

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 50**  
**98TH GENERAL ASSEMBLY**

0136S.04T

2015

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**AN ACT**

To repeal sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, and to enact in lieu thereof twenty-nine new sections relating to the business of insurance, with a penalty provision.

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

Section A. Sections 382.010, 382.040, 382.050, 382.060, 382.080, 382.095, 382.110, 2 382.160, 382.170, 382.180, 382.190, 382.195, 382.220, and 382.230, RSMo, are repealed and 3 twenty-nine new sections enacted in lieu thereof, to be known as sections 382.010, 382.040, 4 382.050, 382.060, 382.080, 382.095, 382.110, 382.160, 382.170, 382.175, 382.180, 382.190, 5 382.195, 382.220, 382.225, 382.230, 382.277, 382.278, 382.500, 382.505, 382.510, 382.515, 6 382.520, 382.525, 382.530, 382.535, 382.540, 382.545, and 382.550, to read as follows:

382.010. As used in sections 382.010 to 382.300, the following words and terms have 2 the meanings indicated unless the context clearly requires otherwise:

3 (1) An "affiliate" of, or person "affiliated" with, a specific person, is a person that 4 directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is 5 under common control with, the person specified;

6 (2) [The term] "Control", [including the terms] "controlling", "controlled by" [and], **or** 7 "under common control with", [means] the possession, direct or indirect, of the power to direct 8 or cause the direction of the management and policies of a person, whether through the

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

9 ownership of voting securities, by contract other than a commercial contract for goods or  
10 nonmanagement services, or otherwise, unless the power is the result of an official position with  
11 or corporate office held by the person. Control shall be presumed to exist if any person, directly  
12 or indirectly, owns, controls, holds with power to vote, or holds proxies representing, ten percent  
13 or more of the voting securities of any other person. This presumption may be rebutted by a  
14 showing made in the manner provided by section 382.170 that control does not exist in fact. The  
15 director may determine, after furnishing all persons in interest notice and opportunity to be heard  
16 and making specific findings of fact to support such determination, that control exists in fact,  
17 notwithstanding the absence of a presumption to that effect;

18 (3) [The term] "Director" [means], the director of the department of insurance, financial  
19 institutions and professional registration, his **or her** deputies, or the department of insurance,  
20 financial institutions and professional registration, as appropriate;

21 (4) **"Enterprise risk", any activity, circumstance, event, or series of events involving**  
22 **one or more affiliates of an insurer that, if not remedied promptly, is likely to have a**  
23 **material adverse effect upon the financial condition or liquidity of the insurer or its**  
24 **insurance holding company system as a whole including, but not limited to, anything that**  
25 **would cause the insurer's risk-based capital to fall into company action level as set forth**  
26 **in section 375.1255 or would cause the insurer to be in hazardous financial condition as set**  
27 **forth in section 375.539;**

28 (5) [An] "Insurance holding company system" [consists of], two or more affiliated  
29 persons, one or more of which is an insurer;

30 [(6) The term] (6) "Insurer" [means], an insurance company as defined in section  
31 375.012, including a reciprocal or interinsurance exchange, and which is qualified and licensed  
32 by the department of insurance, financial institutions and professional registration of Missouri  
33 to transact the business of insurance in this state; but it shall not include any company organized  
34 and doing business under [chapters] **chapter 377, 378, or 380, agencies, authorities, or**  
35 **instrumentalities of the United States, its possessions and territories, the Commonwealth**  
36 **of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;**

37 [(6) A] (7) "Person" [is], an individual, corporation, **limited liability company,**  
38 partnership, association, joint stock company, [business] trust, unincorporated organization, or  
39 any similar entity, or any combination of the foregoing acting in concert, but [is not any  
40 securities broker performing no more than the usual and customary broker's function] **shall not**  
41 **include any joint venture partnership exclusively engaged in owning, managing, leasing,**  
42 **or developing real or tangible personal property;**

43            [(7)] **(8)** A "securityholder" of a specified person is one who owns any security of that  
44 person, including common stock, preferred stock, debt obligations, and any other security  
45 convertible into or evidencing the right to acquire any of the foregoing;

46            [(8)] **(9)** A "subsidiary" of a specified person is an affiliate controlled by that person  
47 directly, or indirectly through one or more intermediaries;

48            [(9)] **(10)** The term "voting security" includes any security convertible into or  
49 evidencing a right to acquire a voting security.

382.040. **1.** No person other than the issuer shall commence a tender offer for or a  
2 request or invitation for tenders of, or enter into any agreement to exchange securities for, seek  
3 to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer  
4 if, after the consummation thereof, he **or she** would, directly or indirectly, or by conversion or  
5 by exercise of any right to acquire, be in control of the insurer, and no person shall enter into an  
6 agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time  
7 the offer, request, or invitation is commenced or the agreement is entered into, or prior to the  
8 acquisition of the securities if no offer or agreement is involved, he **or she** has filed with the  
9 director and has sent to the insurer a statement containing the information required by section  
10 382.050 and the offer, request, invitation, agreement or acquisition has been approved by the  
11 director in the manner prescribed by sections 382.010 to 382.300.

12            **2. For purposes of sections 382.040 to 382.090, any controlling person of a domestic**  
13 **insurer seeking to divest its controlling interest in the domestic insurer in any manner shall**  
14 **file with the director, with a copy to the insurer, confidential notice of its proposed**  
15 **divestiture at least thirty days prior to the cessation of control. The director shall**  
16 **determine those instances in which the party or parties seeking to divest or to acquire a**  
17 **controlling interest in an insurer shall be required to file for and obtain approval of the**  
18 **transaction. The information shall remain confidential until the conclusion of the**  
19 **transaction. If the statement referred to in subsection 1 of this section is otherwise filed,**  
20 **the provisions of this subsection shall not apply.**

21            **3. With respect to a transaction subject to this section, the acquiring person shall**  
22 **also file a preacquisition notification with the director which shall contain the information**  
23 **set forth in subsection 3 of section 382.095. A failure to file the notification may be subject**  
24 **to the penalties specified in subsection 7 of section 382.095.**

25            **4.** For purposes of this section, a domestic insurer shall include any person controlling  
26 a domestic insurer unless such person, as determined by the director, is either directly or through  
27 its affiliates primarily engaged in business other than the business of insurance; however, such  
28 person shall file a preacquisition notification with the director containing the information set  
29 forth in section 382.095 thirty days prior to the proposed effective date of the acquisition. Any

30 person who fails to file the preacquisition notification required by this section shall be subject  
31 to the penalties provided in subsection 5 of section 382.095. For the purposes of sections  
32 382.040, 382.050, 382.060, 382.070, 382.080 and 382.090, "person" shall not include any  
33 securities broker holding, in the usual and customary broker's function, less than twenty percent  
34 of the voting securities of an insurance company or of any person which controls an insurance  
35 company.

382.050. 1. The statement to be filed with the director shall be made under oath or  
2 affirmation and shall contain the following [information]:

3 (1) The name and address of each person hereinafter called "acquiring party" by whom  
4 or on whose behalf the merger or other acquisition of control referred to in section 382.040 is  
5 to be effected, and

6 (a) If that person is an individual, his **or her** principal occupation and all offices and  
7 positions held during the past five years, and any conviction of crimes other than minor traffic  
8 violations during the past ten years; and

9 (b) If that person is not an individual, a report of the nature of its business operations  
10 during the past five years or for such lesser period as that person and any predecessors thereof  
11 have been in existence;

12 (c) An informative description of the business intended to be done by that person and  
13 its subsidiaries; and

14 (d) A list of all individuals who are or who have been selected to become directors or  
15 executive officers of such person, or who perform or will perform functions appropriate to such  
16 positions. The list shall include for each such individual the information required by paragraph  
17 (a) of subdivision (1) of subsection 1 of this section;

18 (2) The source, nature and amount of the consideration to be used in effecting the merger  
19 or other acquisition of control, a description of any transaction wherein funds were or are to be  
20 obtained for any such purpose, including any pledge of the insurer's stock or the stock of any  
21 subsidiaries or controlling affiliates, and the identity of persons furnishing such consideration,  
22 but, where a source of the consideration is a loan made in the lender's ordinary course of  
23 business, the identity of the lender shall remain confidential, if the person filing the statement  
24 so requests;

25 (3) Fully audited financial information as to the earnings and financial condition of each  
26 acquiring party for the preceding five fiscal years of each such acquiring party, or for such lesser  
27 period as such acquiring party and any predecessors thereof shall have been in existence, and  
28 similar unaudited information as of a date not earlier than ninety days prior to the filing of the  
29 statement;

30 (4) Any plans or proposals which each acquiring party may have to liquidate the insurer,  
31 to sell its assets, to merge or consolidate it with any person, or to make any other material change  
32 in its business or corporate structure or management;

33 (5) The number of shares of any security referred to in section 382.040 which each  
34 acquiring party proposes to acquire;

35 (6) The terms of the proposed offer, request, invitation, agreement, or acquisition  
36 referred to in section 382.040, and a statement as to the method by which the fairness of the  
37 proposal was arrived at;

38 (7) The amount of each class of any security referred to in section 382.040 which is  
39 beneficially owned or concerning which there is a right to acquire beneficial ownership by each  
40 acquiring party;

41 (8) A full description of any contracts, arrangements or understandings with respect to  
42 any security referred to in section 382.040 in which any acquiring party proposes to be or is  
43 involved, including but not limited to transfer of any of the securities, joint ventures, loan or  
44 option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of  
45 profits, division of losses or profits, or the giving or withholding of proxies. Such description  
46 shall identify the persons with whom such contracts, arrangements or understandings have been  
47 or will be entered into;

48 (9) A description of the purchase of any security referred to in section 382.040 during  
49 the twelve calendar months preceding the filing of the statement by any acquiring party,  
50 including the dates of purchase, names of the purchasers, and consideration paid or agreed to be  
51 paid therefor;

52 (10) A description of any recommendations to purchase any security referred to in  
53 section 382.040 made during the twelve calendar months preceding the filing of the statement  
54 by any acquiring party, or by anyone based upon interviews or at the suggestion of such  
55 acquiring party;

56 (11) Copies of the form of all tender offers for, requests or invitations for tenders of,  
57 exchange offers for, and agreements to acquire or exchange any securities referred to in section  
58 382.040, and of the form of additional soliciting material, if distributed, relating thereto;

59 (12) The terms of any agreement, contract or understanding made with or proposed to  
60 be made with any broker-dealer as to solicitation of securities referred to in section 382.040 for  
61 tender, and the amount of any fees, commissions or other compensation to be paid to  
62 broker-dealers with regard thereto; [and]

63 (13) **An agreement by the person required to file the statement referred to in section**  
64 **382.040 that the annual report specified in section 382.175 will be provided for so long as**  
65 **control exists;**

66           **(14) An acknowledgment by the person required to file the statement referred to**  
67 **in section 382.040 that such person and all subsidiaries within its control in the insurance**  
68 **holding company system shall provide information to the director upon request as**  
69 **necessary to evaluate enterprise risk to the insurer; and**

70           **(15)** Such additional information as the director may by rule or regulation prescribe as  
71 necessary or appropriate for the protection of policyholders of the insurer or in the public  
72 interest.

73           2. If the person required to file the statement referred to in section 382.040 is a  
74 partnership, limited partnership, syndicate or other group, the director may require that the  
75 information called for by subdivisions (1) to [(13)] **(15)** of subsection 1 of this section shall be  
76 given with respect to each partner of such partnership or limited partnership, each member of  
77 such syndicate or group, and each person who controls such partner or member. If any such  
78 partner, member or person is a corporation or the person required to file the statement referred  
79 to in section 382.040 is a corporation, the director may require that the information called for by  
80 subdivisions (1) to [(13)] **(15)** of subsection 1 of this section shall be given with respect to the  
81 corporation, each officer and director of the corporation, and each person who is directly or  
82 indirectly the beneficial owner of more than ten percent of the outstanding voting securities of  
83 the corporation.

84           3. If any material change occurs in the facts set forth in the statement filed with the  
85 director and sent to the insurer pursuant to this section, an amendment setting forth the change,  
86 together with copies of all documents and other material relevant to the change, shall be filed  
87 with the director and shall be sent to the insurer within two business days after the person learns  
88 of the change.

89           4. If any offer, request, invitation, agreement or acquisition referred to in section 382.040  
90 is proposed to be made by means of a registration statement under the Securities Act of 1933 or  
91 in circumstances requiring the disclosure of similar information under the Securities Exchange  
92 Act of 1934, or under a state law requiring similar registration or disclosure, the person required  
93 to file the statement referred to in section 382.040 may utilize such documents in furnishing the  
94 information called for by that statement.

          382.060. 1. The director shall [hold a public hearing on the proposed] **approve any**  
2 merger or other acquisition of control referred to in section 382.040 [and shall thereafter approve  
3 such merger or acquisition of control unless he finds by a preponderance of the evidence] **unless**  
4 **after a public hearing the director finds** that:

5           (1) After the change of control the domestic insurer referred to in section 382.040 would  
6 not be able to satisfy the requirements for the issuance of a license to write the line or lines of  
7 insurance for which it is presently licensed;

8           (2) The effect of the merger or other acquisition of control would be substantially to  
9 lessen competition in insurance in this state or tend to create a monopoly therein. In applying  
10 the competitive standard in this subdivision:

11           (a) The informational requirements of subsection 3 of section 382.095 and the standards  
12 of subsection 4 of section 382.095 shall apply;

13           (b) The merger or other acquisition of control shall not be disapproved if the director  
14 finds that any of the situations meeting the criteria provided by subsection 4 of section 382.095  
15 exist; and

16           (c) The director may condition the approval of the merger or other acquisition on the  
17 removal of the basis of disapproval within a specified period of time;

18           (3) The financial condition of any acquiring party is such as might jeopardize the  
19 financial stability of the insurer, or prejudice the interest of its policyholders;

20           (4) The plans or proposals which the acquiring party has to liquidate the insurer, to sell  
21 its assets or to consolidate or merge it with any person, or to make any other material change in  
22 its business or corporate structure or management are unfair and unreasonable to policyholders  
23 of the insurer and contrary to the public interest;

24           (5) The competence, experience or integrity of those persons who would control the  
25 operation of the insurer are such that it would be contrary to the interest of policyholders of the  
26 insurer and of the public to permit the merger or other acquisition of control; or

27           (6) The acquisition is likely to be hazardous or prejudicial to the insurance buying public.

28           2. Any disapproval made by the director shall be in writing and shall contain specific  
29 findings of fact supporting it.

30           3. The public hearing referred to above in this section shall be held within thirty days  
31 after the statement required by section 382.040 is filed, and at least twenty days' notice thereof  
32 shall be given by the director to the person filing the statement. Not less than seven days' notice  
33 of the public hearing shall be given by the person filing the statement to the insurer and to such  
34 other persons and in such manner as may be designated by the director. The director shall make  
35 a determination within thirty days after the conclusion of the hearing. At the hearing, the person  
36 filing the statement, the insurer, any person to whom notice of hearing was sent, and any other  
37 person whose interests may be affected thereby shall have the right to present evidence, examine  
38 and cross-examine witnesses, and offer oral and written arguments and in connection therewith  
39 may conduct discovery proceedings in the same manner as is presently allowed in the circuit  
40 courts of this state. All discovery proceedings shall be concluded not later than three days prior  
41 to the commencement of the public hearing.

42           4. **If the proposed acquisition of control requires the approval of more than one**  
43 **state insurance commissioner, the public hearing referred to in subsection 3 of this section**

44 may be held on a consolidated basis upon request of the person filing the statement  
45 referred to in section 382.040. Such person shall file the statement referred to in section  
46 382.040 with the National Association of Insurance Commissioners within five days of  
47 making the request for a public hearing. A state insurance commissioner may opt out of  
48 a consolidated hearing and shall provide notice to the applicant of the opt out within ten  
49 days of the receipt of the statement referred to in section 382.040. A hearing conducted on  
50 a consolidated basis shall be public and shall be held within the United States before the  
51 insurance commissioners of the states in which the insurers are domiciled. Such  
52 commissioners shall hear and receive evidence. A state insurance commissioner may  
53 attend such hearing in person or by telecommunication.

54 **5. In connection with a change of control of a domestic insurer, any determination**  
55 **by the director that the person acquiring control of the insurer shall be required to**  
56 **maintain or restore the capital of the insurer to the level required by the laws and**  
57 **regulations of this state shall be made not later than sixty days after the date of notification**  
58 **of the change of control submitted under subsection 1 of section 382.040.**

59 **6.** The director may retain at the acquiring party's expense any attorneys, actuaries,  
60 accountants and other experts not otherwise a part of the director's staff as may be reasonably  
61 necessary to assist the director in reviewing the proposed acquisition of control.

382.080. The following shall be violations of sections [382.010 to 382.300] **382.040 to**  
2 **382.090:**

3 (1) The failure to file any statement, amendment, or other material required to be filed  
4 pursuant to section 382.040 or 382.050; or

5 (2) The effectuation or any attempt to effectuate an acquisition of control of, **divestiture**  
6 **of,** or merger with[, ] a domestic insurer covered by sections [382.010 to 382.300, within the  
7 thirty-day period referred to in section 382.060, without approval by the director or after  
8 disapproval by the director] **382.040 to 382.090, unless the director has given approval.**

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

2 (1) "Acquisition", any agreement, arrangement or activity the consummation of which  
3 results in a person acquiring directly or indirectly the control of another person, and includes but  
4 is not limited to the acquisition of voting securities, the acquisition of assets, bulk reinsurance  
5 and mergers;

6 (2) "Involved insurer" includes an insurer which either acquires or is acquired, is  
7 affiliated with an acquirer or acquired or is the result of a merger.

8 2. Except as provided in this subsection, this section applies to any acquisition in which  
9 there is a change in control of an insurer authorized to do business in this state. This section  
10 shall not apply to the following [as provided in section 382.060]:



- 11 (1) [An acquisition subject to approval or disapproval by the director;
- 12 (2)] A purchase of securities solely for investment purposes so long as such securities  
13 are not used by voting or otherwise to cause or attempt to cause the substantial lessening of  
14 competition in any insurance market in this state. If a purchase of securities results in a  
15 presumption of control under subdivision (2) of section 382.010, it is not solely for investment  
16 purposes unless the commissioner of insurance or other appropriate person of the insurer's state  
17 of domicile accepts a disclaimer of control or affirmatively finds that control does not exist and  
18 such disclaimer action or affirmative finding is communicated by such person to the director;
- 19 [(3)] (2) The acquisition of a person by another person when both persons are neither  
20 directly nor through affiliates primarily engaged in the business of insurance, if preacquisition  
21 notification is filed with the director in accordance with subsection 3 of this section thirty days  
22 prior to the proposed effective date of the acquisition; however, such preacquisition notification  
23 is not required for exclusion from this section if the acquisition would otherwise be excluded  
24 from this section by any other subdivision of this subsection;
- 25 [(4)] (3) The acquisition of already affiliated persons;
- 26 [(5)] (4) An acquisition if, as an immediate result of the acquisition:
- 27 (a) In no market would the combined market share of the involved insurers exceed five  
28 percent of the total market;
- 29 (b) There would be no increase in any market share; or
- 30 (c) In no market would the combined market share of the involved insurers exceed  
31 twelve percent of the total market, and the market share of the involved insurer after the  
32 acquisition would increase by two percent of the total market or less. For the purpose of this  
33 subdivision, a "market" means direct written insurance premium in this state for a line of  
34 business as contained in the annual statement required to be filed by insurers licensed to do  
35 business in this state;
- 36 [(6)] (5) An acquisition for which a preacquisition notification would be required  
37 pursuant to this section due solely to the resulting effect on the ocean marine insurance line of  
38 business;
- 39 [(7)] (6) An acquisition of an insurer whose domiciliary commissioner or other  
40 appropriate person affirmatively finds that such insurer is in failing condition; there is a lack of  
41 feasible alternative to improving such condition; the public benefits of improving such insurer's  
42 condition through the acquisition exceed the public benefits that would arise from not lessening  
43 competition; and such findings are communicated by such person to the director.
- 44 3. An acquisition covered by [subdivisions (1) to (7) of] subsection 2 of this section may  
45 be subject to an order pursuant to subsection 5 of this section, unless the acquiring person files  
46 a preacquisition notification and the waiting period described in this subsection has expired. The

47 acquired person or acquiring person may file a preacquisition notification. The director shall  
 48 give confidential treatment to information submitted under this subsection. The preacquisition  
 49 notification shall be in such form and contain such information as prescribed by the National  
 50 Association of Insurance Commissioners relating to those markets which, under subdivision [(5)]  
 51 (4) of subsection 2 of this section cause the acquisition not to be exempted from the provisions  
 52 of this section. The director may require such additional material and information as he **or she**  
 53 deems necessary to determine whether the proposed acquisition, if consummated, would violate  
 54 the competitive standard of subsection 4 of this section. The required information may include  
 55 an opinion of an economist as to the competitive impact of the acquisition in this state  
 56 accompanied by a summary of the education and experience of such person indicating his **or her**  
 57 ability to render an informed opinion. The waiting period required shall begin on the date of  
 58 receipt by the director of a preacquisition notification and shall end on the earlier of the thirtieth  
 59 day after the date of such receipt, or termination of the waiting period by the director. Prior to  
 60 the end of the waiting period, the director on a one-time basis may require the submission of  
 61 additional needed information relevant to the proposed acquisition, in which event the waiting  
 62 period shall end on the earlier of the thirtieth day after receipt of such additional information by  
 63 the director or termination of the waiting period by the director.

64 4. (1) The director may enter an order under subsection 5 of this section with respect to  
 65 an acquisition if there is substantial evidence that the effect of the acquisition may be  
 66 substantially to lessen competition in any line of insurance in this state or tend to create a  
 67 monopoly therein or if the insurer fails to file adequate information in compliance with  
 68 subsection 3 of this section.

69 (2) In determining whether a proposed acquisition would violate the competitive  
 70 standard of subdivision (1) of this subsection, the director shall consider the following:

71 (a) Any acquisition covered under subsection 2 of this section involving two or more  
 72 insurers competing in the same market is prima facie evidence of violation of the competitive  
 73 standards:

74 a. If the market is highly concentrated and the involved insurers possess the following  
 75 share of the market:

76	Insurer A	Insurer B
77	4%	4% or more
78	10%	2% or more
79	15%	1% or more; or

80 b. If the market is not highly concentrated and the involved insurers possess the  
 81 following share of the market:

82	Insurer A	Insurer B
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83	5%	5% or more
84	10%	4% or more
85	15%	3% or more
86	19%	1% or more

87

88 A highly concentrated market is one in which the share of the four largest insurers is seventy-five  
89 percent or more of the market. Percentages not shown in the tables are to be interpolated  
90 proportionately to the percentages that are shown. If more than two insurers are involved,  
91 exceeding the total of the two columns in the table is prima facie evidence of violation of the  
92 competitive standard in subdivision (1) of this subsection. For the purpose of this subdivision,  
93 the insurer with the largest share of the market shall be deemed to be insurer A;

94 (b) There is a significant trend toward increased concentration when the aggregate  
95 market share of any grouping of the largest insurers in the market, from the two largest to the  
96 eight largest, has increased by seven percent or more of the market over a period of time  
97 extending from any base year five to ten years prior to the acquisition up to the time of the  
98 acquisition. Any acquisition or merger covered under subsection 2 of this section involving two  
99 or more insurers competing in the same market is prima facie evidence of violation of the  
100 competitive standard in subdivision (1) of this subsection if:

101 a. There is a significant trend toward increased concentration in the market;

102 b. One of the insurers involved is one of the insurers in a grouping of such large insurers  
103 showing the requisite seven percent or more increase in the market share; and

104 c. Another involved insurer's market is two percent or more.

105 (3) For the purposes of subdivision (2) of this subsection:

106 (a) The term "insurer" includes any company or group of companies under common  
107 management, ownership or control;

108 (b) The term "market" means the relevant product and geographical markets. In  
109 determining the relevant product and geographical markets, the director shall give due  
110 consideration to, among other things, the definitions or guidelines, if any, promulgated by the  
111 National Association of Insurance Commissioners and to information, if any, submitted by  
112 parties to the acquisition. In the absence of sufficient information to the contrary, the relevant  
113 product market is assumed to be the direct written insurance premium for a line of business, such  
114 line being that used in the annual statement required to be filed by insurers doing business in this  
115 state, and the relevant geographical market is assumed to be this state;

116 (c) The burden of showing prima facie evidence of violation of the competitive standard  
117 rests upon the director.

118 (4) Even though an acquisition is not prima facie violative of the competitive standard  
119 under subdivision (2) of this subsection, the director may establish that the requisite  
120 anticompetitive effect exists based upon other substantial evidence. Even though an acquisition  
121 is prima facie violative of the competitive standard under subdivision (2) of this subsection, a  
122 party may establish the absence of the requisite anticompetitive effect, based upon other  
123 substantial evidence. Relevant factors in making a determination under this subdivision include,  
124 but are not limited to, the following: market shares, volatility of ranking of market leaders,  
125 number of competitors, concentration, trend of concentration in the industry, and ease of entry  
126 and exit into the market.

127 (5) An order [may] **shall** not be entered under subsection 5 of this section if:

128 (a) The acquisition will yield substantial economies of scale or economies in resource  
129 use that cannot be feasibly achieved in any other way, and the public benefits which would arise  
130 from such economies exceed the public benefits which would arise from not lessening  
131 competition; or

132 (b) The acquisition will substantially increase the availability of insurance, and the public  
133 benefits of such increase exceed the public benefits which would arise from not lessening  
134 competition.

135 5. If an acquisition violates the standards of this section, the director may enter an order:

136 (1) Requiring an involved insurer to cease and desist from doing business in this state  
137 with respect to the line or lines of insurance involved in the violation; or

138 (2) Denying the application of an acquired or acquiring insurer for a license to do  
139 business in this state. Such an order shall not be entered unless there is a hearing, notice of such  
140 hearing is issued prior to the end of the waiting period and not less than fifteen days prior to the  
141 hearing, and the hearing is concluded and the order is issued no later than sixty days after the end  
142 of the waiting period. Every order shall be accompanied by a written decision of the director  
143 setting forth his **or her** findings of fact and conclusions of law. An order entered under this  
144 subsection shall not become final earlier than thirty days after it is issued, during which time any  
145 involved insurer may submit a plan to remedy the anticompetitive impact of the acquisition  
146 within a reasonable time. Based upon such plan or other information, the director shall specify  
147 the conditions, if any, under the time period during which the aspects of the acquisition causing  
148 a violation of the standards of this section would be remedied and the order vacated or modified.  
149 An order issued pursuant to this subsection shall not apply if the acquisition is not consummated.

150 6. Any person who violates a cease and desist order of the director under subsection 5  
151 of this section, and while such order is in effect, may, after notice and hearing and upon order  
152 of the director, be subject at the discretion of the director to any one or more of the following:

153 (1) A monetary penalty of not more than ten thousand dollars for every day of violation;  
154 or

155 (2) Suspension or revocation of such person's license.

156 7. Any insurer or other person who fails to make any filing required by this section and  
157 who also fails to demonstrate a good faith effort to comply with any such filing requirement shall  
158 be subject to a fine of not more than fifty thousand dollars.

159 8. Sections 382.260 and 382.280 do not apply to acquisitions covered by subsection 2  
160 of this section.

382.110. 1. Every insurer subject to registration shall file a registration statement on a  
2 form provided by the director containing current information about:

3 (1) The capital structure, general financial condition, ownership and management of the  
4 insurer and any person controlling the insurer;

5 (2) The identity of every member of the insurance holding company system;

6 (3) The following agreements in force, relationships subsisting, and transactions  
7 currently outstanding between the insurer and its affiliates:

8 (a) Loans, other investments, or purchases, sales or exchanges of securities of the  
9 affiliates by the insurer or of the insurer by its affiliates;

10 (b) Purchases, sales, or exchanges of assets;

11 (c) Transactions not in the ordinary course of business;

12 (d) Guarantees or undertakings for the benefit of an affiliate which result in an actual  
13 contingent exposure of the insurer's assets to liability, other than insurance contracts entered into  
14 in the ordinary course of the insurer's business;

15 (e) All management and service contracts and all cost-sharing arrangements; and

16 (f) Reinsurance agreements;

17 (g) Dividends and other distributions to shareholders; and

18 (h) Consolidated tax allocation agreements;

19 (4) Any pledge of the insurer's stock, including stock of any subsidiary or controlling  
20 affiliate, for a loan made to any member of the insurance holding company system; [and]

21 (5) **Financial statements of or within an insurance holding company system,**  
22 **including all affiliates, if requested by the director. Financial statements may include, but**  
23 **are not limited to, annual audited financial statements filed with the United States**  
24 **Securities and Exchange Commission (SEC) under the Securities Act of 1933, as amended,**  
25 **or the Securities Exchange Act of 1934, as amended. An insurer required to file financial**  
26 **statements under this subdivision may satisfy such requirement by providing the director**  
27 **with the most recently filed parent corporation financial statements that have been filed**  
28 **with the SEC;**

29           **(6) Statements that the insurer's board of directors oversees corporate governance**  
30 **and internal controls and that the insurer's officers or senior management have approved,**  
31 **implemented, and continue to maintain and monitor corporate governance and internal**  
32 **control procedures;**

33           **(7) Other matters concerning transactions between registered insurers and any affiliates**  
34 **as may be included from time to time in any registration forms adopted or approved by the**  
35 **director; and**

36           **(8) Any other information required by the director by rule.**

37           2. All registration statements shall contain a summary outlining all items in the current  
38 registration statement representing changes from the prior registration statement.

39           3. No information need be disclosed on the registration statement filed pursuant to  
40 subsection 1 of this section if such information is not material for the purposes of that subsection.  
41 Unless the director by rule, regulation or order provides otherwise, sales, purchases, exchanges,  
42 loans or extensions of credit, or investments, involving one-half of one percent or less of an  
43 insurer's admitted assets as of the thirty-first day of December next preceding shall not be  
44 deemed material for purposes of subsection 1 of this section.

45           4. Any person within an insurance holding company system subject to registration shall  
46 be required to provide complete and accurate information to an insurer, where such information  
47 is reasonably necessary to enable the insurer to comply with the provisions of sections 382.010  
48 to 382.300.

          382.160. The provisions of sections 382.100 [and 382.110] **to 382.180** shall not apply  
2 to any insurer, information or transaction if and to the extent that the director by rule, regulation,  
3 or order shall exempt the same from such provisions.

          382.170. Any person may file with the director a disclaimer of affiliation with any  
2 authorized insurer or the disclaimer may be filed by the insurer or any member of an insurance  
3 holding company system. The disclaimer shall fully disclose all material relationships and bases  
4 for affiliation between such person and such insurer as well as the basis for disclaiming such  
5 affiliation. [After a disclaimer has been filed, the insurer shall be relieved of any duty to register  
6 or report under section 382.110 which may arise out of the insurer's relationship with such  
7 person unless and until the director disallows the disclaimer. The director shall disallow the  
8 disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and  
9 after making specific findings of fact to support the disallowance.] **A disclaimer of affiliation**  
10 **shall be deemed to have been granted unless the director, within thirty days following**  
11 **receipt of a complete disclaimer, notifies the filing party that the disclaimer is disallowed.**  
12 **In the event of disallowance, the disclaiming party may request an administrative hearing,**  
13 **which shall be granted. The disclaiming party shall be relieved of its duty to register under**

14 **this section if approval of the disclaimer has been granted by the director or if the**  
15 **disclaimer is deemed to have been approved.**

**382.175. Upon request of the director, the ultimate controlling person of every**  
2 **insurer subject to registration shall file an annual enterprise risk report. The report shall**  
3 **be appropriate to the nature, scale, and complexity of the operations of the insurance**  
4 **holding company and shall, to the best of the ultimate controlling person's knowledge and**  
5 **belief, identify the material risks within the insurance holding company system, if any, that**  
6 **could pose enterprise risk to the insurer. The report shall be filed with the lead state**  
7 **insurance commissioner of the insurance holding company system as determined by**  
8 **procedures within the Financial Analysis Handbook adopted by the National Association**  
9 **of Insurance Commissioners. The first enterprise risk report shall be due and filed no later**  
10 **than May 1, 2016, and annually thereafter by the first day of May each year, unless the**  
11 **lead state insurance commissioner extends the time for filing for good cause shown.**

382.180. The failure to file a registration statement [or any amendment thereto],  
2 **summary of the registration statement, or enterprise risk filing required under sections**  
3 **382.100 to 382.180** within the time specified for the filing is a violation of sections [382.010 to  
4 382.300] **382.100 to 382.180.**

382.190. Material transactions by registered insurers with their affiliates are subject to  
2 the following standards:

3 (1) The terms shall be fair and reasonable;

4 (2) Charges or fees for services shall be reasonable;

5 (3) Expenses incurred and payment received shall be allocated to the insurer in  
6 conformity with customary insurance accounting practices consistently applied;

7 (4) The books, accounts and records of each party shall be maintained so as to clearly  
8 and accurately disclose the precise nature and details of the transactions **including such**  
9 **accounting information as is necessary to support the reasonableness of the charges or fees**  
10 **to the respective parties; [and]**

11 (5) The insurer's surplus as regards policyholders following any dividends or  
12 distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding  
13 liabilities and adequate to its financial needs; **and**

14 (6) **Agreements for cost-sharing services and management shall include such**  
15 **provisions as required by the director by rule.**

382.195. 1. The following transactions involving a domestic insurer and any person in  
2 its holding company system [may], **including amendments or modifications of affiliate**  
3 **agreements previously filed under this section that are subject to any materiality standards**  
4 **contained in subdivisions (1) to (7) of this subsection, shall not be entered into unless the**

5 insurer has notified the director in writing of its intention to enter into such transaction at least  
6 thirty days prior thereto, or such shorter period as the director may permit, and the director has  
7 not disapproved it within such period:

8 (1) Sales, purchases, exchanges, loans [or], extensions of credit, [guarantees,] or  
9 investments if such transactions are equal to or exceed, with respect to nonlife insurers, the lesser  
10 of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards  
11 policyholders, or with respect to life insurers, three percent of the insurer's admitted assets, each  
12 as of the thirty-first day of December of the preceding year;

13 (2) Loans or extensions of credit to any person who is not an affiliate, where the insurer  
14 makes such loans or extensions of credit with agreement or understanding that the proceeds of  
15 such transactions, in whole or in substantial part, are to be used to make loans or extensions of  
16 credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making  
17 such loans or extensions of credit provided such transactions are equal to or exceed, with respect  
18 to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five  
19 percent of surplus as regards policyholders, or with respect to life insurers, three percent of the  
20 insurer's admitted assets; each as of the thirty-first day of December of the preceding year;

21 (3) Reinsurance agreements or modifications thereto, **including:**

22 **(a) All reinsurance pooling agreements;**

23 **(b) Agreements** in which the reinsurance premium or a change in the insurer's liabilities,  
24 **or the projected reinsurance premium or a change in the insurer's liabilities in any of the**  
25 **next three years** equals or exceeds five percent of the insurer's surplus as regards policyholders,  
26 as of the thirty-first day of December of the preceding year, including those agreements which  
27 may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an  
28 agreement or understanding exists between the insurer and nonaffiliate that any portion of such  
29 assets will be transferred to one or more affiliates of the insurer;

30 (4) All management agreements, **tax allocation agreements**, service contracts, and all  
31 cost-sharing arrangements; [and]

32 (5) **Guarantees when made by a domestic insurer; provided, however, that a**  
33 **guarantee which is quantifiable as to amount is not subject to the notice requirements of**  
34 **this subdivision unless it exceeds the lesser of one-half of one percent of the insurer's**  
35 **admitted assets or ten percent of surplus as regards policyholders as of the thirty-first day**  
36 **of December next preceding. Further, all guarantees which are not quantifiable as to**  
37 **amount are subject to the notice requirements of this subdivision;**

38 (6) **Direct or indirect acquisitions or investments in a person that controls the**  
39 **insurer or in an affiliate of the insurer in an amount which, together with its present**  
40 **holding in such investments, exceeds two and one-half percent of the insurer's surplus to**



41 **policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired under**  
42 **section 382.020 or authorized under any other provision of this chapter or in nonsubsidiary**  
43 **insurance affiliates that are subject to the provisions of this chapter are exempt from such**  
44 **requirement; and**

45 (7) Any material transactions, specified by regulation, which the director determines may  
46 adversely affect the interests of the insurer's policyholders.

47

48 **The notice for amendments or modifications shall include the reasons for the change and**  
49 **the financial impact on the domestic insurer.**

50 2. The provisions of **subsection 1** of this section shall not be deemed to authorize or  
51 permit any transactions which, in the case of an insurer not a member of the same holding  
52 company system, would be otherwise contrary to law.

53 [2.] 3. A domestic insurer [may] **shall** not enter into transactions which are part of a plan  
54 or series of like transactions with persons within the **insurance** holding company system if the  
55 purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid  
56 the review that would occur otherwise. If the director determines that such separate transactions  
57 were entered into over any twelve-month period for such purpose, [he] **the director** may exercise  
58 his **or her** authority under section 382.265.

59 4. **In reviewing transactions under subsection 1 of this section, the director shall**  
60 **consider whether the transactions comply with the standards set forth in section 382.190**  
61 **and whether they may adversely affect the interest of policyholders.**

62 5. **The director shall be notified within thirty days of any investment of the**  
63 **domestic insurer in any one corporation if the total investment in the corporation by the**  
64 **insurance holding company system exceeds ten percent of the corporation's voting**  
65 **securities.**

382.220. 1. Subject to the limitation contained in this section and in addition to all the  
2 other powers with which the director is vested by law relating to the examination of insurers, the  
3 director may [order] **examine** any insurer registered under the provisions of sections [382.010  
4 to 382.300] **382.100 to 382.180 and its affiliates to ascertain the financial condition of the**  
5 **insurer including the enterprise risk to the insurer by the ultimate controlling party, by**  
6 **any entity or combination of entities within the insurance holding company system, or by**  
7 **the insurance company system on a consolidated basis.**

8 2. **The director may order any insurer registered under sections 382.100 to 382.180**  
9 to produce such records, books, or other information papers in the possession of the insurer or  
10 its affiliates as [shall be] **are reasonably** necessary to [ascertain the financial condition or  
11 legality of conduct of the insurer. In the event the insurer fails to comply with the order, the

12 director may examine such affiliates to obtain such information] **determine compliance with**  
13 **this chapter.**

14 **3. To determine compliance with this chapter, the director may order any insurer**  
15 **registered under sections 382.100 to 382.180 to produce information not in the possession**  
16 **of the insurer if the insurer is able to obtain access to such information under contractual**  
17 **relationships, statutory obligations, or other methods. In the event the insurer is unable**  
18 **to obtain the information requested by the director, the insurer shall provide the director**  
19 **with a detailed explanation of the reason that the insurer is unable to obtain the**  
20 **information and the identity of the holder of such information. Whenever it appears to the**  
21 **director that the detailed explanation is without merit, the director shall have the power**  
22 **to examine the insurer to determine compliance with this section pursuant to the director's**  
23 **authority under section 374.205 and this section.**

24 [2.] **4.** The director may retain at the registered insurer's expense such attorneys,  
25 actuaries, accountants and other experts not otherwise a part of the director's staff as shall be  
26 reasonably necessary to assist in the conduct of the examination under this section. Any persons  
27 so retained shall be under the direction and control of the director and shall act in a purely  
28 advisory capacity.

29 [3.] **5.** Each registered insurer producing for examination records, books and papers  
30 pursuant to this section shall be liable for and shall pay the expense of such examination in  
31 accordance with the provisions of section 374.220.

32 **6. In the event the insurer fails to comply with an order, the director shall have the**  
33 **power to examine the affiliates to obtain the information. The director shall have the**  
34 **power to issue subpoenas, administer oaths, and examine under oath any person for**  
35 **purposes of determining compliance with this section. Upon the failure or refusal of any**  
36 **person to obey a subpoena, the director may petition a court of competent jurisdiction, and**  
37 **upon proper showing, the court may enter an order compelling the witness to appear and**  
38 **testify or produce documentary evidence. Failure to obey the court order shall be**  
39 **punishable as contempt of court. Every person shall be obligated to attend as a witness at**  
40 **the place specified in the subpoena, when subpoenaed, anywhere within the state. He or**  
41 **she shall be entitled to the same fees and mileage, if claimed, as a witness in section 491.280,**  
42 **which fees, mileage, and actual expense, if any, necessarily incurred in securing the**  
43 **attendance of witnesses and their testimony, shall be itemized, charged against, and paid**  
44 **by the company being examined.**

**382.225. 1. With respect to any insurer registered under sections 382.100 to 382.180**  
2 **and in accordance with subsection 3 of this section, the director shall also have the power**  
3 **to participate in a supervisory college for any domestic insurer that is part of an insurance**

4 **holding company system with international operations in order to determine compliance**  
5 **by the insurer with this chapter. The powers of the director with respect to supervisory**  
6 **colleges include, but are not limited to, the following:**

7 (1) **Initiating the establishment of a supervisory college;**

8 (2) **Clarifying the membership and participation of other supervisors in the**  
9 **supervisory college;**

10 (3) **Clarifying the functions of the supervisory college and the role of other**  
11 **regulators including the establishment of a group-wide supervisor or host, who may be the**  
12 **director;**

13 (4) **Coordinating the ongoing activities of the supervisory college, including**  
14 **planning meetings, supervisory activities, and processes for information sharing; and**

15 (5) **Establishing a crisis management plan.**

16 **2. Each registered insurer subject to this section shall be liable for and shall pay the**  
17 **reasonable expenses of the director's participation in a supervisory college in accordance**  
18 **with subsection 3 of this section including reasonable travel expenses. For purposes of this**  
19 **section, a supervisory college may be convened as either a temporary or permanent forum**  
20 **for communication and cooperation between the regulators charged with the supervision**  
21 **of the insurer or its affiliates, and the director may establish a regular assessment to the**  
22 **insurer for the payment of such expenses.**

23 **3. In order to assess the business strategy, financial position, legal and regulatory**  
24 **position, risk exposure, risk management and governance processes, and as part of the**  
25 **examination of individual insurers in accordance with section 382.220, the director may**  
26 **participate in a supervisory college with other regulators charged with supervision of the**  
27 **insurer or its affiliates including other state, federal, and international regulatory agencies.**  
28 **The director may enter into agreements in accordance with subsection 3 of section 382.230**  
29 **providing the basis for cooperation between the director and the other regulatory agencies**  
30 **and the activities of the supervisory college. Nothing in this section shall delegate to the**  
31 **supervisory college the authority of the director to regulate or supervise the insurer or its**  
32 **affiliates within the director's jurisdiction.**

382.230. **1. All information, documents and copies thereof in the possession or control**  
2 **of the director that are** obtained by or disclosed to the director or any other person in the course  
3 of an examination or investigation made [pursuant to] **under** section 382.220 and all information  
4 reported [pursuant to section] **under subdivisions (13) and (14) of subsection 1 of section**  
5 **382.050 and sections 382.100 to 382.210** shall be given confidential treatment and **privileges;**  
6 **shall not be subject to the provisions of chapter 610;** shall not be subject to subpoena [and];  
7 shall not be made public by the director, the National Association of Insurance Commissioners,

8 or any other person, except to the chief insurance regulatory official of other states[.]; **and shall**  
9 **not be subject to discovery or admissible as evidence in any private civil action. However,**  
10 **the director is authorized to use the documents, materials, or other information in**  
11 **furtherance of any regulatory or legal action brought as a part of the director's official**  
12 **duties. The director shall not otherwise make the documents, materials, or other**  
13 **information public** without the prior written consent of the insurer to which it pertains unless  
14 the director, after giving the insurer and its affiliates who would be affected thereby, notice and  
15 opportunity to be heard, determines that the interests of policyholders, shareholders or the public  
16 will be served by the publication thereof, in which event [he] **the director** may publish all or any  
17 part thereof in such manner as he **or she** may deem appropriate.

18 **2. Neither the director nor any person who receives documents, materials, or other**  
19 **information while acting under the authority of the director or with whom such**  
20 **documents, materials, or other information is shared under sections 382.010 to 382.300**  
21 **shall be permitted or required to testify in any private civil action concerning any**  
22 **confidential documents, materials, or other information subject to subsection 1 of this**  
23 **section.**

24 **3. In order to assist in the performance of the director's duties, the director:**

25 **(1) May share documents, materials, or other information including the**  
26 **confidential and privileged documents, materials, or other information subject to**  
27 **subsection 1 of this section with other state, federal, and international financial regulatory**  
28 **agencies, with the National Association of Insurance Commissioners and its affiliates and**  
29 **subsidiaries, and with state, federal, and international law enforcement authorities**  
30 **including members of any supervisory college described in section 382.225; provided that**  
31 **the recipient agrees in writing to maintain the confidentiality and privileged status of such**  
32 **documents, materials, or other information, and has verified in writing the legal authority**  
33 **to maintain confidentiality;**

34 **(2) Notwithstanding the provisions of subsection 1 of this section and subdivision**  
35 **(1) of this subsection, may share confidential and privileged documents, materials, or other**  
36 **information reported under section 382.175 only with the directors of states having statutes**  
37 **or regulations substantially similar to subsection 1 of this section and who have agreed in**  
38 **writing not to disclose such information;**

39 **(3) May receive documents, materials, or other information including otherwise**  
40 **confidential and privileged documents, materials, or information from the National**  
41 **Association of Insurance Commissioners and its affiliates and subsidiaries and from**  
42 **regulatory and law enforcement officials of other foreign or domestic jurisdictions, and**  
43 **shall maintain as confidential or privileged any documents, materials, or other information**

44 received with notice or the understanding that it is confidential or privileged under the  
45 laws of the jurisdiction that is the source of the document, material, or other information;  
46 and

47 (4) Shall enter into a written agreement with the National Association of Insurance  
48 Commissioners governing sharing and use of information provided under sections 382.010  
49 to 382.300 consistent with this subsection that shall:

50 (a) Specify procedures and protocols regarding the confidentiality and security of  
51 information shared with the National Association of Insurance Commissioners and its  
52 affiliates and subsidiaries under sections 382.010 to 382.300 including procedures and  
53 protocols for sharing by the National Association of Insurance Commissioners with other  
54 state, federal, and international regulators;

55 (b) Specify that ownership of information shared with the National Association of  
56 Insurance Commissioners and its affiliates and subsidiaries under sections 382.010 to  
57 382.300 remains with the director and that the National Association of Insurance  
58 Commissioner's use of such information is subject to the direction of the director;

59 (c) Require prompt notice to be given to an insurer whose confidential information  
60 in the possession of the National Association of Insurance Commissioners under sections  
61 382.010 to 382.300 is subject to a request or subpoena to the National Association of  
62 Insurance Commissioners for disclosure or production; and

63 (d) Require the National Association of Insurance Commissioners and its affiliates  
64 and subsidiaries to consent to intervention by an insurer in any judicial or administrative  
65 action in which the National Association of Insurance Commissioners and its affiliates and  
66 subsidiaries may be required to disclose confidential information about the insurer shared  
67 with the National Association of Insurance Commissioners and its affiliates and  
68 subsidiaries under sections 382.010 to 382.300.

69 4. The sharing of information by the director under sections 382.010 to 382.300  
70 shall not constitute a delegation of regulatory or rulemaking authority, and the director  
71 is solely responsible for the administration, execution, and enforcement of the provisions  
72 of sections 382.010 to 382.300.

73 5. No waiver of any applicable privilege or claim of confidentiality in the  
74 documents, materials, or other information shall occur as a result of disclosure of such  
75 documents, materials, or other information to the director under this section or as a result  
76 of sharing as authorized in sections 382.010 to 382.300.

77 6. Documents, materials, or other information in the possession or control of the  
78 National Association of Insurance Commissioners under sections 382.010 to 382.300 shall  
79 be confidential by law and privileged, shall not be subject to disclosure under chapter 610,

80 shall not be subject to subpoena, and shall not be subject to discovery or admissible in  
81 evidence in any private civil action.

382.277. Whenever it appears to the director that any person has committed a  
2 violation of sections 382.040 to 382.090 and the violation prevents the full understanding  
3 of the enterprise risk to the insurer by affiliates or by the insurance holding company  
4 system, the violation may serve as an independent basis for disapproving dividends or  
5 distributions and for placing the insurer under an order of suspension in accordance with  
6 section 375.1160.

382.278. The provisions of subdivisions (13) and (14) of subsection 1 of section  
2 382.050, subdivision (5) of subsection 1 of section 382.110, and sections 382.175 and 382.220  
3 shall not apply to an insurance holding company or its affiliates if the insurance company  
4 affiliates of such insurance holding company had total premiums, direct and ceded, of less  
5 than one hundred fifty million dollars in the preceding year and such insurance holding  
6 company certifies in writing to the director that more than twenty-five percent of the  
7 employees of its affiliates, not including insurance affiliates or the holding company itself,  
8 are engaged in agricultural operations.

382.500. 1. The provisions of sections 382.500 to 382.550 shall apply to all insurers  
2 domiciled in this state that are not exempt under section 382.525.

3 2. The general assembly finds and declares that an own risk and solvency  
4 assessment (ORSA) summary report contains confidential and sensitive information  
5 related to an insurer or insurance group's identification of risks material and relevant to  
6 the insurer or insurance group filing such report. Such information includes proprietary  
7 and trade secret information that has the potential for harm and competitive disadvantage  
8 to the insurer or insurance group if such information is made public. An ORSA summary  
9 report shall be a confidential document filed with the director, shall be shared only as  
10 stated in sections 382.500 to 382.550 to assist the director in the performance of the  
11 director's duties, and shall not be subject to public disclosure.

382.505. As used in sections 382.500 to 382.550, the following terms shall mean:

2 (1) "Director", the director of the department of insurance, financial institutions  
3 and professional registration;

4 (2) "Insurance group", those insurers and affiliates included within an insurance  
5 holding company system as defined in sections 382.010 to 382.300;

6 (3) "Insurer", the same meaning as such term is defined in section 382.010; except  
7 that, insurer shall not include agencies, authorities, or instrumentalities of the United  
8 States, its possessions and territories, the Commonwealth of Puerto Rico, the District of  
9 Columbia, or a state or political subdivision of a state;

10 (4) "NAIC", the National Association of Insurance Commissioners;

11 (5) "Own risk and solvency assessment" or "ORSA", a confidential internal  
12 assessment appropriate to the nature, scale, and complexity of an insurer or insurance  
13 group conducted by such insurer or insurance group of the material and relevant risks  
14 associated with the insurer's or insurance group's current business plan, and the  
15 sufficiency of capital resources to support such risks;

16 (6) "ORSA guidance manual", the current version of the Own Risk and Solvency  
17 Assessment Guidance Manual developed and adopted by the National Association of  
18 Insurance Commissioners (NAIC), as amended. A change in the ORSA guidance manual  
19 shall be effective on January first following the calendar year in which the changes have  
20 been adopted by the NAIC;

21 (7) "ORSA summary report", a confidential high-level summary of an insurer's or  
22 insurance group's own risk and solvency assessment.

382.510. An insurer shall maintain a risk management framework to assist the  
2 insurer with identifying, assessing, monitoring, managing, and reporting on its material  
3 and relevant risks. Such requirement may be satisfied if the insurance group of which the  
4 insurer is a member maintains a risk management framework applicable to the operations  
5 of the insurer.

382.515. Subject to the provisions of section 382.525, an insurer or the insurance  
2 group of which the insurer is a member shall conduct an ORSA consistent with a process  
3 comparable to the ORSA guidance manual. An ORSA shall be conducted no less than  
4 annually and additionally at any time when there are significant changes to the risk profile  
5 of the insurer or the insurance group of which the insurer is a member, as determined by  
6 the insurer or the insurance group.

382.520. 1. Upon the director's request and no more than once each year, an  
2 insurer shall submit to the director an ORSA summary report or any combination of  
3 reports that together contain the information described in the ORSA guidance manual  
4 applicable to the insurer and to the insurance group of which the insurer is a member.  
5 Notwithstanding any request from the director, if the insurer is a member of an insurance  
6 group, the insurer shall submit the report or reports required under this subsection if the  
7 director is the lead state regulator of the insurance group as determined by the procedures  
8 within the Financial Analysis Handbook adopted by the National Association of Insurance  
9 Commissioners.

10 2. The report or reports shall include a signature of the insurer's or insurance  
11 group's chief risk officer or other executive having responsibility for the oversight of the  
12 insurer's enterprise risk management process attesting to the best of his or her belief and

13 knowledge that the insurer applies the enterprise risk management process described in  
14 the ORSA summary report and that a copy of the report has been provided to the insurer's  
15 board of directors or the appropriate committee thereof.

16 3. An insurer may comply with subsection 1 of this section by providing the most  
17 recent and substantially similar report or reports provided by the insurer or another  
18 member of an insurance group of which the insurer is a member to the director of another  
19 state or to a supervisor or regulator of a foreign jurisdiction if such report or reports  
20 provide information that is comparable to the information described in the ORSA  
21 guidance manual. Any such report or reports in a language other than English shall be  
22 accompanied by a translation of such report or reports into the English language.

382.525. 1. An insurer shall be exempt from the requirements of sections 382.500  
2 to 382.550 if:

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

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

11 2. If an insurer qualifies for exemption under subdivision (1) of subsection 1 of this  
12 section, but the insurance group of which the insurer is a member does not qualify for  
13 exemption under subdivision (2) of subsection 1 of this section, the ORSA summary report  
14 that may be required under section 382.520 shall include every insurer within the  
15 insurance group. Such requirement may be satisfied by the submission of more than one  
16 ORSA summary report for any combination of insurers, provided any combination of  
17 reports includes every insurer within the insurance group.

18 3. If an insurer does not qualify for exemption under subdivision (1) of subsection  
19 1 of this section, but the insurance group of which the insurer is a member qualifies for  
20 exemption under subdivision (2) of subsection 1 of this section, the only ORSA summary  
21 report that may be required under section 382.520 is the report applicable to such insurer.

22 4. An insurer that does not qualify for exemption under subsection 1 of this section  
23 may apply to the director for a waiver from the requirements of sections 382.500 to 382.550  
24 based upon unique circumstances. In deciding whether to grant the insurer's request for  
25 waiver, the director may consider the type and volume of business written, ownership and  
26 organizational structure, and any other factor the director considers relevant to the insurer



27 or insurance group of which the insurer is a member. If the insurer is part of an insurance  
28 group with insurers domiciled in more than one state, the director shall coordinate with  
29 the lead state director or regulator and with the other domiciliary state directors or  
30 regulators in considering whether to grant the insurer's request for a waiver.

31 **5. Notwithstanding the exemptions in this section, the director may require that an**  
32 **insurer maintain a risk management framework, conduct an ORSA, and file an ORSA**  
33 **summary report:**

34 **(1) Based on unique circumstances, including but not limited to the type and**  
35 **volume of business written, ownership and organization structure, federal agency requests,**  
36 **and international supervisor requests;**

37 **(2) If the insurer has risk-based capital for company action level event as set forth**  
38 **in section 375.1255 or other applicable risk-based capital law, meets one or more of the**  
39 **standards of an insurer deemed to be in hazardous financial condition as defined in section**  
40 **375.539, or otherwise exhibits qualities of a troubled insurer as determined by the director.**

41 **6. If an insurer that qualifies for an exemption under subsection 1 of this section**  
42 **subsequently no longer qualifies for such exemption due to changes in premium as**  
43 **reflected in the insurer's most recent annual statement or in the most recent annual**  
44 **statements of the insurers within the insurance group of which the insurer is a member,**  
45 **the insurer shall have one year following the year in which the threshold is exceeded to**  
46 **comply with the requirements of sections 382.500 to 382.550.**

**382.530. 1. An ORSA summary report shall be prepared consistent with the ORSA**  
2 **guidance manual, subject to the requirements of subsection 2 of this section.**  
3 **Documentation and supporting information shall be maintained and made available upon**  
4 **examination or upon request of the director.**

5 **2. The review of an ORSA summary report and any additional requests for**  
6 **information shall be made using similar procedures currently used in the analysis and**  
7 **examination of multistate or global insurers and insurance groups.**

**382.535. 1. Documents, materials, or other information, including the ORSA**  
2 **summary report, in the possession of or control of the department of insurance, financial**  
3 **institutions and professional registration that are obtained by, created by, or disclosed to**  
4 **the director or any other person under sections 382.500 to 382.550 is recognized by this**  
5 **state as being proprietary and to contain trade secrets. All such documents, materials, or**  
6 **other information shall be confidential by law and privileged, shall not be subject to**  
7 **disclosure under chapter 610, shall not be subject to subpoena, and shall not be subject to**  
8 **discovery or admissible in evidence in any private civil action; except that, the director is**  
9 **authorized to use such documents, materials, or other information in the furtherance of**

10 any regulatory or legal action brought as a part of the director's official duties. The  
11 director shall not otherwise make such documents, materials, or other information public  
12 without the prior written consent of the insurer.

13       2. Neither the director nor any person who receives documents, materials, or other  
14 ORSA-related information, through examination or otherwise, while acting under the  
15 authority of the director or with whom such documents, materials, or other ORSA-related  
16 information are shared under sections 382.500 to 382.550 shall be permitted or required  
17 to testify in any private civil action concerning any confidential documents, materials, or  
18 other ORSA-related information subject to subsection 1 of this section.

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

21       (1) May, upon request, share documents, materials, or other ORSA-related  
22 information, including the confidential and privileged documents, materials, or other  
23 ORSA-related information subject to subsection 1 of this section, including proprietary  
24 and trade secret documents and materials with other state, federal, and international  
25 financial regulatory agencies, including members of any supervisory college authorized  
26 under this chapter, with the NAIC, and with any third-party consultants designated by the  
27 director; provided that, the recipient agrees in writing prior to receiving any such  
28 documents, materials, or other ORSA-related information to maintain the confidentiality  
29 and privileged status of such documents, materials, or other ORSA-related information  
30 and has verified in writing the legal authority to maintain confidentiality; and

31       (2) May receive documents, materials, or other ORSA-related information,  
32 including otherwise confidential and privileged documents, materials, or information,  
33 including proprietary and trade secret information or documents, from regulatory officials  
34 of other foreign or domestic jurisdictions, including members of any supervisory college  
35 authorized under this chapter, and from the NAIC, and shall maintain as confidential or  
36 privileged any documents, materials, or other ORSA-related information received with  
37 notice or the understanding that it is confidential or privileged under the laws of the  
38 jurisdiction that is the source of the document, material, or other ORSA-related  
39 information; and

40       (3) Shall enter into a written agreement with the NAIC or a third-party consultant  
41 governing sharing and use of ORSA-related information provided under sections 382.500  
42 to 382.550 that is consistent with this subsection and that shall:

43       (a) Specify procedures and protocols regarding the confidentiality and security of  
44 information shared with the NAIC or a third-party consultant under sections 382.500 to  
45 382.550, including procedures and protocols for sharing by the NAIC with other state

46 regulators from states in which the insurance group has domiciled insurers. The  
47 agreement shall provide that the recipient agrees in writing to maintain the confidentiality  
48 and privileged status of ORSA-related documents, materials, or other ORSA-related  
49 information and has verified in writing the legal authority to maintain confidentiality;

50 (b) Specify that ownership of information shared with the NAIC or third-party  
51 consultant under sections 382.500 to 382.550 remains with the director and that the NAIC's  
52 or a third-party consultant's use of such information is subject to the direction of the  
53 director;

54 (c) Prohibit the NAIC or third-party consultant from storing any information  
55 shared under sections 382.500 to 382.550 in a permanent database after the underlying  
56 analysis is completed;

57 (d) Require prompt notice to be given to an insurer whose confidential information  
58 in the possession of the NAIC or a third-party consultant under sections 382.500 to 382.550  
59 is subject to a request or subpoena to the NAIC or a third-party consultant for disclosure  
60 or production;

61 (e) Require the NAIC or a third-party consultant to consent to intervention by an  
62 insurer in any judicial or administrative action in which the NAIC or a third-party  
63 consultant may be required to disclose confidential information about the insurer shared  
64 with the NAIC or a third-party consultant under sections 382.500 to 382.550; and

65 (f) In the case of an agreement involving a third-party consultant, provide for the  
66 insurer's written consent.

67 4. The sharing of information and documents by the director under sections  
68 382.500 to 382.550 shall not constitute a delegation of regulatory or rulemaking authority,  
69 and the director is solely responsible for the administration, execution, and enforcement  
70 of the provisions of sections 382.500 to 382.550.

71 5. No waiver of any applicable privilege or claim of confidentiality in the  
72 documents, proprietary and trade secret materials, or other ORSA-related information  
73 shall occur as a result of disclosure of such documents, materials, or ORSA-related  
74 information to the director under this section or as a result of sharing as authorized in  
75 sections 382.500 to 382.550.

76 6. Documents, materials, or other ORSA-related information in the possession or  
77 control of the NAIC or third-party consultants under sections 382.500 to 382.550 shall be  
78 confidential by law and privileged, shall not be subject to disclosure under chapter 610,  
79 shall not be subject to subpoena, and shall not be subject to discovery or admissible in  
80 evidence in any private civil action.

382.540. 1. Subject to subsection 1 of section 374.215, any insurer failing without  
2 just cause to timely file an ORSA summary report as required in sections 382.500 to  
3 382.550 commits a level two violation under section 374.049 with respect to each day's  
4 delay.

5 2. The director may enforce the provisions of sections 382.500 to 382.550 under  
6 sections 374.046 to 374.049.

382.545. If any provision of sections 382.500 to 382.550 or the application thereof  
2 to any person or circumstance is held invalid, such determination shall not affect the  
3 provisions or applications of sections 382.500 to 382.550 which may be given effect without  
4 the invalid provision or application, and to that end the provisions of sections 382.500 to  
5 382.550 are severable.

382.550. Sections 382.500 to 382.550 shall become effective January 1, 2016. The  
2 first filing of ORSA summary reports shall be in 2016 in accordance with section 382.520.

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