

SENATE SUBSTITUTE
FOR
SENATE COMMITTEE SUBSTITUTE
FOR
HOUSE COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 577

AN ACT

To repeal sections 143.441, 147.010, 148.370, 303.024, 374.456, 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-six new sections relating to the regulation of insurance, with penalty provisions.

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

1 Section A. Sections 143.441, 147.010, 148.370, 303.024,
2 374.456, 374.755, 375.020, 375.1025, 375.1028, 375.1030,
3 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045,
4 375.1047, 375.1050, 375.1052, 375.1057, 379.1300, 379.1302,
5 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412,
6 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031,
7 384.043, 384.051, 384.057, and 384.062, RSMo, are repealed and
8 forty-six new sections enacted in lieu thereof, to be known as
9 sections 143.441, 147.010, 148.370, 303.024, 374.350, 374.351,

1 374.352, 374.755, 375.020, 375.1025, 375.1028, 375.1030,
2 375.1032, 375.1035, 375.1037, 375.1038, 375.1040, 375.1042,
3 375.1045, 375.1047, 375.1050, 375.1052, 375.1053, 375.1054,
4 375.1056, 375.1057, 376.502, 379.1300, 379.1302, 379.1310,
5 379.1326, 379.1332, 379.1339, 379.1373, 379.1388, 379.1412,
6 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.043,
7 384.051, 384.057, and 384.062, to read as follows:

8 143.441. 1. The term "corporation" means every
9 corporation, association, joint stock company and joint stock
10 association organized, authorized or existing under the laws of
11 this state and includes:

12 (1) Every corporation, association, joint stock company,
13 and joint stock association organized, authorized, or existing
14 under the laws of this state, and every corporation, association,
15 joint stock company, and joint stock association, licensed to do
16 business in this state, or doing business in this state, and not
17 organized, authorized, or existing under the laws of this state,
18 or by any receiver in charge of the property of any such
19 corporation, association, joint stock company or joint stock
20 association;

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

27 (3) Every corporation, or receiver in charge of the
28 property thereof, which owns or operates a bridge between this

1 and any other state; and

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

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

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

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

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

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

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

24 147.010. 1. For the transitional year defined in
25 subsection 4 of this section and each taxable year beginning on
26 or after January 1, 1980, but before January 1, 2000, every
27 corporation organized pursuant to or subject to chapter 351,
28 RSMo, or pursuant to any other law of this state shall, in

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

1 secretary of state. For all taxable years beginning on or after
2 January 1, 2000, the annual franchise tax shall be equal to
3 one-thirtieth of one percent of the corporation's outstanding
4 shares and surplus if the outstanding shares and surplus exceed
5 one million dollars. Any corporation whose outstanding shares
6 and surplus do not exceed one million dollars shall state that
7 fact on the annual report form prescribed by the director of
8 revenue.

9 2. Sections 147.010 to 147.120 shall not apply to
10 corporations not organized for profit, nor to corporations
11 organized pursuant to the provisions of chapter 349, RSMo, nor to
12 express companies, which now pay an annual tax on their gross
13 receipts in this state, nor to insurance companies, which [pay]
14 are subject to an annual tax on their premium receipts in this
15 state, nor to state, district, county, town and farmers' mutual
16 companies now organized or that may be hereafter organized
17 pursuant to any of the laws of this state, organized for the sole
18 purpose of writing fire, lightning, windstorm, tornado, cyclone,
19 hail and plate glass and mutual automobile insurance and for the
20 purpose of paying any loss incurred by any member by assessment,
21 nor to any mutual insurance corporation not having shares, nor to
22 a company or association organized to transact business of life
23 or accident insurance on the assessment plan for the purpose of
24 mutual protection and benefit to its members and the payment of
25 stipulated sums of moneys to the family, heirs, executors,
26 administrators or assigns of the deceased member, nor to foreign
27 life, fire, accident, surety, liability, steam boiler, tornado,
28 health, or other kind of insurance company of whatever nature

1 coming within the provisions of section 147.050 and doing
2 business in this state, nor to savings and loan associations and
3 domestic and foreign regulated investment companies as defined by
4 Section 170 of the Act of Congress commonly known as the "Revenue
5 Act of 1942", nor to electric and telephone corporations
6 organized pursuant to chapter 351, RSMo, and chapter 392, RSMo,
7 prior to January 1, 1980, which have been declared tax exempt
8 organizations pursuant to Section 501(c) of the Internal Revenue
9 Code of 1986, nor for taxable years beginning after December 31,
10 1986, to banking institutions subject to the annual franchise tax
11 imposed by sections 148.010 to 148.110, RSMo; but bank deposits
12 shall be considered as funds of the individual depositor left for
13 safekeeping and shall not be considered in computing the amount
14 of tax collectible pursuant to the provisions of sections 147.010
15 to 147.120.

16 3. A corporation's "taxable year" for purposes of sections
17 147.010 to 147.120 shall be its taxable year as provided in
18 section 143.271, RSMo.

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

22 5. The franchise tax payable for a corporation's
23 transitional year shall be computed by multiplying the amount
24 otherwise due for that year by a fraction, the numerator of which
25 is the number of months between January 1, 1980, and the end of
26 the taxable year and the denominator of which is twelve. The
27 franchise tax payable, if a corporation's taxable year is changed
28 as provided in section 143.271, RSMo, shall be similarly computed

1 pursuant to regulations prescribed by the director of revenue.

2 6. All franchise reports and franchise taxes shall be
3 returned to the director of revenue. All checks and drafts
4 remitted for payment of franchise taxes shall be made payable to
5 the director of revenue.

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

9 8. The director of the department of revenue shall honor
10 all existing agreements between taxpayers and the director of the
11 department of revenue.

12 148.370. Every insurance company or association organized
13 under the laws of the state of Missouri and doing business under
14 the provisions of sections 376.010 to 376.670, 379.205 to
15 379.310, 379.650 to 379.790 and chapter 381, RSMo, and every
16 mutual fire insurance company organized under the provisions of
17 sections 379.010 to 379.190, RSMo, shall, as hereinafter
18 provided, quarterly pay, beginning with the year 1983, a tax upon
19 the direct premiums received by it from policyholders in this
20 state, whether in cash or in notes, or on account of business
21 done in this state, in lieu of the taxes imposed under the
22 provisions of chapters 143 and 147, RSMo, for insurance of life,
23 property or interest in this state, at the rate of two percent
24 per annum, which amount of taxes shall be assessed and collected
25 as hereinafter provided; provided, that fire and casualty
26 insurance companies or associations shall be credited with
27 canceled or returned premiums actually paid during the year in
28 this state, and that life insurance companies shall be credited

1 with dividends actually declared to policyholders in this state
2 but held by the company and applied to the reduction of premiums
3 payable by the policyholder.

4 303.024. 1. Each insurer issuing motor vehicle liability
5 policies in this state, or an agent of the insurer, shall furnish
6 an insurance identification card to the named insured for each
7 motor vehicle insured by a motor vehicle liability policy that
8 complies with the requirements of sections 303.010 to 303.050,
9 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370.

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

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

13 (2) The name of the named insured;

14 (3) The policy number;

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

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

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

24 3. A new insurance identification card shall be issued when
25 the insured motor vehicle is changed, when an additional motor
26 vehicle is insured, and when a new policy number is assigned. A
27 replacement insurance identification card shall be issued at the
28 request of the insured in the event of loss of the original

1 insurance identification card.

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

6 (1) Name of the self-insurer;

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

8 (3) The statement "THIS CARD MUST BE CARRIED IN THE
9 SELF-INSURED MOTOR VEHICLE FOR PRODUCTION UPON DEMAND"

10 prominently displayed on the card.

11 5. An insurance identification card shall be carried in the
12 insured motor vehicle at all times. The operator of an insured
13 motor vehicle shall exhibit the insurance identification card on
14 the demand of any peace officer, commercial vehicle enforcement
15 officer or commercial vehicle inspector who lawfully stops such
16 operator or investigates an accident while that officer or
17 inspector is engaged in the performance of the officer's or
18 inspector's duties. If the operator fails to exhibit an
19 insurance identification card, the officer or inspector shall
20 issue a citation to the operator for a violation of section
21 303.025. A motor vehicle liability insurance policy, a motor
22 vehicle liability insurance binder, or receipt which contains the
23 policy information required in subsection 2 of this section,
24 shall be satisfactory evidence of insurance in lieu of an
25 insurance identification card.

26 6. Any person who knowingly or intentionally produces,
27 manufactures, sells, or otherwise distributes a fraudulent
28 document intended to serve as an insurance identification card is

1 guilty of a class D felony. Any person who knowingly or
2 intentionally possesses a fraudulent document intended to serve
3 as an insurance identification card is guilty of a class B
4 misdemeanor.

5 374.350. Sections 374.350 to 374.352 may be cited as the
6 "Interstate Insurance Product Regulation Compact".

7 374.351. The Interstate Insurance Product Regulation
8 Compact is intended to help States join together to establish an
9 interstate compact to regulate designated insurance products.

10 Pursuant to terms and conditions of this Act, the State of
11 Missouri seeks to join with other States and establish the
12 Interstate Insurance Product Regulation Compact, and thus become
13 a member of the Interstate Insurance Product Regulation
14 Commission. The Director of the Department of Insurance,
15 Financial Institutions and Professional Registration is hereby
16 designated to serve as the representative of this State to the
17 Commission.

18 374.352. The State of Missouri ratifies, approves, and
19 adopts the following interstate compact:

20 ARTICLE I. PURPOSES

21 The purposes of this Compact are, through means of joint and
22 cooperative action among the Compacting States:

23 1. To promote and protect the interest of consumers of
24 individual and group annuity, life insurance, disability income
25 and long-term care insurance products;

26 2. To develop uniform standards for insurance products
27 covered under the Compact;

28 3. To establish a central clearinghouse to receive and

1 provide prompt review of insurance products covered under the
2 Compact and, in certain cases, advertisements related thereto,
3 submitted by insurers authorized to do business in one or more
4 Compacting States;

5 4. To give appropriate regulatory approval to those product
6 filings and advertisements satisfying the applicable uniform
7 standard;

8 5. To improve coordination of regulatory resources and
9 expertise between state insurance departments regarding the
10 setting of uniform standards and review of insurance products
11 covered under the Compact;

12 6. To create the Interstate Insurance Product Regulation
13 Commission; and

14 7. To perform these and such other related functions as may
15 be consistent with the state regulation of the business of
16 insurance.

17 ARTICLE II. DEFINITIONS

18 For purposes of this Compact:

19 1. "Advertisement" means any material designed to create
20 public interest in a Product, or induce the public to purchase,
21 increase, modify, reinstate, borrow on, surrender, replace or
22 retain a policy, as more specifically defined in the Rules and
23 Operating Procedures of the Commission.

24 2. "Bylaws" mean those bylaws established by the Commission
25 for its governance, or for directing or controlling the
26 Commission's actions or conduct.

27 3. "Compacting State" means any State which has enacted
28 this Compact legislation and which has not withdrawn pursuant to

1 Article XIV, Section 1, or been terminated pursuant to Article
2 XIV, Section 2.

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

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

8 6. "Domiciliary State" means the state in which an Insurer
9 is incorporated or organized; or, in the case of an alien
10 Insurer, its state of entry.

11 7. "Insurer" means any entity licensed by a State to issue
12 contracts of insurance for any of the lines of insurance covered
13 by this Act.

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

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

18 10. "Operating Procedures" mean procedures promulgated by
19 the Commission implementing a Rule, Uniform Standard or a
20 provision of this Compact.

21 11. "Product" means the form of a policy or contract,
22 including any application, endorsement, or related form which is
23 attached to and made a part of the policy or contract, and any
24 evidence of coverage or certificate, for an individual or group
25 annuity, life insurance, disability income or long-term care
26 insurance product that an Insurer is authorized to issue.

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

1 including a Uniform Standard developed pursuant to Article VII of
2 this Compact, designed to implement, interpret, or prescribe law
3 or policy or describing the organization, procedure, or practice
4 requirements of the Commission, which shall have the force and
5 effect of law in the Compacting States.

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

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

10 15. "Uniform Standard" means a standard adopted by the
11 Commission for a Product line, pursuant to Article VII of this
12 Compact, and shall include all of the Product requirements in
13 aggregate; provided, that each Uniform Standard shall be
14 construed, whether express or implied, to prohibit the use of any
15 inconsistent, misleading or ambiguous provisions in a Product and
16 the form of the Product made available to the public shall not be
17 unfair, inequitable or against public policy as determined by the
18 Commission.

19 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

20 1. The Compacting States hereby create and establish a
21 joint public agency known as the "Interstate Insurance Product
22 Regulation Commission." Pursuant to Article IV, the Commission
23 will have the power to develop Uniform Standards for Product
24 lines, receive and provide prompt review of Products filed
25 therewith, and give approval to those Product filings satisfying
26 applicable Uniform Standards; provided, it is not intended for
27 the Commission to be the exclusive entity for receipt and review
28 of insurance product filings. Nothing herein shall prohibit any

1 Insurer from filing its product in any State wherein the Insurer
2 is licensed to conduct the business of insurance; and any such
3 filing shall be subject to the laws of the State where filed.

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

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

8 4. Venue is proper and judicial proceedings by or against
9 the Commission shall be brought solely and exclusively in a Court
10 of competent jurisdiction where the principal office of the
11 Commission is located.

12 ARTICLE IV. POWERS OF THE COMMISSION

13 The Commission shall have the following powers:

14 1. To promulgate Rules, pursuant to Article VII of this
15 Compact, which shall have the force and effect of law and shall
16 be binding in the Compacting States to the extent and in the
17 manner provided in this Compact;

18 2. To exercise its rulemaking authority and establish
19 reasonable Uniform Standards for Products covered under the
20 Compact, and Advertisement related thereto, which shall have the
21 force and effect of law and shall be binding in the Compacting
22 States, but only for those Products filed with the Commission,
23 provided, that a Compacting State shall have the right to opt out
24 of such Uniform Standard pursuant to Article VII, to the extent
25 and in the manner provided in this Compact, and, provided
26 further, that any Uniform Standard established by the Commission
27 for long-term care insurance products may provide the same or
28 greater protections for consumers as, but shall not provide less

1 than, those protections set forth in the National Association of
2 Insurance Commissioners' Long-Term Care Insurance Model Act and
3 Long-Term Care Insurance Model Regulation, respectively, adopted
4 as of 2001. The Commission shall consider whether any subsequent
5 amendments to the NAIC Long-Term Care Insurance Model Act or
6 Long-Term Care Insurance Model Regulation adopted by the NAIC
7 require amending of the Uniform Standards established by the
8 Commission for long-term care insurance products;

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

16 4. To receive and review in an expeditious manner
17 Advertisement relating to long-term care insurance products for
18 which Uniform Standards have been adopted by the Commission, and
19 give approval to all Advertisement that satisfies the applicable
20 Uniform Standard. For any product covered under this Compact,
21 other than long-term care insurance products, the Commission
22 shall have the authority to require an insurer to submit all or
23 any part of its Advertisement with respect to that product for
24 review or approval prior to use, if the Commission determines
25 that the nature of the product is such that an Advertisement of
26 the product could have the capacity or tendency to mislead the
27 public. The actions of Commission as provided in this section
28 shall have the force and effect of law and shall be binding in

1 the Compacting States to the extent and in the manner provided in
2 the Compact;

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

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

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

14 8. To issue subpoenas requiring the attendance and
15 testimony of witnesses and the production of evidence;

16 9. To establish and maintain offices;

17 10. To purchase and maintain insurance and bonds;

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

21 12. To hire employees, professionals or specialists, and
22 elect or appoint officers, and to fix their compensation, define
23 their duties and give them appropriate authority to carry out the
24 purposes of the Compact, and determine their qualifications; and
25 to establish the Commission's personnel policies and programs
26 relating to, among other things, conflicts of interest, rates of
27 compensation and qualifications of personnel;

28 13. To accept any and all appropriate donations and grants

1 of money, equipment, supplies, materials and services, and to
2 receive, utilize and dispose of the same; provided that at all
3 times the Commission shall strive to avoid any appearance of
4 impropriety;

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

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

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

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

16 18. To provide for dispute resolution among Compacting
17 States;

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

21 20. To provide advice and training to those personnel in
22 state insurance departments responsible for product review, and
23 to be a resource for state insurance departments;

24 21. To establish a budget and make expenditures;

25 22. To borrow money;

26 23. To appoint committees, including advisory committees
27 comprising Members, state insurance regulators, state legislators
28 or their representatives, insurance industry and consumer

1 representatives, and such other interested persons as may be
2 designated in the Bylaws;

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

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

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

9 ARTICLE V. ORGANIZATION OF THE COMMISSION

10 1. Membership, Voting and Bylaws

11 a. Each Compacting State shall have and be limited to one
12 Member. Each Member shall be qualified to serve in that capacity
13 pursuant to applicable law of the Compacting State. Any Member
14 may be removed or suspended from office as provided by the law of
15 the State from which he or she shall be appointed. Any vacancy
16 occurring in the Commission shall be filled in accordance with
17 the laws of the Compacting State wherein the vacancy exists.

18 Nothing herein shall be construed to affect the manner in which a
19 Compacting State determines the election or appointment and
20 qualification of its own Commissioner.

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

27 c. The Commission shall, by a majority of the Members,
28 prescribe Bylaws to govern its conduct as may be necessary or

1 appropriate to carry out the purposes, and exercise the powers,
2 of the Compact, including, but not limited to:

3 i. Establishing the fiscal year of the Commission;

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

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

11 iv. Providing reasonable procedures for calling and
12 conducting meetings of the Commission that consists of a majority
13 of Commission members, ensuring reasonable advance notice of each
14 such meeting and providing for the right of citizens to attend
15 each such meeting with enumerated exceptions designed to protect
16 the public's interest, the privacy of individuals, and insurers'
17 proprietary information, including trade secrets. The Commission
18 may meet in camera only after a majority of the entire membership
19 votes to close a meeting *en toto* or in part. As soon as
20 practicable, the Commission must make public (i) a copy of the
21 vote to close the meeting revealing the vote of each Member with
22 no proxy votes allowed, and (ii) votes taken during such meeting;

23 v. Establishing the titles, duties and authority and
24 reasonable procedures for the election of the officers of the
25 Commission;

26 vi. Providing reasonable standards and procedures for the
27 establishment of the personnel policies and programs of the
28 Commission. Notwithstanding any civil service or other similar

1 laws of any Compacting State, the Bylaws shall exclusively govern
2 the personnel policies and programs of the Commission;

3 vii. Promulgating a code of ethics to address permissible
4 and prohibited activities of commission members and employees;
5 and

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

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

14 2. Management Committee, Officers and Personnel

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

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

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

27 iii. Four (4) members from those Compacting States with
28 less than two percent (2%) of the market, based on the premium

1 volume described above, with one (1) selected from each of the
2 four (4) zone regions of the NAIC as provided in the Bylaws.

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

6 i. Managing the affairs of the Commission in a manner
7 consistent with the Bylaws and purposes of the Commission;

8 ii. Establishing and overseeing an organizational structure
9 within, and appropriate procedures for, the Commission to provide
10 for the creation of Uniform Standards and other Rules, receipt
11 and review of product filings, administrative and technical
12 support functions, review of decisions regarding the disapproval
13 of a product filing, and the review of elections made by a
14 Compacting State to opt out of a Uniform Standard; provided that
15 a Uniform Standard shall not be submitted to the Compacting
16 States for adoption unless approved by two-thirds (2/3) of the
17 members of the Management Committee;

18 iii. Overseeing the offices of the Commission; and

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

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

25 d. The Management Committee may, subject to the approval of
26 the Commission, appoint or retain an executive director for such
27 period, upon such terms and conditions and for such compensation
28 as the Commission may deem appropriate. The executive director

1 shall serve as secretary to the Commission, but shall not be a
2 Member of the Commission. The executive director shall hire and
3 supervise such other staff as may be authorized by the
4 Commission.

5 3. Legislative and Advisory Committees

6 a. A legislative committee comprising state legislators or
7 their designees shall be established to monitor the operations
8 of, and make recommendations to, the Commission, including the
9 Management Committee; provided that the manner of selection and
10 term of any legislative committee member shall be as set forth in
11 the Bylaws. Prior to the adoption by the Commission of any
12 Uniform Standard, revision to the Bylaws, annual budget or other
13 significant matter as may be provided in the Bylaws, the
14 Management Committee shall consult with and report to the
15 legislative committee.

16 b. The Commission shall establish two (2) advisory
17 committees, one of which shall comprise consumer representatives
18 independent of the insurance industry, and the other comprising
19 insurance industry representatives.

20 c. The Commission may establish additional advisory
21 committees as its Bylaws may provide for the carrying out of its
22 functions.

23 4. Corporate Records of the Commission

24 The Commission shall maintain its corporate books and
25 records in accordance with the Bylaws.

26 5. Qualified Immunity, Defense and Indemnification

27 a. The Members, officers, executive director, employees and
28 representatives of the Commission shall be immune from suit and

1 liability, either personally or in their official capacity, for
2 any claim for damage to or loss of property or personal injury or
3 other civil liability caused by or arising out of any actual or
4 alleged act, error or omission that occurred, or that the person
5 against whom the claim is made had a reasonable basis for
6 believing occurred within the scope of Commission employment,
7 duties or responsibilities; provided, that nothing in this
8 paragraph shall be construed to protect any such person from suit
9 and/or liability for any damage, loss, injury or liability caused
10 by the intentional or willful and wanton misconduct of that
11 person.

12 b. The Commission shall defend any Member, officer,
13 executive director, employee or representative of the Commission
14 in any civil action seeking to impose liability arising out of
15 any actual or alleged act, error or omission that occurred within
16 the scope of Commission employment, duties or responsibilities,
17 or that the person against whom the claim is made had a
18 reasonable basis for believing occurred within the scope of
19 Commission employment, duties or responsibilities; provided, that
20 nothing herein shall be construed to prohibit that person from
21 retaining his or her own counsel; and provided further, that the
22 actual or alleged act, error or omission did not result from that
23 person's intentional or willful and wanton misconduct.

24 c. The Commission shall indemnify and hold harmless any
25 Member, officer, executive director, employee or representative
26 of the Commission for the amount of any settlement or judgment
27 obtained against that person arising out of any actual or alleged
28 act, error or omission that occurred within the scope of

1 Commission employment, duties or responsibilities, or that such
2 person had a reasonable basis for believing occurred within the
3 scope of Commission employment, duties or responsibilities,
4 provided, that the actual or alleged act, error or omission did
5 not result from the intentional or willful and wanton misconduct
6 of that person.

7 ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

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

10 2. Each Member of the Commission shall have the right and
11 power to cast a vote to which that Compacting State is entitled
12 and to participate in the business and affairs of the Commission.
13 A Member shall vote in person or by such other means as provided
14 in the Bylaws. The Bylaws may provide for Members' participation
15 in meetings by telephone or other means of communication.

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

19 ARTICLE VII. RULES AND OPERATING PROCEDURES: RULEMAKING
20 FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

21 1. Rulemaking Authority. The Commission shall promulgate
22 reasonable Rules, including Uniform Standards, and Operating
23 Procedures in order to effectively and efficiently achieve the
24 purposes of this Compact. Notwithstanding the foregoing, in the
25 event the Commission exercises its rulemaking authority in a
26 manner that is beyond the scope of the purposes of this Act, or
27 the powers granted hereunder, then such an action by the
28 Commission shall be invalid and have no force and effect.

1 2. Rulemaking Procedure. Rules and Operating Procedures
2 shall be made pursuant to a rulemaking process that conforms to
3 the Model State Administrative Procedure Act of 1981 as amended,
4 as may be appropriate to the operations of the Commission.
5 Before the Commission adopts a Uniform Standard, the Commission
6 shall give written notice to the relevant state legislative
7 committee(s) in each Compacting State responsible for insurance
8 issues of its intention to adopt the Uniform Standard. The
9 Commission in adopting a Uniform Standard shall consider fully
10 all submitted materials and issue a concise explanation of its
11 decision.

12 3. Effective Date and Opt Out of a Uniform Standard. A
13 Uniform Standard shall become effective ninety (90) days after
14 its promulgation by the Commission or such later date as the
15 Commission may determine; provided, however, that a Compacting
16 State may opt out of a Uniform Standard as provided in this
17 Article. "Opt out" shall be defined as any action by a
18 Compacting State to decline to adopt or participate in a
19 promulgated Uniform Standard. All other Rules and Operating
20 Procedures, and amendments thereto, shall become effective as of
21 the date specified in each Rule, Operating Procedure or
22 amendment.

23 4. Opt Out Procedure. A Compacting State may opt out of a
24 Uniform Standard, either by legislation or regulation duly
25 promulgated by the Insurance Department under the Compacting
26 State's Administrative Procedure Act. If a Compacting State
27 elects to opt out of a Uniform Standard by regulation, it must
28 (a) give written notice to the Commission no later than ten (10)

1 business days after the Uniform Standard is promulgated, or at
2 the time the State becomes a Compacting State and (b) find that
3 the Uniform Standard does not provide reasonable protections to
4 the citizens of the State, given the conditions in the State.
5 The Commissioner shall make specific findings of fact and
6 conclusions of law, based on a preponderance of the evidence,
7 detailing the conditions in the State which warrant a departure
8 from the Uniform Standard and determining that the Uniform
9 Standard would not reasonably protect the citizens of the State.
10 The Commissioner must consider and balance the following factors
11 and find that the conditions in the State and needs of the
12 citizens of the State outweigh: (i) the intent of the legislature
13 to participate in, and the benefits of, an interstate agreement
14 to establish national uniform consumer protections for the
15 Products subject to this Act; and (ii) the presumption that a
16 Uniform Standard adopted by the Commission provides reasonable
17 protections to consumers of the relevant Product.
18 Notwithstanding the foregoing, a Compacting State may, at the
19 time of its enactment of this Compact, prospectively opt out of
20 all Uniform Standards involving long-term care insurance products
21 by expressly providing for such opt out in the enacted Compact,
22 and such an opt out shall not be treated as a material variance
23 in the offer or acceptance of any State to participate in this
24 Compact. Such an opt out shall be effective at the time of
25 enactment of this Compact by the Compacting State and shall apply
26 to all existing Uniform Standards involving long-term care
27 insurance products and those subsequently promulgated.

28 5. Effect of Opt Out. If a Compacting State elects to opt

1 out of a Uniform Standard, the Uniform Standard shall remain
2 applicable in the Compacting State electing to opt out until such
3 time the opt out legislation is enacted into law or the
4 regulation opting out becomes effective. Once the opt out of a
5 Uniform Standard by a Compacting State becomes effective as
6 provided under the laws of that State, the Uniform Standard shall
7 have no further force and effect in that State unless and until
8 the legislation or regulation implementing the opt out is
9 repealed or otherwise becomes ineffective under the laws of the
10 State. If a Compacting State opts out of a Uniform Standard
11 after the Uniform Standard has been made effective in that State,
12 the opt out shall have the same prospective effect as provided
13 under Article XIV for withdrawals.

14 6. Stay of Uniform Standard. If a Compacting State has
15 formally initiated the process of opting out of a Uniform
16 Standard by regulation, and while the regulatory opt out is
17 pending, the Compacting State may petition the Commission, at
18 least fifteen (15) days before the effective date of the Uniform
19 Standard, to stay the effectiveness of the Uniform Standard in
20 that State. The Commission may grant a stay if it determines the
21 regulatory opt out is being pursued in a reasonable manner and
22 there is a likelihood of success. If a stay is granted or
23 extended by the Commission, the stay or extension thereof may
24 postpone the effective date by up to ninety (90) days, unless
25 affirmatively extended by the Commission; provided, a stay may
26 not be permitted to remain in effect for more than one (1) year
27 unless the Compacting State can show extraordinary circumstances
28 which warrant a continuance of the stay, including, but not

1 limited to, the existence of a legal challenge which prevents the
2 Compacting State from opting out. A stay may be terminated by
3 the Commission upon notice that the rulemaking process has been
4 terminated.

5 7. Not later than thirty (30) days after a Rule or
6 Operating Procedure is promulgated, any person may file a
7 petition for judicial review of the Rule or Operating Procedure;
8 provided, that the filing of such a petition shall not stay or
9 otherwise prevent the Rule or Operating Procedure from becoming
10 effective unless the court finds that the petitioner has a
11 substantial likelihood of success. The court shall give
12 deference to the actions of the Commission consistent with
13 applicable law and shall not find the Rule or Operating Procedure
14 to be unlawful if the Rule or Operating Procedure represents a
15 reasonable exercise of the Commission's authority.

16 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

17 1. The Commission shall promulgate Rules establishing
18 conditions and procedures for public inspection and copying of
19 its information and official records, except such information and
20 records involving the privacy of individuals and insurers' trade
21 secrets. The Commission may promulgate additional Rules under
22 which it may make available to federal and state agencies,
23 including law enforcement agencies, records and information
24 otherwise exempt from disclosure, and may enter into agreements
25 with such agencies to receive or exchange information or records
26 subject to nondisclosure and confidentiality provisions.

27 2. Except as to privileged records, data and information,
28 the laws of any Compacting State pertaining to confidentiality or

1 nondisclosure shall not relieve any Compacting State Commissioner
2 of the duty to disclose any relevant records, data or information
3 to the Commission; provided, that disclosure to the Commission
4 shall not be deemed to waive or otherwise affect any
5 confidentiality requirement; and further provided, that, except
6 as otherwise expressly provided in this Act, the Commission shall
7 not be subject to the Compacting State's laws pertaining to
8 confidentiality and nondisclosure with respect to records, data
9 and information in its possession. Confidential information of
10 the Commission shall remain confidential after such information
11 is provided to any Commissioner.

12 3. The Commission shall monitor Compacting States for
13 compliance with duly adopted Bylaws, Rules, including Uniform
14 Standards, and Operating Procedures. The Commission shall notify
15 any non-complying Compacting State in writing of its
16 noncompliance with Commission Bylaws, Rules or Operating
17 Procedures. If a non-complying Compacting State fails to remedy
18 its noncompliance within the time specified in the notice of
19 noncompliance, the Compacting State shall be deemed to be in
20 default as set forth in Article XIV.

21 4. The Commissioner of any State in which an Insurer is
22 authorized to do business, or is conducting the business of
23 insurance, shall continue to exercise his or her authority to
24 oversee the market regulation of the activities of the Insurer in
25 accordance with the provisions of the State's law. The
26 Commissioner's enforcement of compliance with the Compact is
27 governed by the following provisions:

28 a. With respect to the Commissioner's market regulation of

1 a Product or Advertisement that is approved or certified to the
2 Commission, the content of the Product or Advertisement shall not
3 constitute a violation of the provisions, standards or
4 requirements of the Compact except upon a final order of the
5 Commission, issued at the request of a Commissioner after prior
6 notice to the Insurer and an opportunity for hearing before the
7 Commission.

8 b. Before a Commissioner may bring an action for violation
9 of any provision, standard or requirement of the Compact relating
10 to the content of an Advertisement not approved or certified to
11 the Commission, the Commission, or an authorized Commission
12 officer or employee, must authorize the action. However,
13 authorization pursuant to this paragraph does not require notice
14 to the Insurer, opportunity for hearing or disclosure of requests
15 for authorization or records of the Commission's action on such
16 requests.

17 ARTICLE IX. DISPUTE RESOLUTION

18 The Commission shall attempt, upon the request of a Member,
19 to resolve any disputes or other issues that are subject to this
20 Compact and which may arise between two or more Compacting
21 States, or between Compacting States and Non-compacting States,
22 and the Commission shall promulgate an Operating Procedure
23 providing for resolution of such disputes.

24 ARTICLE X. PRODUCT FILING AND APPROVAL

25 1. Insurers and Third-Party Filers seeking to have a
26 Product approved by the Commission shall file the Product with,
27 and pay applicable filing fees to, the Commission. Nothing in
28 this Act shall be construed to restrict or otherwise prevent an

1 insurer from filing its Product with the insurance department in
2 any State wherein the insurer is licensed to conduct the business
3 of insurance, and such filing shall be subject to the laws of the
4 States where filed.

5 2. The Commission shall establish appropriate filing and
6 review processes and procedures pursuant to Commission Rules and
7 Operating Procedures. Notwithstanding any provision herein to
8 the contrary, the Commission shall promulgate Rules to establish
9 conditions and procedures under which the Commission will provide
10 public access to Product filing information. In establishing
11 such Rules, the Commission shall consider the interests of the
12 public in having access to such information, as well as
13 protection of personal medical and financial information and
14 trade secrets, that may be contained in a Product filing or
15 supporting information.

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

19 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

20 1. Not later than thirty (30) days after the Commission has
21 given notice of a disapproved Product or Advertisement filed with
22 the Commission, the Insurer or Third Party Filer whose filing was
23 disapproved may appeal the determination to a review panel
24 appointed by the Commission. The Commission shall promulgate
25 Rules to establish procedures for appointing such review panels
26 and provide for notice and hearing. An allegation that the
27 Commission, in disapproving a Product or Advertisement filed with
28 the Commission, acted arbitrarily, capriciously, or in a manner

1 that is an abuse of discretion or otherwise not in accordance
2 with the law, is subject to judicial review in accordance with
3 Article III, Section 4.

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

10 ARTICLE XII. FINANCE

11 1. The Commission shall pay or provide for the payment of
12 the reasonable expenses of its establishment and organization.
13 To fund the cost of its initial operations, the Commission may
14 accept contributions and other forms of funding from the National
15 Association of Insurance Commissioners, Compacting States and
16 other sources. Contributions and other forms of funding from
17 other sources shall be of such a nature that the independence of
18 the Commission concerning the performance of its duties shall not
19 be compromised.

20 2. The Commission shall collect a filing fee from each
21 Insurer and Third Party Filer filing a product with the
22 Commission to cover the cost of the operations and activities of
23 the Commission and its staff in a total amount sufficient to
24 cover the Commission's annual budget.

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

28 4. The Commission shall be exempt from all taxation in and

1 by the Compacting States.

2 5. The Commission shall not pledge the credit of any
3 Compacting State, except by and with the appropriate legal
4 authority of that Compacting State.

5 6. The Commission shall keep complete and accurate accounts
6 of all its internal receipts, including grants and donations, and
7 disbursements of all funds under its control. The internal
8 financial accounts of the Commission shall be subject to the
9 accounting procedures established under its Bylaws. The
10 financial accounts and reports including the system of internal
11 controls and procedures of the Commission shall be audited
12 annually by an independent certified public accountant. Upon the
13 determination of the Commission, but no less frequently than
14 every three (3) years, the review of the independent auditor
15 shall include a management and performance audit of the
16 Commission. The Commission shall make an Annual Report to the
17 Governor and legislature of the Compacting States, which shall
18 include a report of the independent audit. The Commission's
19 internal accounts shall not be confidential and such materials
20 may be shared with the Commissioner of any Compacting State upon
21 request provided, however, that any work papers related to any
22 internal or independent audit and any information regarding the
23 privacy of individuals and insurers' proprietary information,
24 including trade secrets, shall remain confidential.

25 7. No Compacting State shall have any claim to or ownership
26 of any property held by or vested in the Commission or to any
27 Commission funds held pursuant to the provisions of this Compact.

28 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1 1. Any State is eligible to become a Compacting State.

2 2. The Compact shall become effective and binding upon
3 legislative enactment of the Compact into law by two Compacting
4 States; provided, the Commission shall become effective for
5 purposes of adopting Uniform Standards for, reviewing, and giving
6 approval or disapproval of, Products filed with the Commission
7 that satisfy applicable Uniform Standards only after twenty-six
8 (26) States are Compacting States or, alternatively, by States
9 representing greater than forty percent (40%) of the premium
10 volume for life insurance, annuity, disability income and long-
11 term care insurance products, based on records of the NAIC for
12 the prior year. Thereafter, it shall become effective and
13 binding as to any other Compacting State upon enactment of the
14 Compact into law by that State.

15 3. Amendments to the Compact may be proposed by the
16 Commission for enactment by the Compacting States. No amendment
17 shall become effective and binding upon the Commission and the
18 Compacting States unless and until all Compacting States enact
19 the amendment into law.

20 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

21 1. Withdrawal

22 a. Once effective, the Compact shall continue in force and
23 remain binding upon each and every Compacting State; provided,
24 that a Compacting State may withdraw from the Compact
25 ("Withdrawing State") by enacting a statute specifically
26 repealing the statute which enacted the Compact into law.

27 b. The effective date of withdrawal is the effective date
28 of the repealing statute. However, the withdrawal shall not

1 apply to any product filings approved or self-certified, or any
2 Advertisement of such products, on the date the repealing statute
3 becomes effective, except by mutual agreement of the Commission
4 and the Withdrawing State unless the approval is rescinded by the
5 Withdrawing State as provided in Paragraph e of this section.

6 c. The Commissioner of the Withdrawing State shall
7 immediately notify the Management Committee in writing upon the
8 introduction of legislation repealing this Compact in the
9 Withdrawing State.

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

13 e. The Withdrawing State is responsible for all
14 obligations, duties and liabilities incurred through the
15 effective date of withdrawal, including any obligations, the
16 performance of which extend beyond the effective date of
17 withdrawal, except to the extent those obligations may have been
18 released or relinquished by mutual agreement of the Commission
19 and the Withdrawing State. The Commission's approval of Products
20 and Advertisement prior to the effective date of withdrawal shall
21 continue to be effective and be given full force and effect in
22 the Withdrawing State, unless formally rescinded by the
23 Withdrawing State in the same manner as provided by the laws of
24 the Withdrawing State for the prospective disapproval of products
25 or advertisement previously approved under state law.

26 f. Reinstatement following withdrawal of any Compacting
27 State shall occur upon the effective date of the Withdrawing
28 State reenacting the Compact.

1 2. Default

2 a. If the Commission determines that any Compacting State
3 has at any time defaulted ("Defaulting State") in the performance
4 of any of its obligations or responsibilities under this Compact,
5 the Bylaws or duly promulgated Rules or Operating Procedures,
6 then, after notice and hearing as set forth in the Bylaws, all
7 rights, privileges and benefits conferred by this Compact on the
8 Defaulting State shall be suspended from the effective date of
9 default as fixed by the Commission. The grounds for default
10 include, but are not limited to, failure of a Compacting State to
11 perform its obligations or responsibilities, and any other
12 grounds designated in Commission Rules. The Commission shall
13 immediately notify the Defaulting State in writing of the
14 Defaulting State's suspension pending a cure of the default. The
15 Commission shall stipulate the conditions and the time period
16 within which the Defaulting State must cure its default. If the
17 Defaulting State fails to cure the default within the time period
18 specified by the Commission, the Defaulting State shall be
19 terminated from the Compact and all rights, privileges and
20 benefits conferred by this Compact shall be terminated from the
21 effective date of termination.

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

28 c. Reinstatement following termination of any Compacting

1 State requires a reenactment of the Compact.

2 3. Dissolution of Compact

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

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

11 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

12 1. The provisions of this Compact shall be severable; and
13 if any phrase, clause, sentence or provision is deemed
14 unenforceable, the remaining provisions of the Compact shall be
15 enforceable.

16 2. The provisions of this Compact shall be liberally
17 construed to effectuate its purposes.

18 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

19 1. Other Laws

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

23 b. For any Product approved or certified to the Commission,
24 the Rules, Uniform Standards and any other requirements of the
25 Commission shall constitute the exclusive provisions applicable
26 to the content, approval and certification of such Products. For
27 Advertisement that is subject to the Commission's authority, any
28 Rule, Uniform Standard or other requirement of the Commission

1 which governs the content of the Advertisement shall constitute
2 the exclusive provision that a Commissioner may apply to the
3 content of the Advertisement. Notwithstanding the foregoing, no
4 action taken by the Commission shall abrogate or restrict: (i)
5 the access of any person to state courts; (ii) remedies available
6 under state law related to breach of contract, tort, or other
7 laws not specifically directed to the content of the Product;
8 (iii) state law relating to the construction of insurance
9 contracts; or (iv) the authority of the attorney general of the
10 state, including but not limited to maintaining any actions or
11 proceedings, as authorized by law.

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

14 2. Binding Effect of this Compact

15 a. All lawful actions of the Commission, including all
16 Rules and Operating Procedures promulgated by the Commission, are
17 binding upon the Compacting States.

18 b. All agreements between the Commission and the Compacting
19 States are binding in accordance with their terms.

20 c. Upon the request of a party to a conflict over the
21 meaning or interpretation of Commission actions, and upon a
22 majority vote of the Compacting States, the Commission may issue
23 advisory opinions regarding the meaning or interpretation in
24 dispute.

25 d. In the event any provision of this Compact exceeds the
26 constitutional limits imposed on the legislature of any
27 Compacting State, the obligations, duties, powers or jurisdiction
28 sought to be conferred by that provision upon the Commission

1 shall be ineffective as to that Compacting State, and those
2 obligations, duties, powers or jurisdiction shall remain in the
3 Compacting State and shall be exercised by the agency thereof to
4 which those obligations, duties, powers or jurisdiction are
5 delegated by law in effect at the time this Compact becomes
6 effective.

7 374.755. 1. The department may cause a complaint to be
8 filed with the administrative hearing commission as provided by
9 chapter 621, RSMo, against any holder of any license required by
10 sections 374.695 to 374.775 or any person who has failed to renew
11 or has surrendered his or her license for any one or any
12 combination of the following causes:

13 (1) Use of any controlled substance, as defined in chapter
14 195, RSMo, or alcoholic beverage to an extent that such use
15 impairs a person's ability to perform the work of the profession
16 licensed under sections 374.695 to 374.775;

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

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

28 (4) Obtaining or attempting to obtain any compensation as a

1 member of the profession licensed by sections 374.695 to 374.775
2 by means of fraud, deception or misrepresentation;

3 (5) Misappropriation of the premium, collateral, or other
4 things of value given to a bail bond agent or a general bail bond
5 agent for the taking of bail, incompetency, misconduct, gross
6 negligence, fraud, or misrepresentation in the performance of the
7 functions or duties of the profession licensed or regulated by
8 sections 374.695 to 374.775;

9 (6) Violation of any provision of or any obligation imposed
10 by the laws of this state, department of insurance, financial
11 institutions and professional registration rules and regulations,
12 or aiding or abetting other persons to violate such laws, orders,
13 rules or regulations, or subpoenas;

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

16 (8) Disciplinary action against the holder of a license or
17 other right to practice the profession regulated by sections
18 374.695 to 374.789 granted by another state, territory, federal
19 agency or country upon grounds for which revocation or suspension
20 is authorized in this state;

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

23 (10) Assisting or enabling any person to practice or offer
24 to practice the profession licensed or regulated by sections
25 374.695 to 374.789 who is not currently licensed and eligible to
26 practice pursuant to sections 374.695 to 374.789;

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

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

6 2. After the filing of such complaint, the proceedings
7 shall be conducted in accordance with the provisions of chapter
8 621, RSMo. Upon a finding by the administrative hearing
9 commission that one or more of the causes stated in subsection 1
10 of this section have been met, the director may suspend or revoke
11 the license or enter into an agreement for a monetary or other
12 penalty pursuant to section 374.280.

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

17 4. In addition to any other remedies available, the
18 director may issue a cease and desist order or may seek an
19 injunction in a court of competent jurisdiction pursuant to the
20 provisions of section 374.046 whenever it appears that any person
21 is acting as a bail bond agent or general bail bond agent without
22 a license or violating any other provisions of sections 374.695
23 to 374.789.

24 375.020. 1. Beginning January 1, 2008, each insurance
25 producer, unless exempt pursuant to section 375.016, licensed to
26 sell insurance in this state shall successfully complete courses
27 of study as required by this section. Any person licensed to act
28 as an insurance producer shall, during each two years, attend

1 courses or programs of instruction or attend seminars equivalent
2 to a minimum of sixteen hours of instruction. Of the sixteen
3 hours' training required in this subsection, the hours need not
4 be divided equally among the lines of authority in which the
5 producer has qualified. The courses or programs attended by the
6 producer during each two-year period shall include instruction on
7 Missouri law, products offered in any line of authority in which
8 the producer is qualified, producers' duties and obligations to
9 the department, and business ethics, including sales suitability.
10 Course credit shall be given to members of the general assembly
11 as determined by the department.

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

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

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

26 (8) A course or program of instruction or seminar developed
27 or sponsored by any authorized insurer, recognized producer
28 association or insurance trade association, or any other entity

1 engaged in the business of providing education courses to
2 producers. A local producer group may also be approved if the
3 instructor receives no compensation for services.

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

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

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

21 (1) Serious physical injury or illness;

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

24 (3) Residence outside the United States; or

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

26 6. Every person subject to the provisions of this section
27 shall furnish in a form satisfactory to the director, written
28 certification as to the courses, programs or seminars of

1 instruction taken and successfully completed by such person.
2 Every provider of continuing education courses authorized in this
3 state shall, within thirty working days of a licensed producer
4 completing its approved course, provide certification to the
5 director of the completion in a format prescribed by the
6 director.

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

13 8. The provisions of this section shall not apply to a life
14 insurance producer who is limited by the terms of a written
15 agreement with the insurer to transact only specific life
16 insurance policies having an initial face amount of five thousand
17 dollars or less, or annuities having an initial face amount of
18 ten thousand dollars or less, that are designated by the
19 purchaser for the payment of funeral or burial expenses. The
20 director may require the insurer entering into the written
21 agreements with the insurance producers pursuant to this
22 subsection to certify as to the representations of the insurance
23 producers.

24 9. Rules and regulations necessary to implement and
25 administer this section shall be promulgated by the director,
26 including, but not limited to, rules and regulations regarding
27 the following:

28 (1) Course content and hour credits: the insurance

1 advisory board established by section 375.019 shall be utilized
2 by the director to assist him in determining acceptable content
3 of courses, programs and seminars to include classroom
4 equivalency;

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

17 10. All funds received pursuant to the provisions of this
18 section shall be transmitted by the director to the department of
19 revenue for deposit in the state treasury to the credit of the
20 insurance dedicated fund. All expenditures necessitated by this
21 section shall be paid from funds appropriated from the insurance
22 dedicated fund by the legislature.

23 375.1025. As used in sections 375.1025 to 375.1062, the
24 following terms shall mean:

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

27 (2) "Accountant" [and] or "independent certified public
28 accountant", an independent certified public accountant or

1 accounting firm in good standing with the American Institute of
2 Certified Public Accountants and in all states in which they are
3 licensed to practice. For Canadian and British companies, it
4 means a Canadian-chartered or British-chartered accountant;

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

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

11 (4) "Audit committee", a committee (or equivalent body)
12 established by the board of directors of an entity for the
13 purpose of overseeing the accounting and financial reporting
14 processes of an insurer or group of insurers, and audits of
15 financial statements of the insurer or group of insurers. The
16 audit committee of any entity that controls a group of insurers
17 may be deemed to be the audit committee for one or more of such
18 controlled insurers solely for the purposes of sections 375.1025
19 to 375.1062 at the election of the controlling person. Such
20 election shall be exercised under subsection 5 of section
21 375.1053. If an audit committee is not designated by the
22 insurer, the insurer's entire board of directors shall constitute
23 the audit committee;

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

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

28 ~~[(3)]~~ (7) "Director", the director of the department of

1 insurance, financial institutions and professional registration;

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

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

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

15 ~~[(4)]~~ (11) "Insurer", an insurer certified to do business
16 in this state pursuant to section 375.161 or 375.831, and to
17 companies authorized to transact business in this state pursuant
18 to chapters 354, 376, 377, 378, 379 and 381, RSMo;

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

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

28 (b) Provide reasonable assurance that transactions are

1 recorded as necessary to permit preparation of financial
2 statements, i.e., those items specified in subsections 2 to 7 of
3 section 375.1032, and that receipts and expenditures are being
4 made only in accordance with authorizations of management and
5 directors; and

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

11 (13) "NAIC", the National Association of Insurance
12 Commissioners;

13 (14) "SEC", the United States Securities and Exchange
14 Commission;

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

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

22 (17) "SOX compliant entity", an entity that either is
23 required to be or voluntarily is compliant with all of the
24 following provisions of the Sarbanes-Oxley Act of 2002, as
25 amended:

26 (a) The preapproval requirements of Section 201 (Section
27 10A(i) of the federal Securities Exchange Act of 1934);

28 (b) The audit committee independence requirements of

1 Section 301 (Section 10A(m) (3) of the federal Securities Exchange
2 Act of 1934); and

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

5 375.1028. 1. Sections 375.1025 to 375.1062 shall apply to
6 all insurers as defined by section 375.1025. Insurers having
7 direct premiums written in this state of less than one million
8 dollars in any calendar year and less than one thousand
9 policyholders or certificate holders of direct written policies
10 nationwide at the end of the calendar year shall be exempt from
11 sections 375.1025 to 375.1062, unless the director makes a
12 specific finding that compliance is necessary for the director to
13 carry out statutory responsibilities; except that, insurers
14 having assumed premiums under contracts or treaties of
15 reinsurance of one million dollars or more shall not be so
16 exempt.

17 2. Foreign or alien insurers filing audited financial
18 reports in another state, pursuant to such other state's
19 requirement for filing of audited financial reports which [are]
20 have been found by the director to be substantially similar to
21 the requirements herein, are exempt from sections [375.1025 to
22 375.1062] 375.1030 to 375.1050 if:

23 (1) A copy of the audited financial report [and the
24 evaluation of accounting procedures and systems of internal
25 control report which], communication of internal control-related
26 matters noted in an audit, and the accountant's letter of
27 qualifications that are filed with such other state are filed
28 with the director in accordance with the filing dates specified

1 in sections 375.1030, 375.1047, and ~~[375.1052]~~ 375.1040,
2 respectively. Canadian insurers may submit accountant's reports
3 as filed with the ~~[Canadian Dominion Department of Insurance;]~~
4 Office of the Superintendent of Financial Institutions, Canada;
5 and

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

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

15 4. Sections 375.1025 to 375.1062 shall not prohibit,
16 preclude or in any way limit the director from ordering ~~[and],~~
17 conducting ~~[and],~~ or performing examinations of insurers under
18 any other applicable law.

19 375.1030. 1. All insurers shall have an annual audit
20 ~~[performed]~~ by an independent certified public accountant and
21 shall file an audited financial report with the director on or
22 before June first ~~[with respect to the calendar]~~ for the year
23 ended December thirty-first immediately preceding. The director
24 may require an insurer to file an audited financial report
25 earlier than June first with ninety days' advance notice to the
26 insurer.

27 2. Extensions of the June first filing date may be granted
28 by the director for thirty-day periods upon a showing by the

1 insurer and its independent certified public accountant of the
2 reasons for requesting such extension and determination by the
3 director of good cause for an extension. The request for
4 extension must be submitted in writing not less than ~~[twenty]~~ ten
5 days prior to the due date in sufficient detail to permit the
6 director to make an informed decision with respect to the
7 requested extension.

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

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

19 375.1032. 1. The annual audited financial report shall
20 report the financial condition of the insurer as of the end of
21 the most recent calendar year and the results of its operation,
22 cash flows and changes in capital and surplus for the previous
23 year ended in conformity with accounting practices prescribed, or
24 otherwise permitted, by law or rule of the department of
25 insurance of the state of domicile of the insurer.

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

- 28 (1) Report of independent certified public accountant;

1 (2) Balance sheet reporting admitted assets, liabilities,
2 capital and surplus;

3 (3) Statement of [gain or loss from] operations;

4 (4) Statement of cash [flows] flow;

5 (5) Statement of changes in capital and surplus;

6 (6) Notes to financial statements. These notes shall be
7 those required by the appropriate National Association of
8 Insurance Commissioners' Annual Statement Instructions [and any
9 other notes required by generally accepted accounting principles]
10 the NAIC's Accounting Practices and Procedures Manual as adopted
11 by the director and shall include[:

12 (a)] a reconciliation of differences, if any, between the
13 audited statutory financial statements and the annual statement
14 filed pursuant to section 375.041 and section 354.105, 354.435,
15 RSMo, 376.350, RSMo, 377.100, 377.380, RSMo, 378.350, RSMo,
16 379.105, RSMo, 380.051 or 380.482, RSMo, with a written
17 description of the nature of these differences[;

18 (b) A summary of ownership and relationships of the insurer
19 and all affiliated companies; and

20 (c) A narrative explanation of all significant intercompany
21 transactions and balances].

22 3. The financial statements included in the audited
23 financial report shall be prepared in a form and using language
24 and groupings substantially the same as the relevant sections of
25 the annual statement of the insurer filed with the director[:

26 (1)], and the financial statement shall be comparative,
27 presenting the amounts as of December thirty-first of the current
28 year and the amounts as of the immediately preceding December

1 thirty-first. However, in the first year in which an insurer is
2 required to file an audited financial report, the comparative
3 data may be omitted[;

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

5 (3) Insignificant amounts may be combined].

6 375.1035. 1. Each insurer required by sections 375.1025 to
7 [375.1057] 375.1062 to file an annual audited financial report
8 shall, within sixty days after becoming subject to such
9 requirement, register with the director in writing the name and
10 address of its independent certified public accountant or
11 accounting firm [(generally referred to in sections 375.1025 to
12 375.1057 as the "accountant")] retained to conduct the annual
13 audit set forth in sections 375.1025 to [375.1057] 375.1062. Any
14 insurer not retaining an independent certified public accountant
15 on the effective date of sections 375.1025 to [375.1057] 375.1062
16 shall register the name and address of its retained independent
17 certified public accountant not less than six months before the
18 date when the first audited financial report is to be filed.

19 2. The insurer shall obtain a letter from such accountant,
20 and file a copy with the director stating that the accountant is
21 aware of the provisions of the insurance laws and the rules and
22 regulations of the department of insurance of the state of
23 domicile that relate to accounting and financial matters and
24 affirming that [he] the accountant will express his or her
25 opinion on the financial statements in [the] terms of their
26 conformity to the statutory accounting practices prescribed or
27 otherwise permitted by that department of insurance, specifying
28 such exceptions as he or she may believe appropriate.

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

27 375.1037. 1. The director shall not recognize [or approve]
28 any person or firm as [an] a qualified independent certified

1 public accountant [that] if such person or firm:

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

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

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

17 3. [No partner or other person responsible for rendering a
18 report may] The lead or coordinating audit partner or person
19 having primary responsibility for the audit shall not act in that
20 capacity for more than [seven] five consecutive years.

21 [Following any period of service] Such partner or person shall be
22 disqualified from acting in that or a similar capacity for the
23 same company or its insurance subsidiaries or affiliates for a
24 period of [two] five years. An insurer may make application to
25 the director for relief from the above rotation requirement on
26 the basis of unusual circumstances. Such application shall be
27 made at least thirty days before the end of the calendar year.
28 The insurer shall file, with its annual statement filing, the

1 approval, if any, for relief from this subsection with the states
2 that it is licensed in or doing business in and with the NAIC.
3 If the nondomestic state accepts electronic filing with the NAIC,
4 the insurer shall file the approval in an electronic format
5 acceptable to the NAIC. The director may consider the following
6 factors in determining if the relief should be granted:

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

9 (2) Premium volume of the insurer; or

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

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

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

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

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

28 5. The director [shall notify the insurer should he

1 determine that the certified public accountant is not independent
2 or is incapable or incompetent] may hold a hearing under sections
3 536.100 to 536.140, RSMo, to determine whether an independent
4 certified public accountant is qualified and, considering the
5 evidence presented, may rule that the accountant is not qualified
6 for purposes of expressing his or her opinion on the financial
7 statements in the annual audited financial report made pursuant
8 to sections 375.1025 to [375.1057. If the insurer contests such
9 determination, the director shall hold a hearing to determine
10 whether the certified public accountant is independent, capable
11 and competent, and, considering the evidence presented, may rule
12 that the accountant is not independent or is incapable or
13 incompetent for purposes of expressing his opinion on the
14 financial statements in the annual audited financial report]
15 375.1062 and require the insurer to replace the accountant with
16 another whose relationship with the insurer is [independent]
17 qualified within the meaning of[, or who is capable or competent
18 to perform the requirements of,] sections 375.1025 to [375.1057]
19 375.1062.

20 6. A qualified independent certified public accountant may
21 enter into an agreement with an insurer to have disputes relating
22 to an audit resolved by mediation or arbitration. However, in
23 the event of a delinquency proceeding commenced against the
24 insurer under sections 375.570 to 375.750, the mediation or
25 arbitration provisions shall operate at the option of the
26 statutory successor.

27 7. The director shall not recognize as a qualified
28 independent certified public accountant, nor accept an annual

1 audited financial report, prepared in whole or in part by an
2 accountant who functions in the role of management, audits his or
3 her own work, or serves in an advocacy role for the insurer.

4 Without limiting the foregoing, the director shall not recognize
5 as a qualified independent certified public accountant, nor
6 accept an annual audited financial report, prepared in whole or
7 in part by an accountant who provides to an insurer,
8 contemporaneously with the audit, the following nonaudit
9 services:

10 (1) Bookkeeping or other services related to the accounting
11 records or financial statements of the insurer;

12 (2) Financial information systems design and
13 implementation;

14 (3) Appraisal or valuation services, fairness opinions, or
15 contribution-in-kind reports;

16 (4) Actuarially oriented advisory services involving the
17 determination of amounts recorded in the financial statements.

18 The accountant may assist an insurer in understanding the
19 methods, assumptions, and inputs used in the determination of
20 amounts recorded in the financial statement only if it is
21 reasonable to conclude that the services provided will not be
22 subject to audit procedures during an audit of the insurer's
23 financial statements. An accountant's actuary may also issue an
24 actuarial opinion or certification ("opinion") on an insurer's
25 reserves if the following conditions have been met:

26 (a) Neither the accountant nor the accountant's actuary has
27 performed any management functions or made any management
28 decisions;

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

4 (c) The accountant's actuary tests the reasonableness of
5 the reserves after the insurer's management has determined the
6 amount of the reserves;

7 (5) Internal audit outsourcing services;

8 (6) Management functions or human resources;

9 (7) Broker or dealer, investment adviser, or investment
10 banking services;

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

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

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

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

1 subsection 10 of this section.

2 10. All auditing services and nonaudit services provided to
3 an insurer by the qualified independent certified public
4 accountant of the insurer shall be preapproved by the audit
5 committee. The preapproval requirement is waived with respect to
6 nonaudit services if the insurer is a SOX compliant entity or a
7 direct or indirect wholly owned subsidiary of a SOX compliant
8 entity or:

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

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

16 (3) The services are promptly brought to the attention of
17 the audit committee and approved prior to the completion of the
18 audit by the audit committee or by one or more members of the
19 audit committee who are the members of the board of directors to
20 whom authority to grant such approvals has been delegated by the
21 audit committee.

22 11. The audit committee may delegate to one or more
23 designated members of the audit committee the authority to grant
24 the preapprovals required by subsection 10 of this section. The
25 decisions of any member to whom this authority is delegated shall
26 be presented to the full audit committee at each of its scheduled
27 meetings.

28 12. The director shall not recognize an independent

1 certified public accountant as qualified for a particular insurer
2 if a member of the board, president, chief executive officer,
3 controller, chief financial officer, chief accounting officer, or
4 any person serving in an equivalent position for that insurer was
5 employed by the independent certified public accountant and
6 participated in the audit of that insurer during the one-year
7 period preceding the date that the most current statutory opinion
8 is due.

9 13. Subsection 12 of this section shall only apply to
10 partners and senior managers involved in the audit. An insurer
11 may make application to the director for relief from subsection
12 12 of this section on the basis of unusual circumstances. The
13 insurer shall file, with its annual statement filing, the
14 approval for relief from subsection 12 of this section with the
15 states that it is licensed in or doing business in and the NAIC.
16 If the nondomestic state accepts electronic filing with the NAIC,
17 the insurer shall file the approval in an electronic format
18 acceptable to the NAIC.

19 375.1038. An insurer may make written application to the
20 director for approval to file audited consolidated or combined
21 financial statements in lieu of separate annual audited financial
22 statements if the insurer is part of a group of insurance
23 companies that utilizes a pooling or one hundred percent
24 reinsurance agreement that affects the solvency and integrity of
25 the insurer's reserves and the insurer cedes all of its direct
26 and assumed business to the pool. In such cases, a columnar
27 consolidating or combining worksheet shall be filed with the
28 report as follows:

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

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

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

7 (4) Explanations of consolidating and eliminating entries
8 shall be included; and

9 (5) A reconciliation shall be included of any differences
10 between the amounts shown in the individual insurer columns of
11 the worksheet and comparable amounts shown on the annual
12 statements of the insurers.

13 375.1040. The accountant shall furnish the insurer in
14 connection with, and for inclusion in, the filing of the annual
15 audited financial report, a letter stating:

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

22 (2) The background and experience in general, and the
23 experience in audits of insurers, of the staff assigned to audit
24 the financial statements of the insurer and whether each is an
25 independent certified public accountant. Nothing within this
26 requirement shall be construed as prohibiting the accountant from
27 utilizing such staff as he or she deems appropriate where use is
28 consistent with the standards prescribed by generally accepted

1 auditing standards;

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

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

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

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

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

21 375.1042. Financial statements of the insurer to be filed
22 pursuant to section 375.1030 shall be examined by an independent
23 certified public accountant. The [examination] audit by the
24 independent certified public accountant of the insurer's
25 financial statements shall be conducted in accordance with
26 generally accepted auditing standards [and consideration]. In
27 accordance with AU Section 319 of the Professional Standards of
28 the AICPA, Consideration of Internal Control in a Financial

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

16 375.1045. 1. The insurer required to furnish the annual
17 audited financial report shall require the independent certified
18 public accountant to report, in writing, within five business
19 days to the board of directors or its audit committee any
20 determination by the independent certified public accountant that
21 the insurer has materially misstated its financial condition as
22 reported to the director as of the balance sheet date currently
23 under [examination] audit or that the insurer does not meet the
24 minimum capital and surplus requirement of the law as of that
25 date. An insurer who has received a report pursuant to this
26 subsection shall forward a copy of the report to the director
27 within five business days of receipt of such report and shall
28 provide the independent certified public accountant making the

1 report with evidence of the report being furnished to the
2 director. If the independent certified public accountant fails
3 to receive such evidence within the required five-business-day
4 period, the independent certified public accountant shall furnish
5 to the director a copy of its report within the next five
6 business days.

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

11 3. If the accountant, subsequent to the date of the audited
12 financial report filed [pursuant to this section] under sections
13 375.1025 to 375.1062, becomes aware of facts which might have
14 affected his or her report, [the department notes the obligation
15 of the] such accountant is required to take such action [under]
16 as prescribed in the professional standards of the American
17 Institute of Certified Public Accountants.

18 375.1047. 1. In addition to the annual audited financial
19 report, each insurer shall furnish the director with a [report of
20 evaluation performed by the accountant, in connection with his
21 examination, of the system of internal accounting controls of the
22 insurer] written communication as to any unremediated material
23 weaknesses in its internal control over financial reporting noted
24 during the audit. Such communication shall be prepared by the
25 accountant within sixty days after the filing of the annual
26 audited financial report and shall contain a description of any
27 unremediated material weakness, as the term material weakness is
28 defined by Statement on Auditing Standard 60, Communication of

1 Internal Control Related Matters Noted in an Audit, or its
2 replacement, as of December thirty-first immediately preceding in
3 the insurer's internal control over financial reporting noted by
4 the accountant during the course of their audit of the financial
5 statements. If no unremediated material weaknesses were noted,
6 the communication shall so state.

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

21 375.1050. 1. As used in this section, "workpapers" are the
22 records kept by the independent certified public accountant of
23 the procedures followed, the tests performed, the information
24 obtained and the conclusions reached pertinent to [his
25 examination] such accountant's audit of the financial statements
26 of an insurer. Workpapers may include audit planning
27 documentation, work programs, analyses, memoranda, letters of
28 confirmation and representation, abstracts of company documents,

1 [any communications between the accountant and the insurer,] and
2 schedules or commentaries prepared or obtained by the independent
3 certified public accountant in the course of [his examination]
4 such accountant's audit of the financial statements of an insurer
5 and which [relate to his opinion thereof] support such
6 accountant's opinion.

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

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

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

15 2. Domestic insurers:

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

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

23
24 shall meet the following schedule for compliance with sections
25 375.1025 to 375.1062 unless the director permits otherwise:

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

- 1 (a) Report of independent certified public accountant;
- 2 (b) Audited balance sheet;
- 3 (c) Notes to audited balance sheet;

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

6 (b) For the year ending December 31, [1992] 2010, and each
7 year thereafter, such insurers shall file with the director all
8 reports and communications required by sections 375.1025 to
9 375.1062.

10 3. Foreign insurers shall comply with sections 375.1025 to
11 375.1062 for the year ending December 31, 1992, and each year
12 thereafter, unless the director permits otherwise.

13 4. The requirements of subsection three of section 375.1037
14 shall be in effect for audits of the year beginning January 1,
15 2010, and thereafter.

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

1 requirements.

2 6. The requirements of sections 375.1038, 375.1054, and
3 375.1056 are effective beginning with the reporting period ending
4 December 31, 2010, and each year thereafter. An insurer or group
5 of insurers that is not required to file a report because the
6 total written premium is below the threshold and subsequently
7 becomes subject to the reporting requirements shall have two
8 years following the year the threshold is exceeded to file a
9 report. Likewise, an insurer acquired in a business combination
10 shall have two calendar years following the date of acquisition
11 or combination to comply with the reporting requirements.

12 375.1053. 1. This section shall not apply to foreign or
13 alien insurers licensed in this state or an insurer that is a SOX
14 compliant entity or a direct or indirect wholly owned subsidiary
15 of a SOX compliant entity.

16 2. The audit committee shall be directly responsible for
17 the appointment, compensation, and oversight of the work of any
18 accountant, including resolution of disagreements between
19 management and the accountant regarding financial reporting, for
20 the purpose of preparing or issuing the audited financial report
21 or related work under sections 375.1025 to 375.1062. Each
22 accountant shall report directly to the audit committee.

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

27 4. In order to be considered independent for purposes of
28 this section, a member of the audit committee shall not, other

1 than in his or her capacity as a member of the audit committee,
2 the board of directors, or any other board committee, accept any
3 consulting, advisory, or other compensatory fee from the entity
4 or be an affiliated person of the entity or any subsidiary
5 thereof. However, if law requires board participation by
6 otherwise nonindependent members, such law shall prevail and such
7 members may participate in the audit committee and be designated
8 as independent for audit committee purposes, unless they are an
9 officer or employee of the insurer or one of its affiliates.

10 5. If a member of the audit committee ceases to be
11 independent for reasons outside the member's reasonable control,
12 that person, with notice by the responsible entity to the state,
13 may remain an audit committee member of the responsible entity
14 until the earlier of the next annual meeting of the responsible
15 entity or one year from the occurrence of the event that caused
16 the member to be no longer independent.

17 6. To exercise the election of the controlling person to
18 designate the audit committee for purposes of sections 375.1025
19 to 375.1062, the ultimate controlling person shall provide
20 written notice to the chief state insurance regulatory officials
21 of the affected insurers. Notification shall be made timely
22 prior to the issuance of the statutory audit report and include a
23 description of the basis for the election. The election can be
24 changed through notice to the director by the insurer, which
25 shall include a description of the basis for the change. The
26 election shall remain in effect for perpetuity, until rescinded.

27 7. (1) The audit committee shall require the accountant
28 that performs for an insurer any audit required by sections

1 375.1025 to 375.1062 to timely report to the audit committee in
2 accordance with the requirements of the auditing profession,
3 including:

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

6 (b) All material alternative treatments of financial
7 information within statutory accounting principles that have been
8 discussed with management officials of the insurer, ramifications
9 of the use of the alternative disclosures and treatments, and the
10 treatment preferred by the accountant; and

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

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

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

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

27 (2) If the insurer wrote direct and assumed premiums of
28 three hundred million to five hundred million dollars during the

1 prior calendar year, at least a majority of the members of the
2 audit committee shall be independent; and

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

7 9. An insurer with direct written and assumed premium,
8 excluding premiums reinsured with the Federal Crop Insurance
9 Corporation and Federal Flood Program, less than five hundred
10 million dollars may make application to the director for a waiver
11 from the requirements of this section based upon hardship. The
12 insurer shall file, with its annual statement filing, the
13 approval for relief from this section with the states that it is
14 licensed in or doing business in and the NAIC. If the
15 nondomestic state accepts electronic filing with the NAIC, the
16 insurer shall file the approval in an electronic format
17 acceptable to the NAIC.

18 375.1054. 1. No director or officer of an insurer shall,
19 directly or indirectly:

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

24 (2) Omit to state, or cause another person to omit to
25 state, any material fact necessary in order to make statements
26 made, in light of the circumstances under which the statements
27 were made, not misleading to an accountant in connection with any
28 audit, review, or communication required under sections 375.1025

1 to 375.1062.

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

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

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

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

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

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

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

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

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

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

20 (1) Directly subject to Section 404;

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

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

25 (4) A member of a holding company system whose parent is
26 not directly subject to Section 404 but is a SOX compliant entity
27
28 may file its or its parent's Section 404 report and an addendum

1 in satisfaction of the requirement of this section, provided that
2 those internal controls of the insurer or group of insurers
3 having a material impact on the preparation of the insurer's or
4 group of insurers' audited statutory financial statements, namely
5 those items included in subdivisions (2) to (6) of subsection 2
6 of section 375.1032, were included in the scope of the Section
7 404 report. The addendum shall be a positive statement by
8 management that there are no material processes with respect to
9 the preparation of the insurer's or group of insurers' audited
10 statutory financial statements excluded from the Section 404
11 report. If there are internal controls of the insurer or group
12 of insurers that have a material impact on the preparation of the
13 insurer's or group of insurers' audited statutory financial
14 statements and those internal controls were not included in the
15 scope of the Section 404 report, the insurer or group of insurers
16 may either file a report under this section, or the Section 404
17 report and a report under this section for those internal
18 controls that have a material impact on the preparation of the
19 insurer's or group of insurers' audited statutory financial
20 statements not covered by the Section 404 report.

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

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

26 (2) A statement that management has established internal
27 control over financial reporting and an assertion, to the best of
28 management's knowledge and belief, after diligent inquiry, as to

1 whether its internal control over financial reporting is
2 effective to provide reasonable assurance regarding the
3 reliability of financial statements in accordance with statutory
4 accounting principles;

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

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

10 (5) Disclosure of any unremediated material weaknesses in
11 the internal control over financial reporting identified by
12 management as of December thirty-first immediately preceding.
13 Management is not permitted to conclude that the internal control
14 over financial reporting is effective to provide reasonable
15 assurance regarding the reliability of financial statements in
16 accordance with statutory accounting principles if there is one
17 or more unremediated material weaknesses in its internal control
18 over financial reporting;

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

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

23 5. Management shall document and make available upon
24 financial condition examination the basis upon which its
25 assertions required in subsection 4 of this section are made.
26 Management may base its assertions, in part, upon its review,
27 monitoring and testing of internal controls undertaken in the
28 normal course of its activities. Management shall have

1 discretion as to the nature of the internal control framework
2 used, and the nature and extent of documentation, in order to
3 make its assertion in a cost-effective manner and, as such, may
4 include assembly of or reference to existing documentation.
5 Management's report on internal control over financial reporting,
6 required by subsection 1 of this section, and any documentation
7 provided in support thereof during the course of a financial
8 condition examination, shall be kept confidential by the
9 department.

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

12 375.1057. 1. In the case of Canadian and British insurers,
13 the annual audited financial report shall be defined as the
14 annual statement of total business on the form filed by such
15 companies with their [domiciliary supervisory] supervision
16 authority duly audited by an independent chartered accountant.

17 2. For such Canadian and British insurers, the letter
18 required by subsection 2 of section 375.1035 shall state that the
19 accountant is aware of the requirements relating to the annual
20 audited financial report filed with the director pursuant to
21 section 375.1030 and shall affirm that the opinion expressed is
22 in conformity with such requirements.

23 376.502. 1. No life insurance company doing business
24 within this state shall deny or refuse to accept an application
25 for life insurance, refuse to renew, cancel, restrict, or
26 otherwise terminate a policy of life insurance, or charge a
27 different rate for the same life insurance coverage, based upon
28 the applicant's or insured's past or future lawful travel

1 destinations. Nothing in this section shall prohibit a life
2 insurance company from denying an application for life insurance,
3 or restricting or charging a different premium or rate for
4 coverage under such a policy based on a specific travel
5 destination where the denial, restriction, or rate differential
6 is based upon sound actuarial principles or is related to actual
7 or reasonably anticipated experience.

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

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

14 379.1300. As used in sections 379.1300 to 379.1350, the
15 following terms shall mean:

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

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

26 (3) "Annuity", a contract issued for a valuable
27 consideration under which the obligations are assumed with
28 respect to periodic payments for a specified term or terms or

1 where the making or continuance of all or of some of such
2 payments, or the amount of any such payments, is dependent upon
3 the continuance of human life;

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

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

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

15 (c) Constitute all of the subscribers of an association
16 captive insurance company formed as a reciprocal insurer;

17 (5) "Association captive insurance company", any company
18 that insures risks of the member organizations of the association
19 and their affiliated companies; except that, association captive
20 insurance company shall not include, without limitation, any
21 reciprocal insurer that has not chosen to apply for and is not
22 licensed as a captive insurance company under section 379.1302;

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

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

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

3 (9) "Captive insurance company", any pure captive insurance
4 company, association captive insurance company, or industrial
5 insured captive insurance company formed or licensed under
6 sections 379.1300 to 379.1350. For purposes of sections 379.1300
7 to 379.1350, a branch captive insurance company shall be a pure
8 captive insurance company with respect to operations in this
9 state, unless otherwise permitted by the director;

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

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

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

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

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

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

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

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

28 (b) Whose aggregate annual premiums for insurance on all

1 risks total at least twenty-five thousand dollars; and

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

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

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

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

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

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

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

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

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

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

27 (19) "Pure captive insurance company", any company that
28 insures risks of its parent and affiliated companies or

1 controlled unaffiliated business.

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

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

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

14 (3) No industrial insured captive insurance company shall
15 insure any risks other than those of the industrial insureds that
16 comprise the industrial insured group and their affiliated
17 companies;

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

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

23 (6) Any captive insurance company may provide excess
24 workers' compensation insurance to its parent and affiliated
25 companies, unless prohibited by the federal law or laws of the
26 state having jurisdiction over the transaction. Any captive
27 insurance company, unless prohibited by federal law, may reinsure
28 workers' compensation of a qualified self-insured plan of its

1 parent and affiliated companies, provided that sections 379.1300
2 to 379.1350 shall not divest the division of workers'
3 compensation of any jurisdiction, as authorized by law, over
4 workers' compensation self-insured plans;

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

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

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

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

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

18 (3) It maintains its principal place of business in this
19 state; and

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

27 (5) It holds at least thirty-five percent of its assets
28 either directly in this state or through a financial institution

1 located in this state and approved by the director].

2 3. (1) Before receiving a license, a captive insurance
3 company shall:

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

8 (b) Submit to the director for approval a description of
9 the coverages, deductibles, coverage limits, and rates, together
10 with such additional information as the director may reasonably
11 require. In the event of any subsequent material change in any
12 item in such description, the captive insurance company shall
13 submit to the director for approval an appropriate revision and
14 shall not offer any additional kinds of insurance until a
15 revision of such description is approved by the director. The
16 captive insurance company shall inform the director of any
17 material change in rates within thirty days of the adoption of
18 such change.

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

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

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

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

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

28 (e) Such other factors deemed relevant by the director in

1 ascertaining whether the proposed captive insurance company will
2 be able to meet its policy obligations.

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

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

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

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

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

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

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

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

26 (c) The director may disclose information to the director
27 of the division of workers' compensation regarding any captive
28 insurance company issuing excess workers' compensation insurance

1 provided that the director for the division of workers'
2 compensation agrees in writing to maintain the confidentiality of
3 such information provided by the director.

4 (4) Each captive insurance company shall pay to the
5 director a nonrefundable license fee of seven thousand five
6 hundred dollars for examining, investigating, and processing its
7 application for license, and the director is authorized to retain
8 legal, financial, and examination services from outside the
9 department, the reasonable cost of which may be charged against
10 the applicant. The provisions of sections 374.160 to 374.162 and
11 sections 374.202 to 374.207, RSMo, shall apply to examinations,
12 investigations, and processing conducted under the authority of
13 this section. In addition, each captive insurance company shall
14 pay a renewal fee for each year thereafter of seven thousand five
15 hundred dollars. Each captive insurance company may deduct the
16 license and renewal fee paid from the premium taxes payable under
17 section 379.1326.

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

24 379.1310. 1. A pure captive insurance company may be
25 incorporated as a stock insurer with its capital divided into
26 shares and held by the stockholders as a nonprofit corporation
27 with one or more members, or as a manager-managed limited
28 liability company.

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

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

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

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

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

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

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

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

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

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

28 (c) Such other aspects as the director shall deem

1 advisable.

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

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

14 (3) Formed as a reciprocal insurer, the organizers shall
15 petition the director to issue a certificate setting the
16 director's finding that the establishment and maintenance of the
17 proposed association will promote the general good of the state.
18 In arriving at such a finding the director shall consider the
19 items set forth in paragraphs (a) to (c) of subdivision (1) of
20 this subsection.

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

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

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

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

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

4 7. Other than captive insurance companies formed as limited
5 liability companies under chapter 347, RSMo, or as nonprofit
6 corporations under chapter 355, RSMo, captive insurance companies
7 formed as corporations under sections 379.1300 to 379.1350 shall
8 have the privileges and be subject to chapter 351, RSMo, as well
9 as the applicable provisions contained in sections 379.1300 to
10 379.1308. In the event of conflict between the provisions of
11 such general corporation law and sections 379.1300 to 379.1350,
12 sections 379.1300 to 379.1350 shall control.

13 8. Captive insurance companies formed under sections
14 379.1300 to 379.1350:

15 (1) As limited liability companies shall have the
16 privileges and be subject to the provisions of chapter 347, RSMo,
17 as well as the applicable provisions contained in sections
18 379.1300 to 379.1350. In the event of a conflict between chapter
19 347, RSMo, and sections 379.1300 to 379.1350, sections 379.1300
20 to 379.1350 shall control; or

21 (2) As nonprofit corporations shall have the privileges and
22 be subject to the provisions of chapter 355, RSMo, as well as the
23 applicable provisions contained in sections 379.1300 to 379.1350.
24 In the event of conflict between chapter 355, RSMo, and sections
25 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall
26 control.

27 9. The provisions of section 375.355, RSMo, section
28 375.908, RSMo, sections 379.980 to 379.988, and chapter 382,

1 RSMo, pertaining to mergers, consolidations, conversions,
2 mutualizations, redomestications, and mutual holding companies
3 shall apply in determining the procedures to be followed by
4 captive insurance companies in carrying out any of the
5 transactions described therein; except that:

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

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

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

19 11. Captive insurance companies formed as reciprocal
20 insurers under the provisions of sections 379.1300 to 379.1350
21 shall have the privileges and be subject to the provisions of
22 sections 379.650 to 379.790 in addition to the applicable
23 provisions of sections 379.1300 to 379.1350. In the event of a
24 conflict between the provisions of sections 379.650 to 379.790
25 and the provisions of sections 379.1300 to 379.1350, the latter
26 shall control, to the extent a reciprocal insurer is made subject
27 to other provisions of chapters 374, 375, and 379 under sections
28 379.650 to 379.790, such provisions shall not be applicable to a

1 reciprocal insurer formed under sections 379.1300 to 379.1350
2 unless such provisions are expressly made applicable to captive
3 insurance companies under sections 379.1300 to 379.1350.

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

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

24 2. Each captive insurance company shall pay to the director
25 of revenue on or before May first of each year a premium tax at
26 the rate of two hundred fourteen-thousandths of one percent on
27 the first twenty million dollars of assumed reinsurance premium,
28 and one hundred forty-three-thousandths of one percent on the

1 next twenty million dollars and forty-eight-thousandths of one
2 percent on the next twenty million dollars and
3 twenty-four-thousandths of one percent of each dollar thereafter.
4 However, no reinsurance premium tax applies to premiums for risks
5 or portions of risks which are subject to taxation on a direct
6 basis under subsection 1 of this section. No reinsurance premium
7 tax shall be payable in connection with the receipt of assets in
8 exchange for the assumption of loss reserves and other
9 liabilities of another insurer under common ownership and control
10 if such transaction is part of a plan to discontinue the
11 operations of such other insurer, and if the intent of the
12 parties to such transaction is to renew or maintain such business
13 with the captive insurance company.

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

19 4. Every captive insurance company shall, on or before
20 February first each year, make a return on a form provided by the
21 director, verified by the affidavit of the company's president
22 and secretary or other authorized officers, to the director
23 stating the amount of all direct premiums received and assumed
24 reinsurance premiums received, whether in cash or in notes,
25 during the year ending on December thirty-first next preceding.
26 Upon receipt of such returns, the director of the department of
27 insurance, financial institutions and professional registration
28 shall verify the same and certify the amount of tax due from the

1 various companies on the basis and at the rate provided in
2 subsections 1 to 3 of this section, and shall certify the same to
3 the director of revenue, on or before March thirty-first of each
4 year. The director of revenue shall immediately thereafter
5 notify and assess each company the amount of tax due.

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

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

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

15 (1) In the case of stock corporations, the direct or
16 indirect ownership of eighty percent or more of the outstanding
17 voting stock of two or more corporations by the same shareholder
18 or shareholders; and

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

23 8. The tax provided for in this section shall constitute
24 all taxes collectible under the laws of this state from any
25 captive insurance company, and no other occupation tax or other
26 taxes shall be levied or collected from any captive insurance
27 company by the state or any county, city, or municipality within
28 this state, except ad valorem taxes on real and personal property

1 used in the production of income.

2 9. [The state treasurer shall annually transfer the premium
3 tax revenues collected under this section to the general revenue
4 fund, except as provided in section 379.1332] Upon receiving the
5 taxes collected under this section from the director of revenue,
6 the state treasurer shall receipt ten percent thereof into the
7 insurance dedicated fund established under section 374.150, RSMo,
8 subject to a maximum of three percent of the current fiscal
9 year's appropriation from such fund, and he or she shall place
10 the remainder of such taxes collected to the general revenue fund
11 of the state.

12 _____10. The tax provided for in this section shall be
13 calculated on an annual basis, notwithstanding policies or
14 contracts of insurance or contracts of reinsurance issued on a
15 multiyear basis. In the case of multiyear policies or contracts,
16 the premium shall be prorated for purposes of determining the tax
17 under this section.

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

26 379.1332. 1. (1) The insurance dedicated fund under
27 section 374.150, RSMo, shall be adequately funded through the
28 collection of fees and taxes for the purpose of providing the

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

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

28 2. The director may anticipate receipts to the insurance

1 dedicated fund through the administration of sections 379.1300 to
2 379.1350 and issue warrants based thereon.

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

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

15 3. In the case of a conversion authorized under subsection
16 1 of this section:

17 (1) Such conversion shall be accomplished under such
18 reasonable plan and procedure as may be approved by the director;
19 provided, however, that the director shall not approve any such
20 plan of conversion unless such plan:

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

23 (b) Provides for a hearing, of which notice is given or to
24 be given to the captive insurance company, its directors,
25 officers, and policyholders, and in the case of a stock insurer,
26 its stockholders, and in the case of a mutual insurer, its
27 members, all of which persons shall be entitled to attend and
28 appear at such hearing; provided, however, that if notice of a

1 hearing is given and no director, officer, policyholder, member,
2 or stockholder requests a hearing, the director may cancel such
3 hearing;

4 (c) Provides a fair and equitable plan for the conversion
5 of stockholder, member, or policyholder interests into subscriber
6 interests in the resulting reciprocal insurer substantially
7 proportionate to the corresponding interests in the stock or
8 mutual insurer; provided, however, that this requirement shall
9 not preclude the resulting reciprocal insurer from applying
10 underwriting criteria that could affect ongoing ownership
11 interests; and

12 (d) Is approved:

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

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

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

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

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

4 (5) Upon the effectiveness of such conversion the corporate
5 existence of the converting insurer shall cease and the resulting
6 reciprocal insurer shall notify the secretary of state of such
7 conversion.

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

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

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

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

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

24 (5) The director shall approve the articles of merger if
25 the director finds that the merger will promote the general good
26 of the state in conformity with those standards set forth in
27 subdivision (1) of subsection 4 of section 379.1310. If the
28 director approves the articles of merger, the director shall

1 endorse the director's approval thereon and the surviving insurer
2 shall present the same to the secretary of state at the secretary
3 of state's office;

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

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

15 5. To the extent such effects are not inconsistent with the
16 provisions of sections 379.1300 to 379.1350, a conversion or
17 merger under this section shall have all of the following
18 effects:

19 (1) The several insurers which are parties to the agreement
20 of merger or consolidation shall be a single insurer which such
21 single insurer shall have all of the rights, privileges,
22 immunities, and powers and shall be subject to all of the duties
23 and liabilities of an insurer organized under sections 379.1300
24 to 379.1350;

25 (2) Such single insurer shall thereupon and thereafter
26 possess all the rights, privileges, immunities, powers, and
27 franchises of a public as well as of a private nature of each of
28 the insurers so merged or consolidated; and all property, real,

1 personal, and mixed, and all debts due on whatever account,
2 including subscriptions to shares of capital stock, and all other
3 choices in action and all and every other interest of or
4 belonging to or due to each of the insurers so merged or
5 consolidated shall be taken and deemed to be transferred to and
6 vested in such single insurer without further act or deed; and
7 the title to any real estate, or any interest therein, under the
8 laws of this state vested in any of such insurers shall not
9 revert or be in any way impaired by reason of such merger or
10 consolidation; and

11 (3) Such single insurer shall thenceforth be responsible
12 and liable for all the liabilities and obligations of each of the
13 insurers so merged or consolidated in the same manner and to the
14 same extent as if such single insurer had itself incurred the
15 same or contracted therefor; and any claim existing or action or
16 proceeding pending by or against any of such insurers may be
17 prosecuted to judgment as if such merger or consolidation had not
18 taken place. Neither the rights of creditors nor any liens upon
19 the property of any such insurers shall be impaired by such
20 merger or consolidation, but such liens shall be limited to the
21 property upon which they were liens immediately prior to the time
22 of such merger or consolidation, unless otherwise provided in the
23 agreement of merger or consolidation.

24 379.1373. 1. Activities of a SPLRC must be limited to
25 those necessary to accomplish its purpose as outlined in its plan
26 of operation.

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

1 state.

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

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

7 379.1388. 1. A SPLRC may recognize as an admitted asset on
8 its financial statements filed with the director:

9 (1) Permitted investments;

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

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

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

20 2. (1) The assets of a SPLRC shall be valued in the same
21 manner as the assets of a Missouri domestic life insurer[.

22 Notwithstanding the preceding, the director may by order
23 authorize a SPLRC to value one or more of its assets through an
24 alternative method]; however, letters of credit, financial
25 guarantee policies, and surety bonds issued without recourse to
26 the SPLRC, or with recourse to the SPLRC with a priority no
27 higher than afforded to class 7 claims under section 375.1218,
28 RSMo, shall be valued as follows. Letters of credit shall be

1 valued at the amount available for drawings by the SPLRC or its
2 ceding company as of the time of valuation. A financial
3 guarantee policy shall be valued at the amount available to pay
4 aggregate claims as of the time of valuation. A surety bond
5 shall be valued at the amount available to pay aggregate claims
6 as of the time of valuation.

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

10 379.1412. 1. Each SPLRC shall pay to the director of
11 revenue on or before May first of each year a premium tax at the
12 rate of two hundred fourteen thousandths of one percent on the
13 first twenty million dollars of assumed reinsurance premium, and
14 one hundred forty-three thousandths of one percent on the next
15 twenty million dollars and forty-eight thousandths of one percent
16 on the next twenty million dollars and twenty-four thousandths of
17 one percent of each dollar thereafter. No reinsurance premium
18 tax shall be payable in connection with the receipt of assets in
19 exchange for the assumption of loss reserves and other
20 liabilities of another insurer under common ownership and control
21 if such transaction is part of a plan to discontinue the
22 operations of such other insurer, and if the intent of the
23 parties to such transaction is to renew or maintain such business
24 with the captive insurance company.

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

1 by the state or any county, city, or municipality within this
2 state, except ad valorem taxes on real and personal property used
3 in the production of income.

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

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

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

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

5 7. Upon receiving the taxes collected under this section
6 from the director of revenue, the state treasurer shall receipt
7 ninety percent thereof into the general revenue fund of the state
8 and the state treasurer shall place the remainder of such taxes
9 collected to the credit of the insurance dedicated fund
10 established under section 374.150, RSMo, subject to a maximum of
11 three percent of the current fiscal year's appropriation from
12 such fund, and he or she shall place the remainder of such taxes
13 collected to the general revenue fund of the state.

14 382.400. As used in sections 382.400 to ~~[382.410]~~ 382.409,
15 the following terms mean:

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

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

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

25 ~~[(4)]~~ (3) "Controlled insurer", a licensed insurer which
26 is controlled, directly or indirectly, by a ~~[broker]~~ producer;

27 ~~[(5)]~~ (4) "Controlling ~~[broker]~~ producer", a ~~[broker]~~
28 producer who, directly or indirectly, controls an insurer;

1 [(6)] (5) "Licensed insurer" or "insurer", any person,
2 firm, association or corporation duly licensed to transact a
3 property or casualty insurance business in this state. The
4 following are not licensed insurers for the purposes of sections
5 382.400 to 382.410:

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

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

12 (c) All captive insurers. For the purposes of sections
13 382.400 to 382.410, "captive insurers" are insurance companies
14 owned by another organization whose exclusive purpose is to
15 insure risks of the parent organization and affiliated companies
16 or, in the case of groups and associations, insurance
17 organizations owned by the insureds whose exclusive purpose is to
18 insure risks to member organizations and group members and their
19 affiliates;

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

27 382.402. Sections 382.400 to [(382.410)] 382.409 shall apply
28 to licensed insurers either domiciled in this state or domiciled

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

7 382.405. 1. (1) The provisions of this section shall
8 apply if in any calendar year the aggregate amount of gross
9 written premium on business placed with a controlled insurer by
10 controlling ~~[broker]~~ producer is equal to or greater than five
11 percent of the admitted assets of the controlled insurer, as
12 reported in the controlled insurer's quarterly statement filed as
13 of September thirtieth of the prior year.

14 (2) Notwithstanding the provisions of subdivision (1) of
15 this subsection, the provisions of this section shall not apply
16 if:

17 (a) The controlling ~~[broker]~~ producer:

18 a. Places insurance only with the controlled insurer, or
19 only with the controlled insurer and a number of members of the
20 controlled insurer's holding company system, or the controlled
21 insurer's parent, affiliate or subsidiary and receives no
22 compensation based upon the amount of premiums written in
23 connection with such insurance; and

24 b. Accepts insurance placements only from nonaffiliated
25 subproducers, and not directly from insureds; and

26 (b) The controlled insurer, except for insurance business
27 written through a residual market facility such as the joint
28 underwriting association prescribed by section 303.200, RSMo,

1 accepts insurance business only from a controlling [broker]
2 producer, a [broker] producer controlled by the controlled
3 insurer, or a [broker] producer that is a subsidiary of the
4 controlled insurer.

5 2. A controlled insurer shall not accept business from a
6 controlling [broker] producer and a controlling [broker] producer
7 shall not place business with a controlled insurer unless there
8 is a written contract between the controlling [broker] producer
9 and the insurer specifying the responsibilities of each party,
10 which contract has been approved by the board of directors of the
11 insurer and contains the following minimum provisions:

12 (1) The controlled insurer may terminate the contract for
13 cause, upon written notice to the controlling [broker] producer.
14 The controlled insurer shall suspend the authority of the
15 controlling [broker] producer to write business during the
16 pendency of any dispute regarding the cause for the termination;

17 (2) The controlling [broker] producer shall render accounts
18 to the controlled insurer detailing all material transactions,
19 including information necessary to support all commissions,
20 charges and other fees received by, or owing to, the controlling
21 [broker] producer;

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

28 (4) All funds collected for the controlled insurer's

1 account shall be held by the controlling [broker] producer in a
2 fiduciary capacity, in one or more appropriately identified bank
3 accounts in banks that are members of the Federal Reserve System,
4 in accordance with the provisions of applicable insurance law;
5 however, funds of a controlling [broker] producer not required to
6 be licensed in this state shall be maintained in compliance with
7 the requirements of the controlling [broker's] producer's
8 domiciliary jurisdiction;

9 (5) The controlling [broker] producer shall maintain
10 separately identifiable records of business written for the
11 controlled insurer;

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

14 (7) The controlled insurer shall provide the controlling
15 [broker] producer with its underwriting standards, rules and
16 procedures, manuals setting forth the rates to be charged, and
17 the conditions for the acceptance or rejection of risks. The
18 controlling [broker] producer shall adhere to the standards,
19 rules, procedures, rates and conditions. The standards, rules,
20 procedures, rates and conditions shall be the same as those
21 applicable to comparable business placed with the controlled
22 insurer by a [broker] producer other than the controlling
23 [broker] producer;

24 (8) The rates and terms of the controlling [broker's]
25 producer's commissions, charges or other fees and the purposes
26 for those charges or fees. The rates of the commissions, charges
27 and other fees shall be no greater than those applicable to
28 comparable business placed with the controlled insurer by

1 **[brokers]** producers other than controlling **[brokers]** producers.
2 For purposes of this subdivision and subdivision (7) of this
3 subsection, examples of comparable business includes the same
4 lines of insurance, same kinds of insurance, same kinds of risks,
5 similar policy limits, and similar quality of business;

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

16 (10) A limit on the controlling **[broker's]** producer's
17 writings in relation to the controlled insurer's surplus and
18 total writings. The insurer may establish a different limit for
19 each line or subline of business. The controlled insurer shall
20 notify the controlling **[broker]** producer when the applicable
21 limit is approached and shall not accept business from the
22 controlling **[broker]** producer if the limit is reached. The
23 controlling **[broker]** producer shall not place business with the
24 controlled insurer if it has been notified by the controlled
25 insurer that the limit has been reached; and

26 (11) The controlling **[broker]** producer may negotiate but
27 shall not bind reinsurance on behalf of the controlled insurer,
28 except that the controlling **[broker]** producer may bind

1 facultative reinsurance contracts pursuant to obligatory
2 facultative agreements if the contract with the controlled
3 insurer contains underwriting guidelines including, but both
4 reinsurance assumed and ceded, a list of reinsurers with which
5 such automatic agreements are in effect, the coverages and
6 amounts or percentages that may be reinsured and commission
7 schedules.

8 3. Every controlled insurer shall have an audit committee
9 of the board of directors composed of independent directors. The
10 audit committee shall annually meet with management, the
11 insurer's independent certified public accountants, and an
12 independent casualty actuary or other independent loss reserve
13 specialist acceptable to the director to review the adequacy of
14 the insurer's loss reserves.

15 4. (1) In addition to any other required loss reserve
16 certification, the controlled insurer shall annually, on April
17 first of each year, file with the director an opinion of an
18 independent casualty actuary, or such other independent loss
19 reserve specialist acceptable to the director, reporting loss
20 ratios for each line of business written and attesting to the
21 adequacy of loss reserves established for losses incurred and
22 outstanding as of year-end, including incurred but not reported,
23 on business placed by the [broker] producer; and

24 (2) The controlled insurer shall annually report to the
25 director the amount of commissions paid to the [broker] producer,
26 the percentage such amount represents of the net premiums written
27 and comparable amounts and percentage paid to noncontrolling
28 [brokers] producers for placements of the same kinds of

1 insurance.

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

11 382.409. 1. (1) If the director believes that the
12 controlling [broker] producer or any other person has not
13 materially complied with sections 382.400 to 382.410, or any
14 regulation or order promulgated hereunder, after notice and
15 opportunity to be heard, the director may order the controlling
16 [broker] producer to cease placing business with the controlled
17 insurer; and

18 (2) If it was found that because of such material
19 noncompliance that the controlled insurer or any policyholder
20 thereof has suffered any loss or damage, the director may
21 maintain a civil action or intervene in an action brought by or
22 on behalf of the insurer or policyholder for recovery of
23 compensatory damages for the benefit of the insurer or
24 policyholder or other appropriate relief.

25 2. If an order of liquidation or rehabilitation of the
26 controlled insurer has been entered pursuant to sections 375.1150
27 to 375.1246, RSMo, and the receiver appointed under that order
28 believes that the controlling [broker] producer or any other

1 person has not materially complied with sections 382.400 to
2 382.410, or any regulation or order promulgated hereunder, and
3 the insurer suffered any loss or damage therefrom, the receiver
4 may maintain a civil action for recovery of damages or other
5 appropriate sanctions for the benefit of the insurer.

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

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

12 384.025. 1. If at any time the director has reason to
13 believe that an eligible surplus lines insurer:

- 14 (1) Is in unsound financial condition;
- 15 (2) Is no longer eligible under section 384.021;
- 16 (3) Has willfully violated the laws of this state; or
- 17 (4) Does not make reasonably prompt payment of just losses

18 and claims in this state or elsewhere;
19 the director may declare it ineligible.

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

23 384.043. 1. No insurance producer shall procure any
24 contract of surplus lines insurance with any nonadmitted insurer,
25 unless he possesses a current surplus lines insurance license
26 issued by the director.

27 2. The director shall issue a surplus lines license to any
28 qualified holder of a current resident or nonresident property

1 and casualty insurance producer license but only when the
2 licensee has:

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

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

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

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

18 384.051. 1. Every insured in this state who procures or
19 causes to be procured or continues or renews insurance in any
20 surplus lines insurer, or any self-insurer in this state who so
21 procures or continues with, any surplus lines insurer, excess of
22 loss, catastrophe or other insurance, upon a subject of insurance
23 resident, located or to be performed within this state, other
24 than insurance procured through a surplus lines broker pursuant
25 to sections 384.011 to 384.071, shall before March second of the
26 year next succeeding the year in which the insurance was so
27 procured, continued or renewed, file a written report of the same
28 with the director on forms prescribed by the director and

1 furnished to such an insured upon request. The report shall
2 show:

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

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

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

23 4. For the general support of the government of this state
24 there is levied upon the insured or self-insurer who procures
25 insurance pursuant to subsections 1 and 3 of this section a tax
26 at the rate of five percent of the net amount of the premium in
27 respect of risks located in this state. Before April sixteenth
28 of the year next succeeding the year in which the insurance was

1 so procured, continued or renewed, the insured shall remit to the
2 [director] department of revenue the amount of the tax. The
3 [director before June first of each year shall certify and
4 transmit to the director of revenue the sums so collected]
5 department of revenue shall notify the director of the sums
6 collected from each insured or self-insurer.

7 384.057. 1. Before March second of each year, each surplus
8 lines broker shall report under oath to the director on forms
9 prescribed by him or her a statement showing, with respect to the
10 year ending the immediately preceding December thirty-first:

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

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

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

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

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

7 384.062. 1. If [the tax collectible] any tax, penalty, or
8 interest payable by a surplus lines licensee under the provisions
9 of sections 384.011 to 384.071 [has been collected and] is not
10 paid within the time prescribed, the same shall be recoverable in
11 a suit brought by the director against the surplus lines
12 licensee.

13 2. All taxes, penalties, and interest or delinquent taxes
14 levied pursuant to this chapter shall be paid to the [director]
15 department of revenue, who shall [obtain such taxes, penalties
16 and interest by civil action against the insured or the surplus
17 lines licensee, and the director shall remit such taxes when
18 collected to the director of revenue] notify the director of the
19 sums collected from each surplus lines licensee. All checks and
20 drafts remitted for the payment of such taxes, penalties and
21 interest shall be made payable to the director of revenue.

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

25 [374.456. 1. The director of the department of
26 insurance, financial institutions and professional
27 registration shall personally report to the appropriate
28 committees of the general assembly by March first of
29 each year on the status of all actions initiated,
30 maintained by the director, or which have been
31 concluded, during the preceding year to enforce the

1 provisions of this act. The director shall answer all
2 questions regarding such actions, or regarding other
3 matters that are related to the provisions of this act.
4

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

13 [384.031. Within thirty days after the placing of
14 any surplus lines insurance, each surplus lines
15 licensee shall file with the director a written report,
16 on a form prescribed by the director, which shall be
17 kept confidential, regarding the insurance with the
18 director, including the following:

- 19 (1) The name and address of the insured;
- 20 (2) The identity of the insurer or insurers;
- 21 (3) A description of the subject and location of
22 the risk;
- 23 (4) The amount of premium charged for the
24 insurance; and
- 25 (5) Such other pertinent information as the
26 director may reasonably require.]
27