

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1253
92ND GENERAL ASSEMBLY

Reported from the Committee on Small Business, Insurance and Industrial Relations, April 14, 2004, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

4251S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 375.246, 375.1198, 375.1220, and 379.825, RSMo, and to enact in lieu thereof four new sections relating to insurance.

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

Section A. Sections 375.246, 375.1198, 375.1220, and 379.825, RSMo, are
2 repealed and four new sections enacted in lieu thereof, to be known as sections 375.246,
3 375.1198, 375.1220, and 379.825, to read as follows:

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding insurer as
2 either an asset or a reduction from liability on account of reinsurance ceded only when
3 the reinsurer meets the requirements of subdivisions (1) to (5) of this subsection. Credit
4 shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects
5 cessions of those kinds or classes of business which the assuming insurer is licensed or
6 otherwise permitted to write or assume in its state of domicile or, in the case of a United
7 States branch of an alien assuming insurer, in the state through which it is entered and
8 licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to
9 subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision
10 (6) have been satisfied.

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

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

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

16 (b) Submits to the authority of the department of insurance to examine its books

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

17 and records;

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

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

24 (e) Maintains a surplus as regards policyholders in an amount not less than
25 twenty million dollars and whose accreditation has not been denied by the director
26 within ninety days of its submission; or

27 (f) Maintains a surplus as regards policyholders in an amount less than twenty
28 million dollars and whose accreditation has been approved by the director.

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

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

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

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

42 (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming
43 insurer that maintains a trust fund in a qualified United States financial institution, as
44 defined in subdivision (2) of subsection 3 of this section, for the payment of the valid
45 claims of its United States ceding insurers, their assigns and successors in interest. To
46 enable the director to determine the sufficiency of the trust fund, the assuming insurer
47 shall report annually to the director information substantially the same as that required
48 to be reported on the National Association of Insurance Commissioners' annual
49 statement form by licensed insurers. The assuming insurer shall submit to examination
50 of its books and records by the director.

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

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

55 b. The commissioner or director of another state who, pursuant to the terms of
56 the trust instrument, has accepted principal regulatory oversight of the trust.

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

65 (d) The trust shall remain in effect for as long as the assuming insurer has
66 outstanding obligations due under the reinsurance agreements subject to the trust. No
67 later than February twenty-eighth of each year the trustees of the trust shall report to
68 the director in writing the balance of the trust and listing the trust's investments at the
69 preceding year end and shall certify the date of termination of the trust, if so planned,
70 or certify that the trust will not expire prior to the next following December thirty-first.

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

73 a. The trust fund for a single assuming insurer shall consist of funds in trust in
74 an amount not less than the assuming insurer's liabilities attributable to reinsurance
75 ceded by the United States ceding insurers, and, in addition, the assuming insurer shall
76 maintain a trusteed surplus of not less than twenty million dollars;

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

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

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

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

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

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

102 (5) Credit:

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

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

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

115 (a) That in the event of the failure of the assuming insurer to perform its
116 obligations under the terms of the reinsurance agreement, the assuming insurer, at the
117 request of the ceding insurer shall submit to the jurisdiction of the courts of this state,
118 will comply with all requirements necessary to give such courts jurisdiction, and will
119 abide by the final decisions of such courts or of any appellate courts in this state in the
120 event of an appeal; and

121 (b) To designate the director or a designated attorney as its true and lawful
122 attorney upon whom may be served any lawful process in any action, suit or proceeding
123 instituted by or on behalf of the ceding company. This paragraph is not intended to
124 conflict with or override the obligation of the parties to a reinsurance agreement to

125 arbitrate their disputes, if this obligation is created in the agreement and the
126 jurisdiction and situs of the arbitration is, with respect to any receivership of the ceding
127 company, any jurisdiction of the United States;

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

132 (a) Notwithstanding any other provisions in the trust instrument, if the trust
133 fund is inadequate because it contains an amount less than the amount required by
134 paragraph (e) of subdivision (4) of this subsection, or if the grantor of the trust has been
135 declared insolvent or placed into receivership, rehabilitation, liquidation or similar
136 proceedings under the laws of its state or country of domicile, the trustee shall comply
137 with an order of the commissioner or director with regulatory oversight over the trust
138 or with an order of a court of competent jurisdiction directing the trustee to transfer to
139 the commissioner or director with regulatory oversight all of the assets of the trust fund;

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

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

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

151 2. An asset or reduction from liability for the reinsurance ceded by a domestic
152 insurer to an assuming insurer not meeting the requirements of subsection 1 of this
153 section shall be allowed in an amount not exceeding the liabilities carried by the ceding
154 insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding
155 insurer, including funds held in trust for the ceding insurer, under a reinsurance
156 contract with the assuming insurer as security for the payment of obligations
157 thereunder, if the security is held in the United States subject to withdrawal solely by,
158 and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in
159 a qualified United States financial institution, as defined in subdivision (2) of subsection
160 3 of this section. This security may be in the form of:

161 (1) Cash;

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

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

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

174 (4) Any other form of security acceptable to the director.

175 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified
176 United States financial institution" means an institution that:

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

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

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

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

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

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

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

196 5. (1) The director shall disallow any credit as an asset or as a deduction from

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

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

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

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

216 b. Where the assuming insurer, with the consent of it and the direct insured or
217 insureds in an assumption reinsurance transaction subject to sections 375.1280 to
218 375.1295, has assumed such policy obligations of the ceding insurer as direct obligations
219 of the assuming insurer to the payees under such policies and in substitution for the
220 obligations of the ceding insurer to such payees.

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

231 (d) The reinsurance agreement may provide that the domiciliary liquidator of an
232 insolvent ceding insurer shall give written notice to the assuming insurer of the

233 pendency of a claim against such ceding insurer on the contract reinsured within a
234 reasonable time after such claim is filed in the liquidation proceeding. During the
235 pendency of such claim, any assuming insurer may investigate such claim and interpose,
236 at its own expense, in the proceeding where such claim is to be adjudicated any defenses
237 which it deems available to the ceding insurer, or its liquidator. Such expense may be
238 filed as a claim against the insolvent ceding insurer to the extent of a proportionate
239 share of the benefit which may accrue to the ceding insurer solely as a result of the
240 defense undertaken by the assuming insurer. Where two or more assuming insurers are
241 involved in the same claim and a majority in interest elect to interpose a defense to such
242 claim, the expense shall be apportioned in accordance with the terms of the reinsurance
243 agreement as though such expense had been incurred by the ceding insurer.

244 6. To the extent that any reinsurer of an insurance company in liquidation would
245 have been required under any agreement pertaining to reinsurance to post letters of
246 credit or other security prior to an order of liquidation to cover such reserves reflected
247 upon the last financial statement filed with a regulatory authority immediately prior to
248 receivership, such reinsurer shall be required to post letters of credit or other security
249 to cover reserves after a company has been placed in liquidation or receivership. If a
250 reinsurer shall fail to post letters of credit or other security as required by a reinsurance
251 agreement or the provisions of this subsection, the director may consider disallowing as
252 a credit or asset, in whole or in part, any future reinsurance ceded to such reinsurer by
253 a ceding insurance company that is incorporated under the laws of the state of Missouri.

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

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

375.1198. 1. Mutual debts or mutual credits, whether arising out of one or more
2 contracts, between the insurer and another person in connection with any action or
3 proceeding under sections 375.1150 to 375.1246, sections 374.216 and 374.217, RSMo,
4 and section 382.302, RSMo, shall be set off and the balance only shall be allowed or paid,
5 except as provided in subsections 2, 3, 4, 5 and 6 of this section and section 375.1204.

6 2. No setoff shall be allowed in favor of any person where:

7 (1) The obligation of the insurer to the person would not as of the date of the
8 filing of a petition for liquidation entitle the person to share as a claimant in the assets
9 of the insurer; or

10 (2) The obligation of the insurer to the person was purchased by or transferred

11 to the person with a view to its being used as a setoff; or

12 (3) The obligation of the person is to pay an assessment levied against the
13 members or subscribers of the insurer, or is to pay a balance upon a subscription to the
14 capital stock of the insurer, or is in any other way in the nature of a capital contribution;
15 or

16 (4) The obligation of the insurer is owed to an affiliate of such person or to any
17 entity or association, rather than the person; or

18 (5) The obligation of the person is owed to an affiliate of the insurer or to any
19 other entity or association, rather than the insurer; or

20 (6) The obligations between the person and the insurer arise from reinsurance
21 relationships resulting in business [which is both ceded to and assumed from the
22 insurer] **where either the person or the insurer has assumed risks and**
23 **obligations from the other party and then has ceded back to that party**
24 **substantially the same risks and obligations.**

25 3. [As soon as practicable, the receiver shall provide persons who assumed
26 business from the insurer as reinsurers with statements of account identifying debts
27 which are currently due and payable to the insurer. Such persons may set off against
28 such debts only mutual credits which are currently due and payable by the insurer to
29 such persons for the period covered by the accounting statements.

30 4. A person who ceded business to the insurer may set off debts due the insurer
31 against only those mutual credits which the person has paid or which have been allowed
32 in a delinquency proceeding.

33 5. Notwithstanding the foregoing, a setoff of sums due on obligations in the
34 nature of those prescribed in subdivision (6) of subsection 2 of this section shall be
35 allowed for those debts accruing from business written under reinsurance contracts
36 which were entered into, renewed or extended with the express written approval of the
37 director where Missouri is the state of domicile of the insolvent insurer and when in the
38 judgment of the director such action is deemed necessary or advisable in order to prevent
39 or mitigate a threatened impairment or insolvency of a domiciliary insurer, in connection
40 with supervision or conservation proceedings pursuant to this act or otherwise in
41 connection with the exercise of the director's regulatory responsibilities concerning a
42 threatened impairment or insolvency without the institution of any delinquency
43 proceedings.

44 6.] The provisions of this section shall apply to all obligations incurred under
45 contracts entered into, renewed, or extended on or after July 1, 1992, and to any existing
46 contract with a termination date longer than one year from January 1, 1993[, and shall

47 supersede any contractual provisions which might be construed to enlarge the setoff
48 rights of any person under any contract with the insurer; provided that the provisions
49 of subdivision (6) of subsection 2 and subsections 3, 4 and 5 of this section shall not
50 apply to insurers or reinsurers until such time that the director determines that
51 substantially similar provisions are effective in a sufficient number of states so as not
52 to place domestic insurers or reinsurers at a competitive disadvantage. The director
53 shall promulgate a rule announcing any determination as is necessitated by this
54 subsection].

375.1220. 1. The liquidator shall review all claims duly filed in the liquidation
2 and shall make such further investigation as the liquidator shall deem necessary. The
3 liquidator may compound, compromise or in any other manner negotiate the amount for
4 which claims will be allowed, under the supervision of the court, except where the
5 liquidator is required by law to accept claims as settled by any person or
6 organization. Unresolved disputes shall be determined pursuant to section 375.1214. No
7 claim under a policy of insurance shall be allowed for any amount in excess of the
8 applicable policy limits or without regard to policy deductibles.

9 2. If the fixing or liquidation of any claim or claims would unduly delay the
10 administration of the liquidation or if the administrative expense of processing and
11 adjudication of a claim or group of claims of a similar type would be unduly excessive
12 when compared with the moneys which are estimated to be available for distribution
13 with respect to such claim or group of claims, the determination and allowance of such
14 claim or claims may be made by an estimate. Any such estimate shall be based upon an
15 actuarial evaluation made with reasonable actuarial certainty or upon another accepted
16 method of valuing claims with reasonable certainty.

17 3. The estimation of contingent liabilities permitted by subsection 2 of this
18 section or any other section of this chapter may be used for the purpose of fixing a
19 creditor's claim in the estate, and for determining the percentage of partial or final
20 dividend payments to be paid to creditors with reported allowed claims. However,
21 nothing in subsection 2 of this section or any other section in this chapter shall be
22 construed as authorizing the receiver, or any other entity, to compel payment from a
23 reinsurer on the basis of estimated incurred but not reported losses and, except with
24 respect to claims made pursuant to section 375.1212, outstanding reserves. Nothing in
25 this subsection shall be construed to impair any obligation arising pursuant to any
26 insurance agreement. **Expert testimony concerning estimates of incurred but
27 not reported losses may be received in evidence in any tribunal whether
28 offered by the receiver or by the reinsurer, if such testimony is otherwise**

29 **admissible pursuant to section 490.065, RSMo.**

30 4. Notwithstanding the provisions of this section or any other section of this
31 chapter to the contrary, the liquidator may negotiate a voluntary commutation and
32 release of all obligations arising from reinsurance contracts or other agreements.

33 5. The provisions of subsection 3 of this section shall not apply to and have no
34 force and effect regarding any formal delinquency proceeding in which, prior to August
35 28, 1999, the court in which such proceeding was or is pending issued any order or
36 decree construing or applying the provisions of this section.

37 [6. Subsections 3 and 5 of this section shall terminate on December 31, 2005.]

379.825. 1. The facility, upon receipt of an application for coverage and the
2 corresponding inspection report from the inspection bureau, shall, after it finds that the
3 property is eligible for insurance under this program, issue a policy.

4 2. The facility shall apportion the liability so assumed to the insurers in the
5 manner hereinafter provided in section 379.835.

6 3. Assessments upon each insurer in the program for expenses in connection with
7 program business shall be levied and assessed by the governing committee of the facility
8 in the manner hereinafter provided in section 379.835, subject to such minimum
9 assessment as shall be established by the governing committee.

10 4. Subject to the insurable value thereof, the maximum limits of liability which
11 may be placed through this program are: on any habitational property at one location,
12 **[one] two** hundred thousand dollars; and on any commercial property at one location,
13 one million dollars. The facility will endeavor to assist in placement when the requested
14 amount of insurance exceeds the maximum limit of liability available under this
15 program. The word "location" as used herein means real and personal property
16 consisting of and contained in a single building or consisting of and contained in
17 contiguous buildings under one ownership.

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