agent or third-party administrator by an insurer.

5. If an insurer has paid benefits under the long-term care insurance policy or certificate, the benefit payments shall not be recovered by the insurer if such policy or certificate is rescinded.

6. In the event of the death of the insured, this section shall not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care. In this situation, the remaining death benefits under these policies shall be governed by the contestability provisions otherwise applicable in the policy to life insurance benefits. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

376.1127. 1. Except as provided in subsection 2 of this section, a long-term care insurance policy shall not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate including a nonforfeiture benefit. The

offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If a policyholder or certificate holder declines the nonforfeiture benefit, the insurer shall provide a contingent benefit upon lapse that will be available for a specified period of time following a substantial increase in premium rates.

2. When a group long-term care insurance policy is issued, the offer required in subsection 1 of this section shall be made to the group policyholder; except that, if the policy is issued as group long-term care insurance, as defined in section 376.951, other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

3. The director shall promulgate rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse as described in subsection 1 of this section.

376.1130. 1. The director shall promulgate reasonable rules to promote premium adequacy and to provide alternatives for the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, agent testing, penalties, and reporting practices for long-term care insurance.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in sections 376.1121 to 376.1133 shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2002, shall be invalid and void.

379.080. 1. (1) The amount of the minimum capital required of a stock company to write the lines of business it proposes to transact or is transacting, or if the company is a mutual company an amount equal to the minimum capital required of a stock company transacting the same classes of business, shall be held in cash or invested in:

(a) Treasury notes or bonds of the United States;

(b) Bonds of the state of Missouri;

(c) Bonds issued by any school district of the state of Missouri;

(d) Bonds of any political subdivision of this state;

(2) The remainder of the capital, surplus or policyholders' surplus of these companies and their other assets may be invested, to the extent allowed by this or any other provision of law, in:

(a) The investments authorized by subdivision (1) of

subsection 1 of this section;

(b) Loans safely secured by personal property collateral worth, at its cash market value, not less than twenty percent in excess of the amount loaned thereon;

(c) Stocks, bonds or evidences of indebtedness issued by corporations organized under the laws of this state, or of the United States or of any other state;

(d) Bonds or other obligations issued by multinational development banks in which the United States is a member nation, including the African Development Bank;

(e) Bonds of any other state, or of any political subdivision of any other state;

(f) Mortgages or deeds of trust on unencumbered real estate in this or any other state worth not less than twenty percent in excess of the amount loaned thereon;

(g) If a company is authorized to do business in a foreign country or a possession of the United States or has outstanding insurance or reinsurance contracts on risks located in a foreign country or United States' possession, the company may invest the remainder of its capital and other assets in securities, cash or other investments payable in the currency of the foreign country or possession that are of substantially the same kinds and classes as those eligible for investments under this subsection, provided that such investments are made with the approval of the director. The aggregate amount of the foreign investments and cash shall not exceed the greater of one and one-half times the amount of the company's reserves and other obligations under the contracts or the amount that the company is required by law to

invest in the foreign country or possession, and the aggregate amount of foreign investments and cash shall not exceed five percent of the company's admitted assets. All foreign investments shall be reported to the director from time to time as he directs;

(h) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or insured, but only to the extent guaranteed or insured by the United States, any state, territory or possession of the United States, the District of Columbia, or by any agency, administration, authority or instrumentality of any of the political units enumerated;

(i) Shares of insured state-chartered building and loan associations and federal savings and loan associations, if such shares are insured by the Federal Deposit Insurance Corporation;

(j) Investments permitted by section 99.550, RSMo;

(k) Data processing equipment, automobiles, real estate and put or call options and financial futures contracts to the extent allowed by this section and any other provision of law;

(l) Investments in subsidiaries to the extent allowed by section 382.020, RSMo;

(m) Any other investments not described herein provided the aggregate amount of such investments shall not exceed eight percent of the admitted assets of the company;

(n) Any investments in an investment pool meeting the requirements of section 379.083 and any other provision of law relating to investments made by individual property and casualty companies; [and]

(o) Any other investments expressly authorized in writing

by the director of the department of insurance; and

(p) Any investment in a Missouri tax credit certificate or partnership interest which entitles the company to receive Missouri tax credits that may be used as a credit against the gross premium tax.

2. Violation of any of the provisions of this section by an insurer is grounds for the suspension or revocation of its certificate of authority by the director.