

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 577**  
95TH GENERAL ASSEMBLY

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Reported from the Committee on Small Business, Insurance and Industry, April 30, 2009, with recommendation that the Senate Committee Substitute do pass.

1575S.06C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 143.441, 147.010, 148.370, 303.024, 374.456, 374.715, 374.740, 374.755, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1057, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, and to enact in lieu thereof forty-eight new sections relating to the regulation of insurance, with penalty provisions.

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

Section A. Sections 143.441, 147.010, 148.370, 303.024, 374.456, 374.715, 2 374.740, 374.755, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 3 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1057, 4 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 5 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 6 384.057, and 384.062, RSMo, are repealed and forty-eight new sections enacted 7 in lieu thereof, to be known as sections 143.441, 147.010, 148.370, 303.024, 8 374.350, 374.351, 374.352, 374.715, 374.740, 374.755, 375.020, 375.1025, 9 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1038, 375.1040, 375.1042, 10 375.1045, 375.1047, 375.1050, 375.1052, 375.1053, 375.1054, 375.1056, 375.1057, 11 376.502, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1339, 379.1373, 12 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 13 384.043, 384.051, 384.057, and 384.062, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

147.010. 1. For the transitional year defined in subsection 4 of this section and each taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or if the outstanding shares of such corporation or any part thereof consist of shares without par value, then, in that event, for the purpose contained in this section, such shares shall be considered as having a value of five dollars per share unless the actual value of such shares exceeds five dollars per share, in which case the tax shall be levied and collected on the actual value and the surplus if the actual value and the surplus exceed two hundred thousand dollars. If such corporation employs a part of its outstanding shares in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one percent of its outstanding shares and surplus employed in this state if its outstanding shares and surplus employed in this state two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located. A foreign corporation engaged in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares and surplus as calculated in this subsection does not exceed two hundred thousand dollars shall state that fact on the annual report form prescribed by the secretary of state. For all taxable years beginning on or after January 1, 2000, the annual franchise tax shall be equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if the outstanding shares and surplus exceed one million dollars. Any corporation whose outstanding shares and surplus do not exceed one million dollars shall state that fact on the annual report form prescribed by the director of revenue.

2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit, nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express companies, which now pay an annual tax on their gross receipts in this state, nor to insurance companies, which [pay] are

37 **subject to** an annual tax on their premium receipts in this state, nor to state,  
38 district, county, town and farmers' mutual companies now organized or that may  
39 be hereafter organized pursuant to any of the laws of this state, organized for the  
40 sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate  
41 glass and mutual automobile insurance and for the purpose of paying any loss  
42 incurred by any member by assessment, nor to any mutual insurance corporation  
43 not having shares, nor to a company or association organized to transact business  
44 of life or accident insurance on the assessment plan for the purpose of mutual  
45 protection and benefit to its members and the payment of stipulated sums of  
46 moneys to the family, heirs, executors, administrators or assigns of the deceased  
47 member, nor to foreign life, fire, accident, surety, liability, steam boiler, tornado,  
48 health, or other kind of insurance company of whatever nature coming within the  
49 provisions of section 147.050 and doing business in this state, nor to savings and  
50 loan associations and domestic and foreign regulated investment companies as  
51 defined by Section 170 of the Act of Congress commonly known as the "Revenue  
52 Act of 1942", nor to electric and telephone corporations organized pursuant to  
53 chapter 351, RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have  
54 been declared tax exempt organizations pursuant to Section 501(c) of the Internal  
55 Revenue Code of 1986, nor for taxable years beginning after December 31, 1986,  
56 to banking institutions subject to the annual franchise tax imposed by sections  
57 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the  
58 individual depositor left for safekeeping and shall not be considered in computing  
59 the amount of tax collectible pursuant to the provisions of sections 147.010 to  
60 147.120.

61           3. A corporation's "taxable year" for purposes of sections 147.010 to  
62 147.120 shall be its taxable year as provided in section 143.271, RSMo.

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

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

73           6. All franchise reports and franchise taxes shall be returned to the  
74 director of revenue. All checks and drafts remitted for payment of franchise taxes  
75 shall be made payable to the director of revenue.

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

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

          148.370. Every insurance company or association organized under the  
2 laws of the state of Missouri and doing business under the provisions of sections  
3 376.010 to 376.670, 379.205 to 379.310, 379.650 to 379.790 and chapter 381,  
4 RSMo, and every mutual fire insurance company organized under the provisions  
5 of sections 379.010 to 379.190, RSMo, shall, as hereinafter provided, quarterly  
6 pay, beginning with the year 1983, a tax upon the direct premiums received by  
7 it from policyholders in this state, whether in cash or in notes, or on account of  
8 business done in this state, **in lieu of the taxes imposed under the**  
9 **provisions of chapters 143 and 147, RSMo**, for insurance of life, property or  
10 interest in this state, at the rate of two percent per annum, which amount of  
11 taxes shall be assessed and collected as hereinafter provided; provided, that fire  
12 and casualty insurance companies or associations shall be credited with canceled  
13 or returned premiums actually paid during the year in this state, and that life  
14 insurance companies shall be credited with dividends actually declared to  
15 policyholders in this state but held by the company and applied to the reduction  
16 of premiums payable by the policyholder.

          303.024. 1. Each insurer issuing motor vehicle liability policies in this  
2 state, or an agent of the insurer, shall furnish an insurance identification card  
3 to the named insured for each motor vehicle insured by a motor vehicle liability  
4 policy that complies with the requirements of sections 303.010 to 303.050,  
5 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370.

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

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

9           (2) The name of the named insured;

10          (3) The policy number;

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

12          (5) A description of the insured motor vehicle, including year and make  
13 or at least five digits of the vehicle identification number or the word "Fleet" if

14 the insurance policy covers five or more motor vehicles; and

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

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

23 4. The director shall furnish each self-insurer, as provided for in section  
24 303.220, an insurance identification card for each motor vehicle so insured. The  
25 insurance identification card shall include all of the following information:

26 (1) Name of the self-insurer;

27 (2) The word "self-insured"; and

28 (3) The statement "THIS CARD MUST BE CARRIED IN THE  
29 SELF-INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND"  
30 prominently displayed on the card.

31 5. An insurance identification card shall be carried in the insured motor  
32 vehicle at all times. The operator of an insured motor vehicle shall exhibit the  
33 insurance identification card on the demand of any peace officer, commercial  
34 vehicle enforcement officer or commercial vehicle inspector who lawfully stops  
35 such operator or investigates an accident while that officer or inspector is  
36 engaged in the performance of the officer's or inspector's duties. If the operator  
37 fails to exhibit an insurance identification card, the officer or inspector shall issue  
38 a citation to the operator for a violation of section 303.025. A motor vehicle  
39 liability insurance policy, a motor vehicle liability insurance binder, or receipt  
40 which contains the policy information required in subsection 2 of this section,  
41 shall be satisfactory evidence of insurance in lieu of an insurance identification  
42 card.

43 **6. Any person who knowingly or intentionally produces,**  
44 **manufactures, sells, or otherwise distributes a fraudulent document**  
45 **intended to serve as an insurance identification card is guilty of a class**  
46 **D felony. Any person who knowingly or intentionally possesses a**  
47 **fraudulent document intended to serve as an insurance identification**  
48 **card is guilty of a class B misdemeanor.**

374.350. Sections 374.350 to 374.352 may be cited as the

2 **"Interstate Insurance Product Regulation Compact".**

374.351. **The Interstate Insurance Product Regulation Compact**  
2 **is intended to help States join together to establish an interstate**  
3 **compact to regulate designated insurance products. Pursuant to terms**  
4 **and conditions of this Act, the State of Missouri seeks to join with other**  
5 **States and establish the Interstate Insurance Product Regulation**  
6 **Compact, and thus become a member of the Interstate Insurance**  
7 **Product Regulation Commission. The Director of the Department of**  
8 **Insurance, Financial Institutions and Professional Registration is**  
9 **hereby designated to serve as the representative of this State to the**  
10 **Commission.**

374.352. **The State of Missouri ratifies, approves, and adopts the**  
2 **following interstate compact:**

#### 3 **ARTICLE I. PURPOSES**

4 **The purposes of this Compact are, through means of joint and**  
5 **cooperative action among the Compacting States:**

- 6 **1. To promote and protect the interest of consumers of individual**  
7 **and group annuity, life insurance, disability income and long-term care**  
8 **insurance products;**
- 9 **2. To develop uniform standards for insurance products covered**  
10 **under the Compact;**
- 11 **3. To establish a central clearinghouse to receive and provide**  
12 **prompt review of insurance products covered under the Compact and,**  
13 **in certain cases, advertisements related thereto, submitted by insurers**  
14 **authorized to do business in one or more Compacting States;**
- 15 **4. To give appropriate regulatory approval to those product**  
16 **filings and advertisements satisfying the applicable uniform standard;**
- 17 **5. To improve coordination of regulatory resources and expertise**  
18 **between state insurance departments regarding the setting of uniform**  
19 **standards and review of insurance products covered under the**  
20 **Compact;**
- 21 **6. To create the Interstate Insurance Product Regulation**  
22 **Commission; and**
- 23 **7. To perform these and such other related functions as may be**  
24 **consistent with the state regulation of the business of insurance.**

#### 25 **ARTICLE II. DEFINITIONS**

26 **For purposes of this Compact:**

27           1. "Advertisement" means any material designed to create public  
28 interest in a Product, or induce the public to purchase, increase,  
29 modify, reinstate, borrow on, surrender, replace or retain a policy, as  
30 more specifically defined in the Rules and Operating Procedures of the  
31 Commission.

32           2. "Bylaws" mean those bylaws established by the Commission for  
33 its governance, or for directing or controlling the Commission's actions  
34 or conduct.

35           3. "Compacting State" means any State which has enacted this  
36 Compact legislation and which has not withdrawn pursuant to Article  
37 XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

38           4. "Commission" means the "Interstate Insurance Product  
39 Regulation Commission" established by this Compact.

40           5. "Commissioner" means the chief insurance regulatory official  
41 of a State including, but not limited to commissioner, superintendent,  
42 director or administrator.

43           6. "Domiciliary State" means the state in which an Insurer is  
44 incorporated or organized; or, in the case of an alien Insurer, its state  
45 of entry.

46           7. "Insurer" means any entity licensed by a State to issue  
47 contracts of insurance for any of the lines of insurance covered by this  
48 Act.

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

51           9. "Non-compacting State" means any State which is not at the  
52 time a Compacting State.

53           10. "Operating Procedures" mean procedures promulgated by the  
54 Commission implementing a Rule, Uniform Standard or a provision of  
55 this Compact.

56           11. "Product" means the form of a policy or contract, including  
57 any application, endorsement, or related form which is attached to and  
58 made a part of the policy or contract, and any evidence of coverage or  
59 certificate, for an individual or group annuity, life insurance, disability  
60 income or long-term care insurance product that an Insurer is  
61 authorized to issue.

62           12. "Rule" means a statement of general or particular  
63 applicability and future effect promulgated by the Commission,



64 including a Uniform Standard developed pursuant to Article VII of this  
65 Compact, designed to implement, interpret, or prescribe law or policy  
66 or describing the organization, procedure, or practice requirements of  
67 the Commission, which shall have the force and effect of law in the  
68 Compacting States.

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

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

73 15. "Uniform Standard" means a standard adopted by the  
74 Commission for a Product line, pursuant to Article VII of this Compact,  
75 and shall include all of the Product requirements in aggregate;  
76 provided, that each Uniform Standard shall be construed, whether  
77 express or implied, to prohibit the use of any inconsistent, misleading  
78 or ambiguous provisions in a Product and the form of the Product made  
79 available to the public shall not be unfair, inequitable or against public  
80 policy as determined by the Commission.

### 81 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

82 1. The Compacting States hereby create and establish a joint  
83 public agency known as the "Interstate Insurance Product Regulation  
84 Commission." Pursuant to Article IV, the Commission will have the  
85 power to develop Uniform Standards for Product lines, receive and  
86 provide prompt review of Products filed therewith, and give approval  
87 to those Product filings satisfying applicable Uniform Standards;  
88 provided, it is not intended for the Commission to be the exclusive  
89 entity for receipt and review of insurance product filings. Nothing  
90 herein shall prohibit any Insurer from filing its product in any State  
91 wherein the Insurer is licensed to conduct the business of insurance;  
92 and any such filing shall be subject to the laws of the State where filed.

93 2. The Commission is a body corporate and politic, and an  
94 instrumentality of the Compacting States.

95 3. The Commission is solely responsible for its liabilities except  
96 as otherwise specifically provided in this Compact.

97 4. Venue is proper and judicial proceedings by or against the  
98 Commission shall be brought solely and exclusively in a Court of  
99 competent jurisdiction where the principal office of the Commission is  
100 located.

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

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

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

107           **2. To exercise its rulemaking authority and establish reasonable**  
108 **Uniform Standards for Products covered under the Compact, and**  
109 **Advertisement related thereto, which shall have the force and effect of**  
110 **law and shall be binding in the Compacting States, but only for those**  
111 **Products filed with the Commission, provided, that a Compacting State**  
112 **shall have the right to opt out of such Uniform Standard pursuant to**  
113 **Article VII, to the extent and in the manner provided in this Compact,**  
114 **and, provided further, that any Uniform Standard established by the**  
115 **Commission for long-term care insurance products may provide the**  
116 **same or greater protections for consumers as, but shall not provide less**  
117 **than, those protections set forth in the National Association of**  
118 **Insurance Commissioners' Long-Term Care Insurance Model Act and**  
119 **Long-Term Care Insurance Model Regulation, respectively, adopted as**  
120 **of 2001. The Commission shall consider whether any subsequent**  
121 **amendments to the NAIC Long-Term Care Insurance Model Act or Long-**  
122 **Term Care Insurance Model Regulation adopted by the NAIC require**  
123 **amending of the Uniform Standards established by the Commission for**  
124 **long-term care insurance products;**

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

132           **4. To receive and review in an expeditious manner**  
133 **Advertisement relating to long-term care insurance products for which**  
134 **Uniform Standards have been adopted by the Commission, and give**  
135 **approval to all Advertisement that satisfies the applicable Uniform**  
136 **Standard. For any product covered under this Compact, other than**  
137 **long-term care insurance products, the Commission shall have the**

138 authority to require an insurer to submit all or any part of its  
139 Advertisement with respect to that product for review or approval  
140 prior to use, if the Commission determines that the nature of the  
141 product is such that an Advertisement of the product could have the  
142 capacity or tendency to mislead the public. The actions of Commission  
143 as provided in this section shall have the force and effect of law and  
144 shall be binding in the Compacting States to the extent and in the  
145 manner provided in the Compact;

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

149       6. To promulgate Operating Procedures, pursuant to Article VII  
150 of this Compact, which shall be binding in the Compacting States to the  
151 extent and in the manner provided in this Compact;

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

156       8. To issue subpoenas requiring the attendance and testimony of  
157 witnesses and the production of evidence;

158       9. To establish and maintain offices;

159       10. To purchase and maintain insurance and bonds;

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

162       12. To hire employees, professionals or specialists, and elect or  
163 appoint officers, and to fix their compensation, define their duties and  
164 give them appropriate authority to carry out the purposes of the  
165 Compact, and determine their qualifications; and to establish the  
166 Commission's personnel policies and programs relating to, among other  
167 things, conflicts of interest, rates of compensation and qualifications of  
168 personnel;

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

173       14. To lease, purchase, accept appropriate gifts or donations of,  
174 or otherwise to own, hold, improve or use, any property, real, personal

175 or mixed; provided that at all times the Commission shall strive to  
176 avoid any appearance of impropriety;

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

179 16. To remit filing fees to Compacting States as may be set forth  
180 in the Bylaws, Rules or Operating Procedures;

181 17. To enforce compliance by Compacting States with Rules,  
182 Uniform Standards, Operating Procedures and Bylaws;

183 18. To provide for dispute resolution among Compacting States;

184 19. To advise Compacting States on issues relating to Insurers  
185 domiciled or doing business in Non-compacting jurisdictions, consistent  
186 with the purposes of this Compact;

187 20. To provide advice and training to those personnel in state  
188 insurance departments responsible for product review, and to be a  
189 resource for state insurance departments;

190 21. To establish a budget and make expenditures;

191 22. To borrow money;

192 23. To appoint committees, including advisory committees  
193 comprising Members, state insurance regulators, state legislators or  
194 their representatives, insurance industry and consumer  
195 representatives, and such other interested persons as may be  
196 designated in the Bylaws;

197 24. To provide and receive information from, and to cooperate  
198 with law enforcement agencies;

199 25. To adopt and use a corporate seal; and

200 26. To perform such other functions as may be necessary or  
201 appropriate to achieve the purposes of this Compact consistent with  
202 the state regulation of the business of insurance.

## 203 ARTICLE V. ORGANIZATION OF THE COMMISSION

### 204 1. Membership, Voting and Bylaws

205 a. Each Compacting State shall have and be limited to one  
206 Member. Each Member shall be qualified to serve in that capacity  
207 pursuant to applicable law of the Compacting State. Any Member may  
208 be removed or suspended from office as provided by the law of the  
209 State from which he or she shall be appointed. Any vacancy occurring  
210 in the Commission shall be filled in accordance with the laws of the  
211 Compacting State wherein the vacancy exists. Nothing herein shall be

212 construed to affect the manner in which a Compacting State determines  
213 the election or appointment and qualification of its own Commissioner.

214       b. Each Member shall be entitled to one vote and shall have an  
215 opportunity to participate in the governance of the Commission in  
216 accordance with the Bylaws. Notwithstanding any provision herein to  
217 the contrary, no action of the Commission with respect to the  
218 promulgation of a Uniform Standard shall be effective unless two-thirds  
219 (2/3) of the Members vote in favor thereof.

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

224       i. Establishing the fiscal year of the Commission;

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

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

231       iv. Providing reasonable procedures for calling and conducting  
232 meetings of the Commission that consists of a majority of Commission  
233 members, ensuring reasonable advance notice of each such meeting and  
234 providing for the right of citizens to attend each such meeting with  
235 enumerated exceptions designed to protect the public's interest, the  
236 privacy of individuals, and insurers' proprietary information, including  
237 trade secrets. The Commission may meet in camera only after a  
238 majority of the entire membership votes to close a meeting *en toto* or  
239 in part. As soon as practicable, the Commission must make public (i)  
240 a copy of the vote to close the meeting revealing the vote of each  
241 Member with no proxy votes allowed, and (ii) votes taken during such  
242 meeting;

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

245       vi. Providing reasonable standards and procedures for the  
246 establishment of the personnel policies and programs of the  
247 Commission. Notwithstanding any civil service or other similar laws  
248 of any Compacting State, the Bylaws shall exclusively govern the

249 **personnel policies and programs of the Commission;**

250 **vii. Promulgating a code of ethics to address permissible and**  
251 **prohibited activities of commission members and employees; and**

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

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

259 **2. Management Committee, Officers and Personnel**

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

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

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

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

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

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

279 **ii. Establishing and overseeing an organizational structure**  
280 **within, and appropriate procedures for, the Commission to provide for**  
281 **the creation of Uniform Standards and other Rules, receipt and review**  
282 **of product filings, administrative and technical support functions,**  
283 **review of decisions regarding the disapproval of a product filing, and**  
284 **the review of elections made by a Compacting State to opt out of a**  
285 **Uniform Standard; provided that a Uniform Standard shall not be**

286 submitted to the Compacting States for adoption unless approved by  
287 two-thirds (2/3) of the members of the Management Committee;

288       iii. Overseeing the offices of the Commission; and

289       iv. Planning, implementing, and coordinating communications  
290 and activities with other state, federal and local government  
291 organizations in order to advance the goals of the Commission.

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

295       d. The Management Committee may, subject to the approval of  
296 the Commission, appoint or retain an executive director for such  
297 period, upon such terms and conditions and for such compensation as  
298 the Commission may deem appropriate. The executive director shall  
299 serve as secretary to the Commission, but shall not be a Member of the  
300 Commission. The executive director shall hire and supervise such  
301 other staff as may be authorized by the Commission.

### 302       3. Legislative and Advisory Committees

303       a. A legislative committee comprising state legislators or their  
304 designees shall be established to monitor the operations of, and make  
305 recommendations to, the Commission, including the Management  
306 Committee; provided that the manner of selection and term of any  
307 legislative committee member shall be as set forth in the Bylaws. Prior  
308 to the adoption by the Commission of any Uniform Standard, revision  
309 to the Bylaws, annual budget or other significant matter as may be  
310 provided in the Bylaws, the Management Committee shall consult with  
311 and report to the legislative committee.

312       b. The Commission shall establish two (2) advisory committees,  
313 one of which shall comprise consumer representatives independent of  
314 the insurance industry, and the other comprising insurance industry  
315 representatives.

316       c. The Commission may establish additional advisory committees  
317 as its Bylaws may provide for the carrying out of its functions.

### 318       4. Corporate Records of the Commission

319       The Commission shall maintain its corporate books and records  
320 in accordance with the Bylaws.

### 321       5. Qualified Immunity, Defense and Indemnification

322       a. The Members, officers, executive director, employees and

323 representatives of the Commission shall be immune from suit and  
324 liability, either personally or in their official capacity, for any claim for  
325 damage to or loss of property or personal injury or other civil liability  
326 caused by or arising out of any actual or alleged act, error or omission  
327 that occurred, or that the person against whom the claim is made had  
328 a reasonable basis for believing occurred within the scope of  
329 Commission employment, duties or responsibilities; provided, that  
330 nothing in this paragraph shall be construed to protect any such person  
331 from suit and/or liability for any damage, loss, injury or liability caused  
332 by the intentional or willful and wanton misconduct of that person.

333         b. The Commission shall defend any Member, officer, executive  
334 director, employee or representative of the Commission in any civil  
335 action seeking to impose liability arising out of any actual or alleged  
336 act, error or omission that occurred within the scope of Commission  
337 employment, duties or responsibilities, or that the person against whom  
338 the claim is made had a reasonable basis for believing occurred within  
339 the scope of Commission employment, duties or responsibilities;  
340 provided, that nothing herein shall be construed to prohibit that person  
341 from retaining his or her own counsel; and provided further, that the  
342 actual or alleged act, error or omission did not result from that  
343 person's intentional or willful and wanton misconduct.

344         c. The Commission shall indemnify and hold harmless any  
345 Member, officer, executive director, employee or representative of the  
346 Commission for the amount of any settlement or judgment obtained  
347 against that person arising out of any actual or alleged act, error or  
348 omission that occurred within the scope of Commission employment,  
349 duties or responsibilities, or that such person had a reasonable basis  
350 for believing occurred within the scope of Commission employment,  
351 duties or responsibilities, provided, that the actual or alleged act, error  
352 or omission did not result from the intentional or willful and wanton  
353 misconduct of that person.

#### 354         ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

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

357         2. Each Member of the Commission shall have the right and  
358 power to cast a vote to which that Compacting State is entitled and to  
359 participate in the business and affairs of the Commission. A Member



360 shall vote in person or by such other means as provided in the  
361 Bylaws. The Bylaws may provide for Members' participation in  
362 meetings by telephone or other means of communication.

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

365 **ARTICLE VII. RULES AND OPERATING PROCEDURES:**

366 **RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING**  
367 **OUT OF UNIFORM STANDARDS**

368 1. Rulemaking Authority. The Commission shall promulgate  
369 reasonable Rules, including Uniform Standards, and Operating  
370 Procedures in order to effectively and efficiently achieve the purposes  
371 of this Compact. Notwithstanding the foregoing, in the event the  
372 Commission exercises its rulemaking authority in a manner that is  
373 beyond the scope of the purposes of this Act, or the powers granted  
374 hereunder, then such an action by the Commission shall be invalid and  
375 have no force and effect.

376 2. Rulemaking Procedure. Rules and Operating Procedures shall  
377 be made pursuant to a rulemaking process that conforms to the Model  
378 State Administrative Procedure Act of 1981 as amended, as may be  
379 appropriate to the operations of the Commission. Before the  
380 Commission adopts a Uniform Standard, the Commission shall give  
381 written notice to the relevant state legislative committee(s) in each  
382 Compacting State responsible for insurance issues of its intention to  
383 adopt the Uniform Standard. The Commission in adopting a Uniform  
384 Standard shall consider fully all submitted materials and issue a  
385 concise explanation of its decision.

386 3. Effective Date and Opt Out of a Uniform Standard. A Uniform  
387 Standard shall become effective ninety (90) days after its promulgation  
388 by the Commission or such later date as the Commission may  
389 determine; provided, however, that a Compacting State may opt out of  
390 a Uniform Standard as provided in this Article. "Opt out" shall be  
391 defined as any action by a Compacting State to decline to adopt or  
392 participate in a promulgated Uniform Standard. All other Rules and  
393 Operating Procedures, and amendments thereto, shall become effective  
394 as of the date specified in each Rule, Operating Procedure or  
395 amendment.

396 4. Opt Out Procedure. A Compacting State may opt out of a

397 Uniform Standard, either by legislation or regulation duly promulgated  
398 by the Insurance Department under the Compacting State's  
399 Administrative Procedure Act. If a Compacting State elects to opt out  
400 of a Uniform Standard by regulation, it must (a) give written notice to  
401 the Commission no later than ten (10) business days after the Uniform  
402 Standard is promulgated, or at the time the State becomes a  
403 Compacting State and (b) find that the Uniform Standard does not  
404 provide reasonable protections to the citizens of the State, given the  
405 conditions in the State. The Commissioner shall make specific findings  
406 of fact and conclusions of law, based on a preponderance of the  
407 evidence, detailing the conditions in the State which warrant a  
408 departure from the Uniform Standard and determining that the  
409 Uniform Standard would not reasonably protect the citizens of the  
410 State. The Commissioner must consider and balance the following  
411 factors and find that the conditions in the State and needs of the  
412 citizens of the State outweigh: (i) the intent of the legislature to  
413 participate in, and the benefits of, an interstate agreement to establish  
414 national uniform consumer protections for the Products subject to this  
415 Act; and (ii) the presumption that a Uniform Standard adopted by the  
416 Commission provides reasonable protections to consumers of the  
417 relevant Product. Notwithstanding the foregoing, a Compacting State  
418 may, at the time of its enactment of this Compact, prospectively opt out  
419 of all Uniform Standards involving long-term care insurance products  
420 by expressly providing for such opt out in the enacted Compact, and  
421 such an opt out shall not be treated as a material variance in the offer  
422 or acceptance of any State to participate in this Compact. Such an opt  
423 out shall be effective at the time of enactment of this Compact by the  
424 Compacting State and shall apply to all existing Uniform Standards  
425 involving long-term care insurance products and those subsequently  
426 promulgated.

427         5. Effect of Opt Out. If a Compacting State elects to opt out of a  
428 Uniform Standard, the Uniform Standard shall remain applicable in the  
429 Compacting State electing to opt out until such time the opt out  
430 legislation is enacted into law or the regulation opting out becomes  
431 effective. Once the opt out of a Uniform Standard by a Compacting  
432 State becomes effective as provided under the laws of that State, the  
433 Uniform Standard shall have no further force and effect in that State

434 unless and until the legislation or regulation implementing the opt out  
435 is repealed or otherwise becomes ineffective under the laws of the  
436 State. If a Compacting State opts out of a Uniform Standard after the  
437 Uniform Standard has been made effective in that State, the opt out  
438 shall have the same prospective effect as provided under Article XIV  
439 for withdrawals.

440       **6. Stay of Uniform Standard.** If a Compacting State has formally  
441 initiated the process of opting out of a Uniform Standard by regulation,  
442 and while the regulatory opt out is pending, the Compacting State may  
443 petition the Commission, at least fifteen (15) days before the effective  
444 date of the Uniform Standard, to stay the effectiveness of the Uniform  
445 Standard in that State. The Commission may grant a stay if it  
446 determines the regulatory opt out is being pursued in a reasonable  
447 manner and there is a likelihood of success. If a stay is granted or  
448 extended by the Commission, the stay or extension thereof may  
449 postpone the effective date by up to ninety (90) days, unless  
450 affirmatively extended by the Commission; provided, a stay may not be  
451 permitted to remain in effect for more than one (1) year unless the  
452 Compacting State can show extraordinary circumstances which  
453 warrant a continuance of the stay, including, but not limited to, the  
454 existence of a legal challenge which prevents the Compacting State  
455 from opting out. A stay may be terminated by the Commission upon  
456 notice that the rulemaking process has been terminated.

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

#### 467       **ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT**

468       **1. The Commission shall promulgate Rules establishing**  
469 **conditions and procedures for public inspection and copying of its**  
470 **information and official records, except such information and records**

471 involving the privacy of individuals and insurers' trade secrets. The  
472 Commission may promulgate additional Rules under which it may make  
473 available to federal and state agencies, including law enforcement  
474 agencies, records and information otherwise exempt from disclosure,  
475 and may enter into agreements with such agencies to receive or  
476 exchange information or records subject to nondisclosure and  
477 confidentiality provisions.

478         2. Except as to privileged records, data and information, the laws  
479 of any Compacting State pertaining to confidentiality or nondisclosure  
480 shall not relieve any Compacting State Commissioner of the duty to  
481 disclose any relevant records, data or information to the Commission;  
482 provided, that disclosure to the Commission shall not be deemed to  
483 waive or otherwise affect any confidentiality requirement; and further  
484 provided, that, except as otherwise expressly provided in this Act, the  
485 Commission shall not be subject to the Compacting State's laws  
486 pertaining to confidentiality and nondisclosure with respect to records,  
487 data and information in its possession. Confidential information of the  
488 Commission shall remain confidential after such information is  
489 provided to any Commissioner.

490         3. The Commission shall monitor Compacting States for  
491 compliance with duly adopted Bylaws, Rules, including Uniform  
492 Standards, and Operating Procedures. The Commission shall notify any  
493 non-complying Compacting State in writing of its noncompliance with  
494 Commission Bylaws, Rules or Operating Procedures. If a non-  
495 complying Compacting State fails to remedy its noncompliance within  
496 the time specified in the notice of noncompliance, the Compacting State  
497 shall be deemed to be in default as set forth in Article XIV.

498         4. The Commissioner of any State in which an Insurer is  
499 authorized to do business, or is conducting the business of insurance,  
500 shall continue to exercise his or her authority to oversee the market  
501 regulation of the activities of the Insurer in accordance with the  
502 provisions of the State's law. The Commissioner's enforcement of  
503 compliance with the Compact is governed by the following provisions:

504         a. With respect to the Commissioner's market regulation of a  
505 Product or Advertisement that is approved or certified to the  
506 Commission, the content of the Product or Advertisement shall not  
507 constitute a violation of the provisions, standards or requirements of

508 the Compact except upon a final order of the Commission, issued at the  
509 request of a Commissioner after prior notice to the Insurer and an  
510 opportunity for hearing before the Commission.

511 b. Before a Commissioner may bring an action for violation of  
512 any provision, standard or requirement of the Compact relating to the  
513 content of an Advertisement not approved or certified to the  
514 Commission, the Commission, or an authorized Commission officer or  
515 employee, must authorize the action. However, authorization pursuant  
516 to this paragraph does not require notice to the Insurer, opportunity  
517 for hearing or disclosure of requests for authorization or records of the  
518 Commission's action on such requests.

#### 519 ARTICLE IX. DISPUTE RESOLUTION

520 The Commission shall attempt, upon the request of a Member, to  
521 resolve any disputes or other issues that are subject to this Compact  
522 and which may arise between two or more Compacting States, or  
523 between Compacting States and Non-compacting States, and the  
524 Commission shall promulgate an Operating Procedure providing for  
525 resolution of such disputes.

#### 526 ARTICLE X. PRODUCT FILING AND APPROVAL

527 1. Insurers and Third-Party Filers seeking to have a Product  
528 approved by the Commission shall file the Product with, and pay  
529 applicable filing fees to, the Commission. Nothing in this Act shall be  
530 construed to restrict or otherwise prevent an insurer from filing its  
531 Product with the insurance department in any State wherein the  
532 insurer is licensed to conduct the business of insurance, and such filing  
533 shall be subject to the laws of the States where filed.

534 2. The Commission shall establish appropriate filing and review  
535 processes and procedures pursuant to Commission Rules and Operating  
536 Procedures. Notwithstanding any provision herein to the contrary, the  
537 Commission shall promulgate Rules to establish conditions and  
538 procedures under which the Commission will provide public access to  
539 Product filing information. In establishing such Rules, the Commission  
540 shall consider the interests of the public in having access to such  
541 information, as well as protection of personal medical and financial  
542 information and trade secrets, that may be contained in a Product  
543 filing or supporting information.

544 3. Any Product approved by the Commission may be sold or

545 otherwise issued in those Compacting States for which the Insurer is  
546 legally authorized to do business.

547 **ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING**  
548 **FILINGS**

549           1. Not later than thirty (30) days after the Commission has given  
550 notice of a disapproved Product or Advertisement filed with the  
551 Commission, the Insurer or Third Party Filer whose filing was  
552 disapproved may appeal the determination to a review panel appointed  
553 by the Commission. The Commission shall promulgate Rules to  
554 establish procedures for appointing such review panels and provide for  
555 notice and hearing. An allegation that the Commission, in disapproving  
556 a Product or Advertisement filed with the Commission, acted  
557 arbitrarily, capriciously, or in a manner that is an abuse of discretion  
558 or otherwise not in accordance with the law, is subject to judicial  
559 review in accordance with Article III, Section 4.

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

566   **ARTICLE XII. FINANCE**

567           1. The Commission shall pay or provide for the payment of the  
568 reasonable expenses of its establishment and organization. To fund the  
569 cost of its initial operations, the Commission may accept contributions  
570 and other forms of funding from the National Association of Insurance  
571 Commissioners, Compacting States and other sources. Contributions  
572 and other forms of funding from other sources shall be of such a nature  
573 that the independence of the Commission concerning the performance  
574 of its duties shall not be compromised.

575           2. The Commission shall collect a filing fee from each Insurer  
576 and Third Party Filer filing a product with the Commission to cover the  
577 cost of the operations and activities of the Commission and its staff in  
578 a total amount sufficient to cover the Commission's annual budget.

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



619 than forty percent (40%) of the premium volume for life insurance,  
620 annuity, disability income and long-term care insurance products,  
621 based on records of the NAIC for the prior year. Thereafter, it shall  
622 become effective and binding as to any other Compacting State upon  
623 enactment of the Compact into law by that State.

624 3. Amendments to the Compact may be proposed by the  
625 Commission for enactment by the Compacting States. No amendment  
626 shall become effective and binding upon the Commission and the  
627 Compacting States unless and until all Compacting States enact the  
628 amendment into law.

#### 629 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

##### 630 1. Withdrawal

631 a. Once effective, the Compact shall continue in force and remain  
632 binding upon each and every Compacting State; provided, that a  
633 Compacting State may withdraw from the Compact ("Withdrawing  
634 State") by enacting a statute specifically repealing the statute which  
635 enacted the Compact into law.

636 b. The effective date of withdrawal is the effective date of the  
637 repealing statute. However, the withdrawal shall not apply to any  
638 product filings approved or self-certified, or any Advertisement of such  
639 products, on the date the repealing statute becomes effective, except by  
640 mutual agreement of the Commission and the Withdrawing State unless  
641 the approval is rescinded by the Withdrawing State as provided in  
642 Paragraph e of this section.

643 c. The Commissioner of the Withdrawing State shall immediately  
644 notify the Management Committee in writing upon the introduction of  
645 legislation repealing this Compact in the Withdrawing State.

646 d. The Commission shall notify the other Compacting States of  
647 the introduction of such legislation within ten (10) days after its receipt  
648 of notice thereof.

649 e. The Withdrawing State is responsible for all obligations,  
650 duties and liabilities incurred through the effective date of withdrawal,  
651 including any obligations, the performance of which extend beyond the  
652 effective date of withdrawal, except to the extent those obligations may  
653 have been released or relinquished by mutual agreement of the  
654 Commission and the Withdrawing State. The Commission's approval of  
655 Products and Advertisement prior to the effective date of withdrawal



656 shall continue to be effective and be given full force and effect in the  
657 Withdrawing State, unless formally rescinded by the Withdrawing State  
658 in the same manner as provided by the laws of the Withdrawing State  
659 for the prospective disapproval of products or advertisement  
660 previously approved under state law.

661 f. Reinstatement following withdrawal of any Compacting State  
662 shall occur upon the effective date of the Withdrawing State reenacting  
663 the Compact.

## 664 2. Default

665 a. If the Commission determines that any Compacting State has  
666 at any time defaulted ("Defaulting State") in the performance of any of  
667 its obligations or responsibilities under this Compact, the Bylaws or  
668 duly promulgated Rules or Operating Procedures, then, after notice and  
669 hearing as set forth in the Bylaws, all rights, privileges and benefits  
670 conferred by this Compact on the Defaulting State shall be suspended  
671 from the effective date of default as fixed by the Commission. The  
672 grounds for default include, but are not limited to, failure of a  
673 Compacting State to perform its obligations or responsibilities, and any  
674 other grounds designated in Commission Rules. The Commission shall  
675 immediately notify the Defaulting State in writing of the Defaulting  
676 State's suspension pending a cure of the default. The Commission shall  
677 stipulate the conditions and the time period within which the  
678 Defaulting State must cure its default. If the Defaulting State fails to  
679 cure the default within the time period specified by the Commission,  
680 the Defaulting State shall be terminated from the Compact and all  
681 rights, privileges and benefits conferred by this Compact shall be  
682 terminated from the effective date of termination.

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

688 c. Reinstatement following termination of any Compacting State  
689 requires a reenactment of the Compact.

## 690 3. Dissolution of Compact

691 a. The Compact dissolves effective upon the date of the  
692 withdrawal or default of the Compacting State which reduces

693 membership in the Compact to one Compacting State.

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

698           **ARTICLE XV. SEVERABILITY AND CONSTRUCTION**

699           1. The provisions of this Compact shall be severable; and if any  
700 phrase, clause, sentence or provision is deemed unenforceable, the  
701 remaining provisions of the Compact shall be enforceable.

702           2. The provisions of this Compact shall be liberally construed to  
703 effectuate its purposes.

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

705           1. Other Laws

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

708           b. For any Product approved or certified to the Commission, the  
709 Rules, Uniform Standards and any other requirements of the  
710 Commission shall constitute the exclusive provisions applicable to the  
711 content, approval and certification of such Products. For  
712 Advertisement that is subject to the Commission's authority, any Rule,  
713 Uniform Standard or other requirement of the Commission which  
714 governs the content of the Advertisement shall constitute the exclusive  
715 provision that a Commissioner may apply to the content of the  
716 Advertisement. Notwithstanding the foregoing, no action taken by the  
717 Commission shall abrogate or restrict: (i) the access of any person to  
718 state courts; (ii) remedies available under state law related to breach  
719 of contract, tort, or other laws not specifically directed to the content  
720 of the Product; (iii) state law relating to the construction of insurance  
721 contracts; or (iv) the authority of the attorney general of the state,  
722 including but not limited to maintaining any actions or proceedings, as  
723 authorized by law.

724           c. All insurance products filed with individual States shall be  
725 subject to the laws of those States.

726           2. Binding Effect of this Compact

727           a. All lawful actions of the Commission, including all Rules and  
728 Operating Procedures promulgated by the Commission, are binding  
729 upon the Compacting States.

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

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

736           **d. In the event any provision of this Compact exceeds the**  
737 **constitutional limits imposed on the legislature of any Compacting**  
738 **State, the obligations, duties, powers or jurisdiction sought to be**  
739 **conferred by that provision upon the Commission shall be ineffective**  
740 **as to that Compacting State, and those obligations, duties, powers or**  
741 **jurisdiction shall remain in the Compacting State and shall be**  
742 **exercised by the agency thereof to which those obligations, duties,**  
743 **powers or jurisdiction are delegated by law in effect at the time this**  
744 **Compact becomes effective.**

          374.715. 1. Applications for examination and licensure as a bail bond  
2 agent or general bail bond agent shall be in writing and on forms prescribed and  
3 furnished by the department, and shall contain such information as the  
4 department requires. Each application shall be accompanied by proof satisfactory  
5 to the department that the applicant is a citizen of the United States, is at least  
6 twenty-one years of age, has a high school diploma or general education  
7 development certificate (GED), is of good moral character, and meets the  
8 qualifications for surety on bail bonds as provided by supreme court rule. Each  
9 application shall be accompanied by the examination and application fee set by  
10 the department. Individuals currently employed as bail bond agents and general  
11 bail bond agents shall not be required to meet the education requirements needed  
12 for licensure pursuant to this section.

13           **2. (1)** In addition, each applicant for licensure as a general bail bond  
14 agent shall furnish proof satisfactory to the department that [the applicant or,  
15 if the applicant is a corporation, that each officer thereof has completed at least  
16 two years as a bail bond agent, and that the applicant possesses liquid assets of  
17 at least ten thousand dollars, along with a duly executed assignment of ten  
18 thousand dollars to the state of Missouri. The assignment shall become effective  
19 upon the applicant's violating any provision of sections 374.695 to 374.789. The  
20 assignment required by this section shall be in the form and executed in the  
21 manner prescribed by the department. The director may require by regulation

22 conditions by which additional assignments of assets of the general bail bond  
23 agent may occur when the circumstances of the business of the general bail bond  
24 agent warrants additional funds. However, such additional funds shall not  
25 exceed twenty-five thousand dollars]:

26       **(a) For a general bail bond agent licensed prior to August 28,**  
27 **2009, the applicant or, if the applicant is a corporation, each officer of**  
28 **the corporation has completed at least two years as a bail bond agent**  
29 **and the applicant possesses liquid assets of at least ten thousand**  
30 **dollars, along with an executed assignment of ten thousand dollars to**  
31 **the state of Missouri;**

32       **(b) For a general bail bond agent licensed on or after August 28,**  
33 **2009, the applicant or, if the applicant is a corporation, each officer of**  
34 **the corporation has completed at least four years as a bail bond agent**  
35 **and the applicant possesses liquid assets of fifty thousand dollars,**  
36 **along with an executed assignment of such fifty thousand dollars to the**  
37 **state of Missouri.**

38       **(2) In addition to the assignment requirements in paragraphs (a)**  
39 **and (b) of subdivision (1) of this subsection, the general bail bond agent**  
40 **shall execute an assignment to the state of Missouri in the amount of**  
41 **five thousand dollars for each additional bail bond agent newly**  
42 **licensed under the authority of the general bail bond agent on or after**  
43 **August 28, 2009; except that, the general bail bond agent shall not be**  
44 **required to assign five thousand dollars for any agent licensed under**  
45 **the authority of the same general bail bond agent prior to August 28,**  
46 **2009.**

47       **(3) The assignments required by this section shall become**  
48 **effective upon the applicant violating any provision of sections 374.695**  
49 **to 374.789, and shall be in the form and executed in the manner**  
50 **prescribed by the department. The director may require by rule**  
51 **conditions by which additional assignments of assets of the general bail**  
52 **bond agent may occur when the circumstances of the business of the**  
53 **general bail bond agent warrants additional funds; except that, such**  
54 **additional funds shall not exceed fifty thousand dollars.**

374.740. Any person applying to be licensed as a nonresident general bail  
2 bond agent who has been licensed in another state shall devote fifty percent of his  
3 or her working time in the state of Missouri and shall file proof with the director  
4 of the department of insurance, financial institutions and professional

5 registration as to his or her compliance, and accompany his or her application  
6 with the fees set by the director by [regulation] rule and, if applying for a  
7 nonresident general bail bond agent's license, with [a duly] **an** executed  
8 assignment of [twenty-five] **fifty** thousand dollars to the state of Missouri, [which  
9 assignment] **along with an additional assignment of five thousand dollars**  
10 **for each bail bond agent licensed under the authority of the general**  
11 **agent. Such assignments** shall become effective upon the applicant's violating  
12 any provision of sections 374.695 to 374.789. Failure to comply with this section  
13 will result in revocation of the nonresidence license. The assignment required by  
14 this section shall be in the form and executed in the manner prescribed by the  
15 department. All licenses issued pursuant to this section shall be subject to the  
16 same renewal requirements set for other licenses issued pursuant to sections  
17 374.695 to 374.789.

374.755. 1. The department may cause a complaint to be filed with the  
2 administrative hearing commission as provided by chapter 621, RSMo, against  
3 any holder of any license required by sections 374.695 to 374.775 or any person  
4 who has failed to renew or has surrendered his or her license for any one or any  
5 combination of the following causes:

6 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or  
7 alcoholic beverage to an extent that such use impairs a person's ability to perform  
8 the work of the profession licensed under sections 374.695 to 374.775;

9 (2) Final adjudication or a plea of guilty or nolo contendere [within the  
10 past fifteen years] in a criminal prosecution under any state or federal law for a  
11 felony or a crime involving moral turpitude [whether or not a sentence is  
12 imposed, prior to issuance of license date]. **A suspended imposition of**  
13 **sentence is not required to be disclosed for licensing or renewal**  
14 **purposes and shall not serve as a basis for denial of licensure;**

15 (3) Use of fraud, deception, misrepresentation or bribery in securing any  
16 license or in obtaining permission to take any examination required pursuant to  
17 sections 374.695 to 374.775;

18 (4) Obtaining or attempting to obtain any compensation as a member of  
19 the profession licensed by sections 374.695 to 374.775 by means of fraud,  
20 deception or misrepresentation;

21 (5) Misappropriation of the premium, collateral, or other things of value  
22 given to a bail bond agent or a general bail bond agent for the taking of bail,  
23 incompetency, misconduct, gross negligence, fraud, or misrepresentation in the

24 performance of the functions or duties of the profession licensed or regulated by  
25 sections 374.695 to 374.775;

26 (6) Violation of any provision of or any obligation imposed by the laws of  
27 this state, department of insurance, financial institutions and professional  
28 registration rules and regulations, or aiding or abetting other persons to violate  
29 such laws, orders, rules or regulations, or subpoenas;

30 (7) Transferring a license or permitting another person to use a license  
31 of the licensee;

32 (8) Disciplinary action against the holder of a license or other right to  
33 practice the profession regulated by sections 374.695 to 374.789 granted by  
34 another state, territory, federal agency or country upon grounds for which  
35 revocation or suspension is authorized in this state;

36 (9) Being finally adjudged insane or incompetent by a court of competent  
37 jurisdiction;

38 (10) Assisting or enabling any person to practice or offer to practice the  
39 profession licensed or regulated by sections 374.695 to 374.789 who is not  
40 currently licensed and eligible to practice pursuant to sections 374.695 to 374.789;

41 (11) Acting in the capacity of an attorney at a trial or hearing of a person  
42 for whom the attorney is acting as surety;

43 (12) Failing to provide a copy of the bail contract, renumbered written  
44 receipt for acceptance of money, or other collateral for the taking of bail to the  
45 principal, if requested by any person who is a party to the bail contract, or any  
46 person providing funds or collateral for bail on the principal's behalf.

47 2. After the filing of such complaint, the proceedings shall be conducted  
48 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
49 administrative hearing commission that one or more of the causes stated in  
50 subsection 1 of this section have been met, the director may suspend or revoke  
51 the license or enter into an agreement for a monetary or other penalty pursuant  
52 to section 374.280.

53 3. In lieu of filing a complaint at the administrative hearing commission,  
54 the director and the bail bond agent or general bail bond agent may enter into an  
55 agreement for a monetary or other penalty pursuant to section 374.280.

56 4. In addition to any other remedies available, the director may issue a  
57 cease and desist order or may seek an injunction in a court of competent  
58 jurisdiction pursuant to the provisions of section 374.046 whenever it appears  
59 that any person is acting as a bail bond agent or general bail bond agent without

60 a license or violating any other provisions of sections 374.695 to 374.789.

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

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

17 (1) American College Courses (CLU, ChFC);  
18 (2) Life Underwriters Training Council (LUTC);  
19 (3) Certified Insurance Counselor (CIC);  
20 (4) Chartered Property and Casualty Underwriter (CPCU);  
21 (5) Insurance Institute of America (IIA);  
22 (6) Any other professional financial designation approved by the director  
23 by rule;

24 (7) An insurance-related course taught by an accredited college or  
25 university or qualified instructor who has taught a course of insurance law at  
26 such institution;

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

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

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

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

- 46           (1) Serious physical injury or illness;
- 47           (2) Active duty in the armed services for an extended period of time;
- 48           (3) Residence outside the United States; or
- 49           (4) The licensee is at least seventy years of age.

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

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

61           8. The provisions of this section shall not apply to a life insurance  
62 producer who is limited by the terms of a written agreement with the insurer to  
63 transact only specific life insurance policies having an initial face amount of five  
64 thousand dollars or less, or annuities having an initial face amount of ten  
65 thousand dollars or less, that are designated by the purchaser for the payment  
66 of funeral or burial expenses. The director may require the insurer entering into  
67 the written agreements with the insurance producers pursuant to this subsection  
68 to certify as to the representations of the insurance producers.

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



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

76 (2) Filing fees for course approval: every applicant seeking approval by  
77 the director of a continuing education course under this section shall pay to the  
78 director a filing fee of fifty dollars per course. Fees shall be waived for state and  
79 local insurance producer groups. Such fee shall accompany any application form  
80 required by the director. Courses shall be approved for a period of no more than  
81 one year. Applicants holding courses intended to be offered for a longer period  
82 must reapply for approval. Courses approved by the director prior to August 28,  
83 1993, for which continuous certification is sought should be resubmitted for  
84 approval sixty days before the anniversary date of the previous approval.

85 10. All funds received pursuant to the provisions of this section shall be  
86 transmitted by the director to the department of revenue for deposit in the state  
87 treasury to the credit of the insurance dedicated fund. All expenditures  
88 necessitated by this section shall be paid from funds appropriated from the  
89 insurance dedicated fund by the legislature.

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

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

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

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

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

15 (4) "Audit committee", a committee (or equivalent body)  
16 established by the board of directors of an entity for the purpose of  
17 overseeing the accounting and financial reporting processes of an  
18 insurer or group of insurers, and audits of financial statements of the

19 insurer or group of insurers. The audit committee of any entity that  
20 controls a group of insurers may be deemed to be the audit committee  
21 for one or more of such controlled insurers solely for the purposes of  
22 sections 375.1025 to 375.1062 at the election of the controlling  
23 person. Such election shall be exercised under subsection 5 of section  
24 375.1053. If an audit committee is not designated by the insurer, the  
25 insurer's entire board of directors shall constitute the audit committee;

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

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

30 [(3)] (7) "Director", the director of the department of insurance, financial  
31 institutions and professional registration;

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

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

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

44 [(4)] (11) "Insurer", an insurer certified to do business in this state  
45 pursuant to section 375.161 or 375.831, and to companies authorized to transact  
46 business in this state pursuant to chapters 354, 376, 377, 378, 379 and 381,  
47 RSMo;

48 (12) "Internal control over financial reporting", a process effected  
49 by an entity's board of directors, management and other personnel  
50 designed to provide reasonable assurance regarding the reliability of  
51 the financial statements, i.e., those items specified in subsections 2 to  
52 7 of section 375.1032 and includes those policies and procedures that:

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

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

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

65           **(13) "NAIC", the National Association of Insurance**  
66 **Commissioners;**

67           **(14) "SEC", the United States Securities and Exchange**  
68 **Commission;**

69           **(15) "Section 404", Section 404 of the Sarbanes-Oxley Act of 2002,**  
70 **as amended, and the SEC's rules and regulations promulgated**  
71 **thereunder;**

72           **(16) "Section 404 report", management's report on internal**  
73 **control over financial reporting, as defined by the SEC and the related**  
74 **attestation report of the independent certified public accountant as**  
75 **described in subsection 1 of section 375.1030;**

76           **(17) "SOX compliant entity", an entity that either is required to**  
77 **be or voluntarily is compliant with all of the following provisions of the**  
78 **Sarbanes-Oxley Act of 2002, as amended:**

79           **(a) The preapproval requirements of Section 201 (Section 10A(i)**  
80 **of the federal Securities Exchange Act of 1934);**

81           **(b) The audit committee independence requirements of Section**  
82 **301 (Section 10A(m)(3) of the federal Securities Exchange Act of 1934);**  
83 **and**

84           **(c) The internal control over financial reporting requirements of**  
85 **Section 404.**

375.1028. 1. Sections 375.1025 to 375.1062 shall apply to all insurers as  
2 defined by section 375.1025. **Insurers having direct premiums written in**  
3 **this state of less than one million dollars in any calendar year and less**  
4 **than one thousand policyholders or certificate holders of direct written**  
5 **policies nationwide at the end of the calendar year shall be exempt**  
6 **from sections 375.1025 to 375.1062, unless the director makes a specific**  
7 **finding that compliance is necessary for the director to carry out**

8 **statutory responsibilities; except that, insurers having assumed**  
9 **premiums under contracts or treaties of reinsurance of one million**  
10 **dollars or more shall not be so exempt.**

11 2. Foreign or alien insurers filing audited financial reports in another  
12 state, pursuant to such other state's requirement for **filing of** audited financial  
13 reports which [are] **have been** found by the director to be substantially similar  
14 to the requirements herein, are exempt from sections [375.1025 to 375.1062]  
15 **375.1030 to 375.1050** if:

16 (1) A copy of the audited financial report [and the evaluation of  
17 accounting procedures and systems of internal control report which],  
18 **communication of internal control-related matters noted in an audit,**  
19 **and the accountant's letter of qualifications that** are filed with such other  
20 state are filed with the director in accordance with the filing dates specified in  
21 sections 375.1030, **375.1047**, and [375.1052] **375.1040**, respectively. Canadian  
22 insurers may submit accountant's reports as filed with the [Canadian Dominion  
23 Department of Insurance;] **Office of the Superintendent of Financial**  
24 **Institutions, Canada; and**

25 (2) A copy of any notification of adverse financial condition report filed  
26 with such other state is filed with the director within the time specified in section  
27 375.1045.

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

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

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

7 2. Extensions of the June first filing date may be granted by the director

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

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

18 **4. Every insurer required to file an annual audited financial**  
19 **report under sections 375.1025 to 375.1062 shall designate a group of**  
20 **individuals as constituting its audit committee, as defined in section**  
21 **375.1025. The audit committee of an entity that controls an insurer may**  
22 **be deemed to be the insurer's audit committee for purposes of sections**  
23 **375.1025 to 375.1062 at the election of the controlling person.**

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

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

- 8 (1) Report of independent certified public accountant;  
9 (2) Balance sheet reporting admitted assets, liabilities, capital and  
10 surplus;  
11 (3) Statement of [gain or loss from] operations;  
12 (4) Statement of cash [flows] **flow**;  
13 (5) Statement of changes in capital and surplus;  
14 (6) Notes to financial statements. These notes shall be those required by  
15 the **appropriate** National Association of Insurance Commissioners' Annual  
16 Statement Instructions [and any other notes required by generally accepted  
17 accounting principles] **the NAIC's Accounting Practices and Procedures**  
18 **Manual as adopted by the director** and shall include[:

19 (a) a reconciliation of differences, if any, between the audited statutory  
20 financial statements and the annual statement filed pursuant to section 375.041

21 and section 354.105, 354.435, RSMo, 376.350, RSMo, 377.100, 377.380, RSMo,  
22 378.350, RSMo, 379.105, RSMo, 380.051 or 380.482, RSMo, with a written  
23 description of the nature of these differences[;

24 (b) A summary of ownership and relationships of the insurer and all  
25 affiliated companies; and

26 (c) A narrative explanation of all significant intercompany transactions  
27 and balances].

28 3. The financial statements included in the audited financial report shall  
29 be prepared in a form and using language and groupings substantially the same  
30 as the relevant sections of the annual statement of the insurer filed with the  
31 director[;

32 (1)], **and** the financial statement shall be comparative, presenting the  
33 amounts as of December thirty-first of the current year and the amounts as of the  
34 immediately preceding December thirty-first. However, in the first year in which  
35 an insurer is required to file an audited financial report, the comparative data  
36 may be omitted[;

37 (2) Amounts may be rounded to the nearest thousand dollars;

38 (3) Insignificant amounts may be combined].

375.1035. 1. Each insurer required by sections 375.1025 to [375.1057]  
2 **375.1062** to file an annual audited financial report shall, within sixty days after  
3 becoming subject to such requirement, register with the director in writing the  
4 name and address of its independent certified public accountant or accounting  
5 firm [(generally referred to in sections 375.1025 to 375.1057 as the "accountant")]  
6 retained to conduct the annual audit set forth in sections 375.1025 to [375.1057]  
7 **375.1062**. Any insurer not retaining an independent certified public accountant  
8 on the effective date of sections 375.1025 to [375.1057] **375.1062** shall register  
9 the name and address of its retained **independent** certified public accountant  
10 not less than six months before the date when the first audited financial report  
11 is to be filed.

12 2. The insurer shall obtain a letter from such accountant, and file a copy  
13 with the director stating that the accountant is aware of the provisions of the  
14 insurance laws and the rules and regulations of the department of insurance of  
15 the state of domicile that relate to accounting and financial matters and affirming  
16 that [he] **the accountant** will express his **or her** opinion on the financial  
17 statements in [the] terms of their conformity to the statutory accounting practices  
18 prescribed or otherwise permitted by that department of insurance, specifying

19 such exceptions as he **or she** may believe appropriate.

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

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

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

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

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

15 the Missouri state board of accountancy, or similar code.

16 3. [No partner or other person responsible for rendering a report may]  
17 **The lead or coordinating audit partner or person having primary**  
18 **responsibility for the audit shall not** act in that capacity for more than  
19 [seven] **five** consecutive years. [Following any period of service] Such **partner**  
20 **or person** shall be disqualified from acting in that or a similar capacity for the  
21 same company or its insurance subsidiaries or affiliates for a period of [two] **five**  
22 years. An insurer may make application to the director for relief from the above  
23 rotation requirement on the basis of unusual circumstances. **Such application**  
24 **shall be made at least thirty days before the end of the calendar**  
25 **year. The insurer shall file, with its annual statement filing, the**  
26 **approval, if any, for relief from this subsection with the states that it**  
27 **is licensed in or doing business in and with the NAIC. If the**  
28 **nondomestic state accepts electronic filing with the NAIC, the insurer**  
29 **shall file the approval in an electronic format acceptable to the**  
30 **NAIC.** The director may consider the following factors in determining if the  
31 relief should be granted:

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

34 (2) Premium volume of the insurer; or

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

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

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

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

46 (3) Has demonstrated a pattern or practice of failing to detect or disclose  
47 material information in previous reports filed under the provisions of sections  
48 375.1025 to [375.1057] **375.1062**.

49 5. The director [shall notify the insurer should he determine that the  
50 certified public accountant is not independent or is incapable or incompetent]



51 **may hold a hearing under sections 536.100 to 536.140, RSMo, to**  
52 **determine whether an independent certified public accountant is**  
53 **qualified and, considering the evidence presented, may rule that the**  
54 **accountant is not qualified** for purposes of expressing his or her opinion on  
55 the financial statements in the annual audited financial report made pursuant  
56 to sections 375.1025 to [375.1057]. If the insurer contests such determination, the  
57 director shall hold a hearing to determine whether the certified public accountant  
58 is independent, capable and competent, and, considering the evidence presented,  
59 may rule that the accountant is not independent or is incapable or incompetent  
60 for purposes of expressing his opinion on the financial statements in the annual  
61 audited financial report] **375.1062** and require the insurer to replace the  
62 accountant with another whose relationship with the insurer is [independent]  
63 **qualified** within the meaning of[, or who is capable or competent to perform the  
64 requirements of,] sections 375.1025 to [375.1057] **375.1062**.

65 **6. A qualified independent certified public accountant may enter**  
66 **into an agreement with an insurer to have disputes relating to an audit**  
67 **resolved by mediation or arbitration. However, in the event of a**  
68 **delinquency proceeding commenced against the insurer under sections**  
69 **375.570 to 375.750, the mediation or arbitration provisions shall operate**  
70 **at the option of the statutory successor.**

71 **7. The director shall not recognize as a qualified independent**  
72 **certified public accountant, nor accept an annual audited financial**  
73 **report, prepared in whole or in part by an accountant who functions in**  
74 **the role of management, audits his or her own work, or serves in an**  
75 **advocacy role for the insurer. Without limiting the foregoing, the**  
76 **director shall not recognize as a qualified independent certified public**  
77 **accountant, nor accept an annual audited financial report, prepared in**  
78 **whole or in part by an accountant who provides to an insurer,**  
79 **contemporaneously with the audit, the following nonaudit services:**

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

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

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

85 **(4) Actuarially oriented advisory services involving the**  
86 **determination of amounts recorded in the financial statements. The**  
87 **accountant may assist an insurer in understanding the methods,**

88 assumptions, and inputs used in the determination of amounts recorded  
89 in the financial statement only if it is reasonable to conclude that the  
90 services provided will not be subject to audit procedures during an  
91 audit of the insurer's financial statements. An accountant's actuary  
92 may also issue an actuarial opinion or certification ("opinion") on an  
93 insurer's reserves if the following conditions have been met:

94 (a) Neither the accountant nor the accountant's actuary has  
95 performed any management functions or made any management  
96 decisions;

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

100 (c) The accountant's actuary tests the reasonableness of the  
101 reserves after the insurer's management has determined the amount of  
102 the reserves;

103 (5) Internal audit outsourcing services;

104 (6) Management functions or human resources;

105 (7) Broker or dealer, investment adviser, or investment banking  
106 services;

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

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

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

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

124 10. All auditing services and nonaudit services provided to an

125 insurer by the qualified independent certified public accountant of the  
126 insurer shall be preapproved by the audit committee. The preapproval  
127 requirement is waived with respect to nonaudit services if the insurer  
128 is a SOX compliant entity or a direct or indirect wholly owned  
129 subsidiary of a SOX compliant entity or:

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

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

137 (3) The services are promptly brought to the attention of the  
138 audit committee and approved prior to the completion of the audit by  
139 the audit committee or by one or more members of the audit committee  
140 who are the members of the board of directors to whom authority to  
141 grant such approvals has been delegated by the audit committee.

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

147 12. The director shall not recognize an independent certified  
148 public accountant as qualified for a particular insurer if a member of  
149 the board, president, chief executive officer, controller, chief financial  
150 officer, chief accounting officer, or any person serving in an equivalent  
151 position for that insurer was employed by the independent certified  
152 public accountant and participated in the audit of that insurer during  
153 the one-year period preceding the date that the most current statutory  
154 opinion is due.

155 13. Subsection 12 of this section shall only apply to partners and  
156 senior managers involved in the audit. An insurer may make  
157 application to the director for relief from subsection 12 of this section  
158 on the basis of unusual circumstances. The insurer shall file, with its  
159 annual statement filing, the approval for relief from subsection 12 of  
160 this section with the states that it is licensed in or doing business in  
161 and the NAIC. If the nondomestic state accepts electronic filing with

162 the NAIC, the insurer shall file the approval in an electronic format  
163 acceptable to the NAIC.

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

10 (1) Amounts shown on the consolidated or combined audited  
11 financial report shall be shown on the worksheet;

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

14 (3) Noninsurance operations may be shown on the worksheet on  
15 a combined or individual basis;

16 (4) Explanations of consolidating and eliminating entries shall  
17 be included; and

18 (5) A reconciliation shall be included of any differences between  
19 the amounts shown in the individual insurer columns of the worksheet  
20 and comparable amounts shown on the annual statements of the  
insurers.

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

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

9 (2) The background and experience in general, and the experience in  
10 audits of insurers, of the staff assigned to audit the financial statements of the  
11 insurer and whether each is an independent certified public  
12 accountant. **Nothing within this requirement shall be construed as**  
13 **prohibiting the accountant from utilizing such staff as he or she deems**  
14 **appropriate where use is consistent with the standards prescribed by**

15 **generally accepted auditing standards;**

16 (3) That the accountant understands the annual audited financial report  
17 and his opinion thereon will be filed in compliance with sections 375.1025 to  
18 375.1062 and that the director will be relying on this information in the  
19 monitoring and regulation of the financial position of the insurer;

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

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

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

29 (7)] That the accountant is in compliance with the requirements of section  
30 375.1037.

375.1042. Financial statements of the insurer to be filed pursuant to  
2 section 375.1030 shall be examined by an independent certified public  
3 accountant. The [examination] **audit** by the independent certified public  
4 accountant of the insurer's financial statements shall be conducted in accordance  
5 with generally accepted auditing standards [and consideration]. **In accordance**  
6 **with AU Section 319 of the Professional Standards of the AICPA,**  
7 **Consideration of Internal Control in a Financial Statement Audit, the**  
8 **independent certified public accountant should obtain an**  
9 **understanding of internal control sufficient to plan the audit. To the**  
10 **extent required by AU 319, for those insurers required to file a**  
11 **Management's Report of Internal Control over Financial Reporting**  
12 **under section 375.1056, the independent certified public accountant**  
13 **should consider, as such term is defined in Statement on Auditing**  
14 **Standards (SAS) No. 102, Defining Professional Requirements in**  
15 **Statements on Auditing Standards or its replacement, the most recently**  
16 **available report in planning and performing the audit of the statutory**  
17 **financial statements. Consideration** shall be given to procedures illustrated  
18 in the Financial Condition Examiner's Handbook promulgated by the National  
19 Association of Insurance Commissioners **as the independent certified public**  
20 **accountant deems necessary.**

375.1045. 1. The insurer required to furnish the annual audited financial  
2 report shall require the independent certified public accountant to report, in  
3 writing, within five business days to the board of directors or its audit committee  
4 any determination by the independent certified public accountant that the insurer  
5 has materially misstated its financial condition as reported to the director as of  
6 the balance sheet date currently under [examination] **audit** or that the insurer  
7 does not meet the minimum capital and surplus requirement of the law as of that  
8 date. An insurer who has received a report pursuant to this subsection shall  
9 forward a copy of the report to the director within five business days of receipt  
10 of such report and shall provide the independent certified public accountant  
11 making the report with evidence of the report being furnished to the director. If  
12 the independent certified public accountant fails to receive such evidence within  
13 the required five-business-day period, the independent certified public accountant  
14 shall furnish to the director a copy of its report within the next five business  
15 days.

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

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

375.1047. 1. In addition to the annual audited financial report, each  
2 insurer shall furnish the director with a [report of evaluation performed by the  
3 accountant, in connection with his examination, of the system of internal  
4 accounting controls of the insurer] **written communication as to any**  
5 **unremediated material weaknesses in its internal control over financial**  
6 **reporting noted during the audit. Such communication shall be**  
7 **prepared by the accountant within sixty days after the filing of the**  
8 **annual audited financial report and shall contain a description of any**  
9 **unremediated material weakness, as the term material weakness is**  
10 **defined by Statement on Auditing Standard 60, Communication of**  
11 **Internal Control Related Matters Noted in an Audit, or its replacement,**

12 **as of December thirty-first immediately preceding in the insurer's**  
13 **internal control over financial reporting noted by the accountant**  
14 **during the course of their audit of the financial statements. If no**  
15 **unremediated material weaknesses were noted, the communication**  
16 **shall so state.**

17 2. [A report of the evaluation by the accountant of the system of internal  
18 accounting controls of the insurer, including any remedial action taken or  
19 proposed, shall be filed annually by the insurer with the director within sixty  
20 days after the filing of the annual audited financial report. This report shall  
21 follow generally the form for reports on internal control structure related matters  
22 noted in an audit described in Volume 1, Section AU 325 of the professional  
23 standards of the American Institute of Certified Public Accountants, as may be  
24 amended, or in the event that such standards no longer be published, a similar  
25 standard to be designated by the director by duly promulgated regulation] **The**  
26 **insurer is required to provide a description of remedial actions taken**  
27 **or proposed to correct unremediated material weaknesses, if the**  
28 **actions are not described in the accountant's communication.**

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

12 2. Every insurer required to file an audited financial report pursuant to  
13 sections 375.1025 to 375.1062 shall require the accountant to make available for  
14 review by the examiners of the department of insurance, financial institutions  
15 and professional registration all workpapers prepared in the conduct of [his  
16 examination] **the accountant's audit** and any communications related to the  
17 audit between the accountant and the insurer, at the offices of the insurer, at the  
18 department of insurance, financial institutions and professional registration or  
19 at any other reasonable place designated by the director. The insurer shall

20 require that the accountant retain the audit workpapers **and communications**  
21 until the department has filed a report on examination covering the period of the  
22 audit, but no longer than seven years from the date of the audit report.

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

375.1052. 1. Upon written application of any insurer, the director may  
2 grant a temporary exemption from compliance with sections 375.1025 to 375.1062  
3 if the director finds, upon review of the application, that compliance with sections  
4 375.1025 to 375.1062 would constitute a financial or organizational hardship  
5 upon the insurer. An exemption may be granted at any time and from time to  
6 time for a specified period or periods. Within ten days from a denial of an  
7 insurer's written request for an exemption from sections 375.1025 to 375.1062,  
8 such insurer may request in writing a hearing on its application for an  
9 exemption. Such hearing shall be held in accordance with the provisions of  
10 chapter 536, RSMo, pertaining to administrative hearing procedures and shall be  
11 a public meeting as provided by subdivision (3) of section 610.010, RSMo.

12 2. Domestic insurers:

13 **(1) Retaining a certified public accountant on the effective date**  
14 **of this section who qualifies as independent shall comply with sections**  
15 **375.1025 to 375.1062 for the year ending December 31, 2009, and each**  
16 **year thereafter unless the director permits otherwise;**

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

19 shall meet the following schedule for compliance with sections 375.1025 to  
20 375.1062 unless the director permits otherwise:

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

23 (a) Report of independent certified public accountant;

24 (b) Audited balance sheet;

25 (c) Notes to audited balance sheet;

26 **(2)] (a) As of December 31, 2009, file with the director an audited**



27 **financial report;**

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

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

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

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

50 6. **The requirements of sections 375.1038, 375.1054, and 375.1056**  
51 **are effective beginning with the reporting period ending December 31,**  
52 **2010, and each year thereafter. An insurer or group of insurers that is**  
53 **not required to file a report because the total written premium is below**  
54 **the threshold and subsequently becomes subject to the reporting**  
55 **requirements shall have two years following the year the threshold is**  
56 **exceeded to file a report. Likewise, an insurer acquired in a business**  
57 **combination shall have two calendar years following the date of**  
58 **acquisition or combination to comply with the reporting requirements.**

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

5 2. **The audit committee shall be directly responsible for the**

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

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

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

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

33 6. To exercise the election of the controlling person to designate  
34 the audit committee for purposes of sections 375.1025 to 375.1062, the  
35 ultimate controlling person shall provide written notice to the chief  
36 state insurance regulatory officials of the affected  
37 insurers. Notification shall be made timely prior to the issuance of the  
38 statutory audit report and include a description of the basis for the  
39 election. The election can be changed through notice to the director by  
40 the insurer, which shall include a description of the basis for the  
41 change. The election shall remain in effect for perpetuity, until  
42 rescinded.

43           **7. (1) The audit committee shall require the accountant that**  
44 **performs for an insurer any audit required by sections 375.1025 to**  
45 **375.1062 to timely report to the audit committee in accordance with the**  
46 **requirements of the auditing profession, including:**

47           **(a) All significant accounting policies and material permitted**  
48 **practices;**

49           **(b) All material alternative treatments of financial information**  
50 **within statutory accounting principles that have been discussed with**  
51 **management officials of the insurer, ramifications of the use of the**  
52 **alternative disclosures and treatments, and the treatment preferred by**  
53 **the accountant; and**

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

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

63           **8. The proportion of independent audit committee members shall**  
64 **meet or exceed the following criteria:**

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

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

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

77           **9. An insurer with direct written and assumed premium,**  
78 **excluding premiums reinsured with the Federal Crop Insurance**  
79 **Corporation and Federal Flood Program, less than five hundred million**

80 dollars may make application to the director for a waiver from the  
81 requirements of this section based upon hardship. The insurer shall  
82 file, with its annual statement filing, the approval for relief from this  
83 section with the states that it is licensed in or doing business in and  
84 the NAIC. If the nondomestic state accepts electronic filing with the  
85 NAIC, the insurer shall file the approval in an electronic format  
86 acceptable to the NAIC.

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

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

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

11 2. No officer or director of an insurer, or any other person acting  
12 under the direction thereof, shall directly or indirectly take any action  
13 to coerce, manipulate, mislead, or fraudulently influence any  
14 accountant engaged in the performance of an audit under sections  
15 375.1025 to 375.1062 if such person knew or should have known that the  
16 action, if successful, could result in rendering the insurer's financial  
17 statements materially misleading.

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

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

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

- 31           **(3) Not to withdraw an issued report; or**  
32           **(4) Not to communicate matters to an insurer's audit committee.**  
33           **4. Any violation of any provision of this section is a level three**  
34 **violation under section 374.049, RSMo.**

**375.1056. 1. Every insurer required to file an audited financial**  
2 **report under sections 375.1025 to 375.1062 that has annual direct**  
3 **written and assumed premiums, excluding premiums reinsured with the**  
4 **Federal Crop Insurance Corporation and Federal Flood Program, of**  
5 **five hundred million dollars or more shall prepare a report of the**  
6 **insurer's or group of insurers' internal control over financial reporting,**  
7 **as such terms are defined in section 375.1025. The report shall be filed**  
8 **with the director along with the communication of internal control**  
9 **related matters noted in an audit described under section**  
10 **375.1047. Management's report of internal control over financial**  
11 **reporting shall be as of December thirty-first immediately preceding.**

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

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

19           **(1) Directly subject to Section 404;**

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

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

24           **(4) A member of a holding company system whose parent is not**  
25 **directly subject to Section 404 but is a SOX compliant entity**  
26 **may file its or its parent's Section 404 report and an addendum in**  
27 **satisfaction of the requirement of this section, provided that those**  
28 **internal controls of the insurer or group of insurers having a material**  
29 **impact on the preparation of the insurer's or group of insurers' audited**  
30 **statutory financial statements, namely those items included in**  
31 **subdivisions (2) to (6) of subsection 2 of section 375.1032, were included**  
32 **in the scope of the Section 404 report. The addendum shall be a**  
33 **positive statement by management that there are no material processes**

34 with respect to the preparation of the insurer's or group of insurers'  
35 audited statutory financial statements excluded from the Section 404  
36 report. If there are internal controls of the insurer or group of insurers  
37 that have a material impact on the preparation of the insurer's or  
38 group of insurers' audited statutory financial statements and those  
39 internal controls were not included in the scope of the Section 404  
40 report, the insurer or group of insurers may either file a report under  
41 this section, or the Section 404 report and a report under this section  
42 for those internal controls that have a material impact on the  
43 preparation of the insurer's or group of insurers' audited statutory  
44 financial statements not covered by the Section 404 report.

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

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

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

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

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

60 (5) Disclosure of any unremediated material weaknesses in the  
61 internal control over financial reporting identified by management as  
62 of December thirty-first immediately preceding. Management is not  
63 permitted to conclude that the internal control over financial reporting  
64 is effective to provide reasonable assurance regarding the reliability  
65 of financial statements in accordance with statutory accounting  
66 principles if there is one or more unremediated material weaknesses  
67 in its internal control over financial reporting;

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

70 (7) Signatures of the chief executive officer and the chief

71 **financial officer, or the equivalent position or title.**

72 **5. Management shall document and make available upon**  
73 **financial condition examination the basis upon which its assertions**  
74 **required in subsection 4 of this section are made. Management may**  
75 **base its assertions, in part, upon its review, monitoring and testing of**  
76 **internal controls undertaken in the normal course of its**  
77 **activities. Management shall have discretion as to the nature of the**  
78 **internal control framework used, and the nature and extent of**  
79 **documentation, in order to make its assertion in a cost-effective**  
80 **manner and, as such, may include assembly of or reference to existing**  
81 **documentation. Management's report on internal control over financial**  
82 **reporting, required by subsection 1 of this section, and any**  
83 **documentation provided in support thereof during the course of a**  
84 **financial condition examination, shall be kept confidential by the**  
85 **department.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28           (5) "Association captive insurance company", any company that insures  
29 risks of the member organizations of the association and their affiliated  
30 companies; **except that, association captive insurance company shall not**



31 **include, without limitation, any reciprocal insurer that has not chosen**  
32 **to apply for and is not licensed as a captive insurance company under**  
33 **section 379.1302;**

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

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

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

41 (9) "Captive insurance company", any pure captive insurance company,  
42 association captive insurance company, or industrial insured captive insurance  
43 company formed or licensed under sections 379.1300 to 379.1350. For purposes  
44 of sections 379.1300 to 379.1350, a branch captive insurance company shall be a  
45 pure captive insurance company with respect to operations in this state, unless  
46 otherwise permitted by the director;

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

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

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

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

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

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

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

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

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

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

66 (14) "Industrial insured captive insurance company", any company that

67 insures risks of the industrial insureds that comprise the industrial insured  
68 group and their affiliated companies;

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (4) No captive insurance company shall provide personal motor vehicle or

15 homeowner's insurance coverage or any component thereof;

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

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

26 (7) Any captive insurance company which insures life and accident and  
27 health risks described in section 376.010, RSMo, and subdivision (4) of subsection  
28 1 of section 379.010, shall comply with all applicable state and federal laws; and

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

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

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

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

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

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

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

48 3. (1) Before receiving a license, a captive insurance company shall:

49 (a) File with the director a certified copy of its organizational documents,  
50 a statement under oath of its president and secretary showing its financial

51 condition, and any other statements or documents required by the director; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (c) The director may disclose information to the director of the division of  
92 workers' compensation regarding any captive insurance company issuing excess  
93 workers' compensation insurance provided that the director for the division of  
94 workers' compensation agrees in writing to maintain the confidentiality of such  
95 information provided by the director.

96 (4) Each captive insurance company shall pay to the director a  
97 nonrefundable license fee of seven thousand five hundred dollars for examining,  
98 investigating, and processing its application for license, and the director is  
99 authorized to retain legal, financial, and examination services from outside the  
100 department, the reasonable cost of which may be charged against the  
101 applicant. The provisions of sections 374.160 to 374.162 and sections 374.202 to  
102 374.207, RSMo, shall apply to examinations, investigations, and processing  
103 conducted under the authority of this section. In addition, each captive insurance  
104 company shall pay a renewal fee for each year thereafter of seven thousand five  
105 hundred dollars. Each captive insurance company may deduct the license and  
106 renewal fee paid from the premium taxes payable under section 379.1326.

107 (5) If the director is satisfied that the documents and statements that  
108 such captive insurance company has filed comply with the provisions of sections  
109 379.1300 to 379.1350, the director may grant a license authorizing it to do  
110 insurance business in this state until April first, which license may be renewed.

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

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

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

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

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

12 (4) **Organized as a reciprocal insurer in accordance with sections**

13 **379.650 to 379.790.**

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

17           4. In the case of a captive insurance company:

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

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

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

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

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

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

38           **(3) Formed as a reciprocal insurer, the organizers shall petition**  
39 **the director to issue a certificate setting the director's finding that the**  
40 **establishment and maintenance of the proposed association will**  
41 **promote the general good of the state. In arriving at such a finding the**  
42 **director shall consider the items set forth in paragraphs (a) to (c) of**  
43 **subdivision (1) of this subsection.**

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

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

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

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

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

53           7. Other than captive insurance companies formed as limited liability  
54 companies under chapter 347, RSMo, or as nonprofit corporations under chapter  
55 355, RSMo, captive insurance companies formed as corporations under sections  
56 379.1300 to 379.1350 shall have the privileges and be subject to chapter 351,  
57 RSMo, as well as the applicable provisions contained in sections 379.1300 to  
58 379.1308. In the event of conflict between the provisions of such general  
59 corporation law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350  
60 shall control.

61           8. Captive insurance companies formed under sections 379.1300 to  
62 379.1350:

63           (1) As limited liability companies shall have the privileges and be subject  
64 to the provisions of chapter 347, RSMo, as well as the applicable provisions  
65 contained in sections 379.1300 to 379.1350. In the event of a conflict between  
66 chapter 347, RSMo, and sections 379.1300 to 379.1350, sections 379.1300 to  
67 379.1350 shall control; or

68           (2) As nonprofit corporations shall have the privileges and be subject to  
69 the provisions of chapter 355, RSMo, as well as the applicable provisions  
70 contained in sections 379.1300 to 379.1350. In the event of conflict between  
71 chapter 355, RSMo, and sections 379.1300 to 379.1350, sections 379.1300 to  
72 379.1350 shall control.

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

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

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

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

89           **11. Captive insurance companies formed as reciprocal insurers**  
90 **under the provisions of sections 379.1300 to 379.1350 shall have the**  
91 **privileges and be subject to the provisions of sections 379.650 to 379.790**  
92 **in addition to the applicable provisions of sections 379.1300 to 379.1350.**  
93 **In the event of a conflict between the provisions of sections 379.650 to**  
94 **379.790 and the provisions of sections 379.1300 to 379.1350, the latter**  
95 **shall control, to the extent a reciprocal insurer is made subject to other**  
96 **provisions of chapters 374, 375, and 379 under sections 379.650 to**  
97 **379.790, such provisions shall not be applicable to a reciprocal insurer**  
98 **formed under sections 379.1300 to 379.1350 unless such provisions are**  
99 **expressly made applicable to captive insurance companies under**  
100 **sections 379.1300 to 379.1350.**

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

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

14           2. Each captive insurance company shall pay to the director of revenue on  
15 or before May first of each year a premium tax at the rate of two hundred  
16 fourteen-thousandths of one percent on the first twenty million dollars of



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

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

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

44         5. A captive insurance company failing to make returns as required by  
45 subsection 4 of this section or failing to pay within the time required all taxes  
46 assessed by this section shall be subject to the provisions of sections 148.375 and  
47 148.410, RSMo.

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

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

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

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

59 8. The tax provided for in this section shall constitute all taxes collectible  
60 under the laws of this state from any captive insurance company, and no other  
61 occupation tax or other taxes shall be levied or collected from any captive  
62 insurance company by the state or any county, city, or municipality within this  
63 state, except ad valorem taxes on real and personal property used in the  
64 production of income.

65 9. [The state treasurer shall annually transfer the premium tax revenues  
66 collected under this section to the general revenue fund, except as provided in  
67 section 379.1332] **Upon receiving the taxes collected under this section**  
68 **from the director of revenue, the state treasurer shall receipt ten**  
69 **percent thereof into the insurance dedicated fund established under**  
70 **section 374.150, RSMo, subject to a maximum of three percent of the**  
71 **current fiscal year's appropriation from such fund, and he or she shall**  
72 **place the remainder of such taxes collected to the general revenue fund**  
73 **of the state.**

74 10. The tax provided for in this section shall be calculated on an annual  
75 basis, notwithstanding policies or contracts of insurance or contracts of  
76 reinsurance issued on a multiyear basis. In the case of multiyear policies or  
77 contracts, the premium shall be prorated for purposes of determining the tax  
78 under this section.

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

379.1332. 1. (1) The insurance dedicated fund under section 374.150,  
2 RSMo, shall be adequately funded through the collection of fees and taxes for the  
3 purpose of providing the financial means for the director of the department of  
4 insurance, financial institutions and professional registration to administer

5 sections 379.1300 to 379.1350 and for reasonable expenses incurred in promoting  
6 the captive insurance industry in Missouri. All fees and assessments received by  
7 the department for the administration of sections 379.1300 to 379.1350 shall be  
8 paid into the fund. [In addition, the transfer of twenty percent of the premium  
9 tax under section 375.1014, RSMo, shall be made to the insurance dedicated fund  
10 until two hundred thousand dollars has been transferred. Thereafter, up to ten  
11 percent of the premium tax under section 379.1326 may be transferred to the  
12 insurance dedicated fund for the administration of sections 379.1300 to 379.1350,  
13 and up to two percent of the premium tax under section 379.1326 may be  
14 transferred to the department of economic development, with approval of the  
15 commissioner of administration, for promotional expenses.] All fees received by  
16 the department from reinsurers who assume risk solely from captive insurance  
17 companies and are subject to the provisions of section 375.246, RSMo, shall be  
18 deposited into the insurance dedicated fund.

19 (2) All payments from the insurance dedicated fund for the maintenance  
20 of staff and expenses associated with the administration of sections 379.1300 to  
21 379.1350, including contractual services as necessary, shall be disbursed from the  
22 state treasury only upon warrants issued by the director, after receipt of proper  
23 documentation regarding services rendered and expenses incurred.

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

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

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

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

14 **(1) Such conversion shall be accomplished under such reasonable**

15 plan and procedure as may be approved by the director; provided,  
16 however, that the director shall not approve any such plan of  
17 conversion unless such plan:

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

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

27 (c) Provides a fair and equitable plan for the conversion of  
28 stockholder, member, or policyholder interests into subscriber interests  
29 in the resulting reciprocal insurer substantially proportionate to the  
30 corresponding interests in the stock or mutual insurer; provided,  
31 however, that this requirement shall not preclude the resulting  
32 reciprocal insurer from applying underwriting criteria that could affect  
33 ongoing ownership interests; and

34 (d) Is approved:

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

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

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

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

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

52           (5) Upon the effectiveness of such conversion the corporate  
53 existence of the converting insurer shall cease and the resulting  
54 reciprocal insurer shall notify the secretary of state of such conversion.

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

60           (1) The plan of merger shall satisfy the provisions of subsection  
61 2 of this section;

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

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

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

71           (5) The director shall approve the articles of merger if the  
72 director finds that the merger will promote the general good of the  
73 state in conformity with those standards set forth in subdivision (1) of  
74 subsection 4 of section 379.1310. If the director approves the articles  
75 of merger, the director shall endorse the director's approval thereon  
76 and the surviving insurer shall present the same to the secretary of  
77 state at the secretary of state's office;

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

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

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

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

97           **(2) Such single insurer shall thereupon and thereafter possess all**  
98 **the rights, privileges, immunities, powers, and franchises of a public as**  
99 **well as of a private nature of each of the insurers so merged or**  
100 **consolidated; and all property, real, personal, and mixed, and all debts**  
101 **due on whatever account, including subscriptions to shares of capital**  
102 **stock, and all other choices in action and all and every other interest**  
103 **of or belonging to or due to each of the insurers so merged or**  
104 **consolidated shall be taken and deemed to be transferred to and vested**  
105 **in such single insurer without further act or deed; and the title to any**  
106 **real estate, or any interest therein, under the laws of this state vested**  
107 **in any of such insurers shall not revert or be in any way impaired by**  
108 **reason of such merger or consolidation; and**

109           **(3) Such single insurer shall thenceforth be responsible and**  
110 **liable for all the liabilities and obligations of each of the insurers so**  
111 **merged or consolidated in the same manner and to the same extent as**  
112 **if such single insurer had itself incurred the same or contracted**  
113 **therefor; and any claim existing or action or proceeding pending by or**  
114 **against any of such insurers may be prosecuted to judgment as if such**  
115 **merger or consolidation had not taken place. Neither the rights of**  
116 **creditors nor any liens upon the property of any such insurers shall be**  
117 **impaired by such merger or consolidation, but such liens shall be**  
118 **limited to the property upon which they were liens immediately prior**  
119 **to the time of such merger or consolidation, unless otherwise provided**  
120 **in the agreement of merger or consolidation.**

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

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

5           3. The SPLRC must have at least three incorporators or organizers of

6 whom not fewer than [two] **one** must be [residents] **a resident** of the state.

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

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

3 (1) Permitted investments;

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

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

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

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

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

379.1412. 1. Each SPLRC shall pay to the director of revenue on or before  
2 May first of each year a premium tax at the rate of two hundred fourteen  
3 thousandths of one percent on the first twenty million dollars of assumed  
4 reinsurance premium, and one hundred forty-three thousandths of one percent  
5 on the next twenty million dollars and forty-eight thousandths of one percent on  
6 the next twenty million dollars and twenty-four thousandths of one percent of  
7 each dollar thereafter. No reinsurance premium tax shall be payable in

8 connection with the receipt of assets in exchange for the assumption of loss  
9 reserves and other liabilities of another insurer under common ownership and  
10 control if such transaction is part of a plan to discontinue the operations of such  
11 other insurer, and if the intent of the parties to such transaction is to renew or  
12 maintain such business with the captive insurance company.

13 2. The premium tax imposed by subsection 1 of this section shall  
14 constitute all taxes collectible under the laws of this state from any SPLRC, and  
15 no other occupation tax or other taxes shall be levied or collected from any captive  
16 insurance company by the state or any county, city, or municipality within this  
17 state, except ad valorem taxes on real and personal property used in the  
18 production of income.

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

22 4. A SPLRC may deduct from premium taxes payable to this state, in  
23 addition to all other credits allowed by law, application fees payable under section  
24 379.1359 and license fees and renewal fees payable under section 379.1364. A  
25 deduction for fees which exceeds a SPLRC's premium tax liability for the same  
26 tax year shall not be refundable, but may be carried forward to any subsequent  
27 tax year, not to exceed five years, until the full deduction is claimed.

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

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

42 7. **Upon receiving the taxes collected under this section from the**  
43 **director of revenue, the state treasurer shall receipt ninety percent**



44 **thereof into the general revenue fund of the state and the state**  
45 **treasurer shall place the remainder of such taxes collected to the credit**  
46 **of the insurance dedicated fund established under section 374.150,**  
47 **RSMo, subject to a maximum of three percent of the current fiscal**  
48 **year's appropriation from such fund, and he or she shall place the**  
49 **remainder of such taxes collected to the general revenue fund of the**  
50 **state.**

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

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

7 (2) ["Broker", an insurance broker or brokers as defined in section  
8 375.012, RSMo;

9 (3)] "Control" or "controlled" has the meaning prescribed by section  
10 382.010;

11 [(4)] (3) "Controlled insurer", a licensed insurer which is controlled,  
12 directly or indirectly, by a [broker] **producer**;

13 [(5)] (4) "Controlling [broker] **producer**", a [broker] **producer** who,  
14 directly or indirectly, controls an insurer;

15 [(6)] (5) "Licensed insurer" or "insurer", any person, firm, association or  
16 corporation duly licensed to transact a property or casualty insurance business  
17 in this state. The following are not licensed insurers for the purposes of sections  
18 382.400 to 382.410:

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

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

25 (c) All captive insurers. For the purposes of sections 382.400 to 382.410,  
26 "captive insurers" are insurance companies owned by another organization whose  
27 exclusive purpose is to insure risks of the parent organization and affiliated  
28 companies or, in the case of groups and associations, insurance organizations  
29 owned by the insureds whose exclusive purpose is to insure risks to member

30 organizations and group members and their affiliates;

31           **(6) "Producer", an insurance broker or brokers or any other**  
32 **person, firm, association, or corporation, when, for any compensation,**  
33 **commission, or other thing of value, the person, firm, association, or**  
34 **corporation acts or aids in any manner in soliciting, negotiating, or**  
35 **procuring the making of an insurance contract on behalf of an insured**  
36 **other than the person, firm, association, or corporation.**

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

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

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

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

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

15           b. Accepts insurance placements only from nonaffiliated subproducers,  
16 and not directly from insureds; and

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

22           2. A controlled insurer shall not accept business from a controlling

23 [broker] **producer** and a controlling [broker] **producer** shall not place business  
24 with a controlled insurer unless there is a written contract between the  
25 controlling [broker] **producer** and the insurer specifying the responsibilities of  
26 each party, which contract has been approved by the board of directors of the  
27 insurer and contains the following minimum provisions:

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

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

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

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

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

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

52 (7) The controlled insurer shall provide the controlling [broker] **producer**  
53 with its underwriting standards, rules and procedures, manuals setting forth the  
54 rates to be charged, and the conditions for the acceptance or rejection of  
55 risks. The controlling [broker] **producer** shall adhere to the standards, rules,  
56 procedures, rates and conditions. The standards, rules, procedures, rates and  
57 conditions shall be the same as those applicable to comparable business placed  
58 with the controlled insurer by a [broker] **producer** other than the controlling

59 [broker] **producer**;

60 (8) The rates and terms of the controlling [broker's] **producer's**  
61 commissions, charges or other fees and the purposes for those charges or  
62 fees. The rates of the commissions, charges and other fees shall be no greater  
63 than those applicable to comparable business placed with the controlled insurer  
64 by [brokers] **producers** other than controlling [brokers] **producers**. For  
65 purposes of this subdivision and subdivision (7) of this subsection, examples of  
66 comparable business includes the same lines of insurance, same kinds of  
67 insurance, same kinds of risks, similar policy limits, and similar quality of  
68 business;

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

77 (10) A limit on the controlling [broker's] **producer's** writings in relation  
78 to the controlled insurer's surplus and total writings. The insurer may establish  
79 a different limit for each line or subline of business. The controlled insurer shall  
80 notify the controlling [broker] **producer** when the applicable limit is approached  
81 and shall not accept business from the controlling [broker] **producer** if the limit  
82 is reached. The controlling [broker] **producer** shall not place business with the  
83 controlled insurer if it has been notified by the controlled insurer that the limit  
84 has been reached; and

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

93 3. Every controlled insurer shall have an audit committee of the board of  
94 directors composed of independent directors. The audit committee shall annually

95 meet with management, the insurer's independent certified public accountants,  
96 and an independent casualty actuary or other independent loss reserve specialist  
97 acceptable to the director to review the adequacy of the insurer's loss reserves.

98 4. (1) In addition to any other required loss reserve certification, the  
99 controlled insurer shall annually, on April first of each year, file with the director  
100 an opinion of an independent casualty actuary, or such other independent loss  
101 reserve specialist acceptable to the director, reporting loss ratios for each line of  
102 business written and attesting to the adequacy of loss reserves established for  
103 losses incurred and outstanding as of year-end, including incurred but not  
104 reported, on business placed by the **[broker] producer**; and

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

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

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

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

11 2. If an order of liquidation or rehabilitation of the controlled insurer has  
12 been entered pursuant to sections 375.1150 to 375.1246, RSMo, and the receiver  
13 appointed under that order believes that the controlling **[broker] producer** or

14 any other person has not materially complied with sections 382.400 to 382.410,  
15 or any regulation or order promulgated hereunder, and the insurer suffered any  
16 loss or damage therefrom, the receiver may maintain a civil action for recovery  
17 of damages or other appropriate sanctions for the benefit of the insurer.

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

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

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

- 3 (1) Is in unsound financial condition;
  - 4 (2) Is no longer eligible under section 384.021;
  - 5 (3) Has willfully violated the laws of this state; or
  - 6 (4) Does not make reasonably prompt payment of just losses and claims  
7 in this state or elsewhere;
- 8 the director may declare it ineligible.

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

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

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

- 7 (1) Remitted the one hundred dollar initial fee to the director;
- 8 (2) Submitted a completed license application on a form supplied by the  
9 director; and

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

13 3. Each surplus lines license shall be renewed [annually] **for a term of**  
14 **two years** on the **biennial** anniversary date of issuance and continue in effect  
15 until refused, revoked or suspended by the director in accordance with section  
16 384.065; except that if the [annual] **biennial** renewal fee for the license is not  
17 paid on or before the anniversary date, the license terminates. The [annual]

18 **biennial** renewal fee is [fifty] **one hundred** dollars.

384.051. 1. Every insured in this state who procures or causes to be  
2 procured or continues or renews insurance in any surplus lines insurer, or any  
3 self-insurer in this state who so procures or continues with, any surplus lines  
4 insurer, excess of loss, catastrophe or other insurance, upon a subject of insurance  
5 resident, located or to be performed within this state, other than insurance  
6 procured through a surplus lines broker pursuant to sections 384.011 to 384.071,  
7 shall before March second of the year next succeeding the year in which the  
8 insurance was so procured, continued or renewed, file a written report of the  
9 same with the director on forms prescribed by the director and furnished to such  
10 an insured upon request. The report shall show:

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

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

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

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

36 of each year shall certify and transmit to the director of revenue the sums so  
37 collected] **department of revenue shall notify the director of the sums**  
38 **collected from each insured or self-insurer.**

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

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

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

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

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

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

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

6 2. All taxes, penalties, and interest or delinquent taxes levied pursuant  
7 to this chapter shall be paid to the [director] **department of revenue**, who shall  
8 [obtain such taxes, penalties and interest by civil action against the insured or



9 the surplus lines licensee, and the director shall remit such taxes when collected  
10 to the director of revenue] **notify the director of the sums collected from**  
11 **each surplus lines licensee.** All checks and drafts remitted for the payment  
12 of such taxes, penalties and interest shall be made payable to the director of  
13 revenue.

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

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

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

[384.031. Within thirty days after the placing of any  
2 surplus lines insurance, each surplus lines licensee shall file with  
3 the director a written report, on a form prescribed by the director,  
4 which shall be kept confidential, regarding the insurance with the  
5 director, including the following:

- 6 (1) The name and address of the insured;
- 7 (2) The identity of the insurer or insurers;
- 8 (3) A description of the subject and location of the risk;
- 9 (4) The amount of premium charged for the insurance; and
- 10 (5) Such other pertinent information as the director may  
11 reasonably require.]