

SECOND REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 895**  
**93RD GENERAL ASSEMBLY**

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Reported from the Committee on Insurance Policy May 5, 2006 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 895 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4180L.12C

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**AN ACT**

To repeal sections 86.590, 354.150, 354.180, 354.210, 354.350, 354.444, 354.495, 354.722, 374.046, 374.150, 374.160, 374.210, 374.215, 374.230, 374.261, 374.263, 374.265, 374.267, 374.280, 374.512, 374.710, 374.715, 374.755, 374.787, 374.789, 375.001, 375.012, 375.020, 375.152, 375.236, 375.298, 375.306, 375.310, 375.320, 375.330, 375.340, 375.345, 375.390, 375.424, 375.445, 375.480, 375.532, 375.534, 375.720, 375.777, 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014, 375.1016, 375.1070, 375.1072, 375.1075, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 376.170, 376.190, 376.280, 376.300, 376.301, 376.303, 376.305, 376.307, 376.309, 376.320, 376.620, 376.672, 376.889, 376.1012, 376.1094, 377.100, 377.200, 379.361, 379.510, 379.790, 380.391, 380.571, 381.068, 384.071, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and to enact in lieu thereof one hundred sixty new sections relating to the department of insurance, with penalty provisions.

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

Section A. Sections 86.590, 354.150, 354.180, 354.210, 354.350, 354.444, 354.495,  
2 354.722, 374.046, 374.150, 374.160, 374.210, 374.215, 374.230, 374.261, 374.263, 374.265,

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.

3 374.267, 374.280, 374.512, 374.710, 374.715, 374.755, 374.787, 374.789, 375.001, 375.012,  
4 375.020, 375.152, 375.236, 375.298, 375.306, 375.310, 375.320, 375.330, 375.340, 375.345,  
5 375.390, 375.424, 375.445, 375.480, 375.532, 375.534, 375.720, 375.777, 375.780, 375.786,  
6 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014,  
7 375.1016, 375.1070, 375.1072, 375.1075, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306,  
8 375.1309, 376.170, 376.190, 376.280, 376.300, 376.301, 376.303, 376.305, 376.307, 376.309,  
9 376.320, 376.620, 376.672, 376.889, 376.1012, 376.1094, 377.100, 377.200, 379.361, 379.510,  
10 379.790, 380.391, 380.571, 381.068, 384.071, 407.1200, 407.1203, 407.1206, 407.1209,  
11 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, are  
12 repealed and one hundred sixty new sections enacted in lieu thereof, to be known as sections  
13 86.590, 191.890, 354.150, 354.180, 354.210, 354.350, 354.444, 354.495, 354.722, 374.046,  
14 374.047, 374.048, 374.049, 374.051, 374.055, 374.150, 374.160, 374.185, 374.210, 374.215,  
15 374.230, 374.280, 374.350, 374.351, 374.352, 374.512, 374.707, 374.710, 374.715, 374.755,  
16 374.780, 374.787, 374.789, 375.001, 375.010, 375.012, 375.020, 375.143, 375.145, 375.152,  
17 375.236, 375.298, 375.306, 375.310, 375.320, 375.330, 375.340, 375.345, 375.390, 375.424,  
18 375.445, 375.480, 375.532, 375.534, 375.720, 375.777, 375.780, 375.786, 375.881, 375.940,  
19 375.942, 375.946, 375.994, 375.1010, 375.1014, 375.1016, 375.1070, 375.1072, 375.1075,  
20 375.1135, 375.1156, 375.1160, 375.1161, 375.1204, 375.1306, 375.1309, 376.170, 376.190,  
21 376.280, 376.291, 376.292, 376.293, 376.294, 376.295, 376.296, 376.297, 376.298, 376.300,  
22 376.301, 376.302, 376.303, 376.304, 376.305, 376.306, 376.307, 376.309, 376.435, 376.620,  
23 376.889, 376.1012, 376.1094, 377.100, 377.200, 379.361, 379.510, 379.790, 379.1300,  
24 379.1302, 379.1304, 379.1306, 379.1308, 379.1310, 379.1312, 379.1314, 379.1316, 379.1318,  
25 379.1320, 379.1322, 379.1324, 379.1326, 379.1328, 379.1330, 379.1332, 379.1336, 379.1338,  
26 379.1340, 379.1342, 379.1344, 379.1346, 379.1348, 379.1350, 380.391, 380.571, 381.068,  
27 384.071, 374.761, 374.773, 385.200, 385.201, 385.203, 385.204, 385.205, 385.207, 385.208,  
28 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303, 385.304, 385.305,  
29 385.306, 385.307, 385.310, 385.311, 385.312, and 407.015, to read as follows:

86.590. The board of trustees of police and firemen's pension systems, established under  
2 the provisions of section 86.583, may invest and reinvest the moneys of the system, and may  
3 hold, purchase, sell, assign, transfer or dispose of any of the securities and investments in which  
4 such moneys shall have been invested, as well as the proceeds of such investments and such  
5 moneys; except that such investment and reinvestments shall be subject to all the terms,  
6 conditions, limitations, and restrictions imposed by law upon life insurance or casualty  
7 companies in the state of Missouri in making and disposing of their investments[, except that the  
8 percentage limitations of subsection 2 of section 376.305, RSMo, shall not apply]. The board  
9 of trustees of police and firemen's pension systems, established under the provisions of section

10 86.583, shall comply with the prudent investor standard for investment fiduciaries as provided  
11 in section 105.688, RSMo, when investing the assets of the system.

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

2 (1) "Anatomic pathology services", histopathology or surgical pathology,  
3 cytopathology, hermatology, subcellular pathology and molecular pathology, and blood  
4 banking services performed by pathologists;

5 (2) "Cytopathology", the examination of cells from fluids, aspirates, washings,  
6 brushings, or smears, including the Pap test examination performed by a physician or  
7 under the supervision of a physician;

8 (3) "Hematology", the microscopic evaluation of bone marrow aspirates and  
9 biopsies performed by a physician or under the supervision of a physician, and peripheral  
10 blood smears when the attending or treating physician or technologist requests that a blood  
11 smear be reviewed by a pathologist;

12 (4) "Histopathology" or "surgical pathology", the gross and microscopic  
13 examination and histologic processing of organ tissue performed by a physician or under  
14 the supervision of a physician.

15 2. Except as provided in subsection 5 of this section, no licensed practitioner in this  
16 state shall, directly or indirectly, charge, bill, or otherwise solicit payment for anatomic  
17 pathology services unless such services are rendered personally by the licensed practitioner  
18 or under such licensed practitioner's direct supervision in accordance with Section 353 of  
19 the Public Health Service Act, 42 U.S.C. Section 263a.

20 3. No patient, insurer, third-party payor, hospital, public health clinic, or nonprofit  
21 health clinic shall be required to reimburse any licensed practitioner for claims submitted  
22 in violation of this section.

23 4. Nothing in this section shall be construed as mandating the assignment of  
24 benefits for anatomic pathology services.

25 5. Nothing in this section shall prohibit billing of a referring laboratory for  
26 anatomic pathology services when a sample or samples must be sent to another specialist;  
27 except that, for purposes of this subsection, "referring laboratory" does not include a  
28 laboratory or a physician's office or group practice that does not perform the technical or  
29 professional component of the anatomic pathology service involved.

30 6. The respective state licensing boards having jurisdiction over any practitioner  
31 who may request or provide anatomical pathology services may revoke, suspend, or deny  
32 renewal of the license of any practitioner who violates the provisions of this section.

354.150. Every health services corporation subject to the provisions of sections 354.010 to 354.380 shall pay the following fees to the director of insurance for enforcement of the provisions of this chapter:

4	[Issuance of certificate of authority . . . . .	\$150.00
5	Filing articles of amendment . . . . .	\$ 20.00
6	Filing each annual statement . . . . .	\$100.00
7	Filing articles of acceptance and issuing a	
8	certificate of acceptance . . . . .	\$ 20.00
9	Filing any other statement or report . . . . .	.\$ 1.00
10	For a certified copy of any document or	
11	other paper filed in the office of the director,	
12	per page . . . . .	\$.35
13	For the certificate and for affixing the seal	
14	thereto . . . . .	\$ 10.00
15	For filing statement and pertinent admission	
16	papers required of a foreign health	
17	services corporation . . . . .	\$200.00
18	For copies of papers, records and documents filed	
19	in the office of the director, an amount not	
20	to exceed, at the director's discretion . . . . .	\$ 1.00
21		per page
22	For each service of process upon the director, on	
23	behalf of the health services corporation . . . . .	\$ 10.00]

24 **(1) For filing the declaration required on organization of each domestic company, two**  
 25 **hundred fifty dollars;**

26 **(2) For filing statement and certified copy of charter required of foreign companies,**  
 27 **two hundred fifty dollars;**

28 **(3) For filing application to renew certificate of authority and all required annual**  
 29 **reports, including the annual statement, actuarial statement, risk-based capital report,**  
 30 **report of valuation of policies or other obligations of assurance, and audited financial**  
 31 **report of any company doing business in this state, one thousand five hundred dollars;**

32 **(4) For filing any paper, document, or report not filed under subdivisions (1) to (3)**  
 33 **of this section which are required to be filed in the office of the director of the department**  
 34 **of insurance, fifty dollars per paper, document, or report;**

35 **(5) For affixing the seal of the office of the director of the department of insurance,**  
 36 **ten dollars;**

37           **(6) For accepting each service of process upon the company, ten dollars.**

354.180. 1. [(1) The director may issue cease and desist orders whenever it appears to  
2 him upon competent and substantial evidence that any person is acting in violation of any law,  
3 rule or regulation relating to corporations subject to the provisions of sections 354.010 to  
4 354.380, or whenever the director has reason to believe that any health services corporation is  
5 in such financial condition that the assumption of additional obligations would be hazardous to  
6 its members or the general public. Before any cease and desist order shall be issued, a copy of  
7 the proposed order together with an order to show cause why such cease and desist order should  
8 not be issued shall be served either personally or by certified mail on any person named therein.  
9

10           (2) (a) Upon issuing any order to show cause, the director shall notify the person named  
11 therein that the person is entitled to a public hearing before the director if a request for a hearing  
12 is made in writing to the director within fifteen days from the day of the service of the order to  
13 show cause why the cease and desist order should not be issued.

14           (b) The cease and desist order shall be issued fifteen days after the service of the order  
15 to show cause if no request for a public hearing is made as above provided.

16           (c) Upon receipt of a request for a hearing, the director shall set a time and place for the  
17 hearing which shall not be less than ten days or more than fifteen days from the receipt of the  
18 request or as otherwise agreed upon by the parties. Notice of the time and place shall be given  
19 by the director not less than five days before the hearing.

20           (d) At the hearing the person may be represented by counsel and shall be entitled to be  
21 advised of the nature and source of any adverse evidence procured by the director and shall be  
22 given the opportunity to submit any relevant written or oral evidence in his behalf to show cause  
23 why the cease and desist order should not be issued.

24           (e) At the hearing the director shall have such powers as are conferred upon him in  
25 section 354.190.

26           (f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue  
27 the cease and desist order as proposed or as subsequently modified or notify the person or  
28 corporation subject to the provisions of sections 354.010 to 354.380 that no order shall be issued,  
29 provided that where the director finds that the corporation is in such financial condition that the  
30 assumption of additional obligations would be hazardous to its members or the general public,  
31 he may order the corporation to cease and desist from making contracts for new members or for  
32 the provision of new benefits until the corporation's financial condition is no longer hazardous.

33           (g) The circuit court of Cole County shall have jurisdiction to review any cease and  
34 desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if

35 any person against whom an order is issued fails to request judicial review, or if, after judicial  
36 review, the director's cease and desist order is upheld, the order shall become final.

37 2. (1) Any person willfully violating any provision of any cease and desist order of the  
38 director after it becomes final, while the same is in force, upon conviction thereof shall be guilty  
39 of a class A misdemeanor, punishable as provided by law.

40 (2) In addition to any other penalty provided, violation of any cease and desist order shall  
41 subject the violator to suspension or revocation of any certificate of authority or license as may  
42 be applicable under the laws of this state relating to corporations subject to the provisions of  
43 sections 354.010 to 354.380.

44 3. (1) When it appears to the director that there is a violation of the law, rule or  
45 regulation relating to corporations subject to the provisions of sections 354.010 to 354.380, and  
46 that the continuance of the acts or actions of any person as herein defined would produce injury  
47 to the public or to any other person in this state, or when it appears that a person is doing or  
48 threatening to do some act in violation of the laws of this state relating to corporations subject  
49 to the provisions of sections 354.010 to 354.380, the director may file a petition for injunction  
50 in the circuit court of Cole County, Missouri, in which he may ask for a temporary injunction or  
51 restraining order as well as a permanent injunction to restrain the act or threatened act. In the  
52 event the temporary injunction or restraining order or a permanent injunction is issued by the  
53 circuit court of Cole County, Missouri, no person against whom the temporary injunction or  
54 restraining order or permanent injunction is granted shall do or continue to do any of the acts or  
55 actions complained of in the petition for injunction, unless and until the temporary injunction or  
56 restraining order or permanent injunction is vacated, dismissed or otherwise terminated.

57 (2) Any writ of injunction issued under this law may be served and enforced as provided  
58 by law in injunctions issued in other cases, but the director of the insurance department shall not  
59 be required to give any bond as preliminary to or in the course of any proceedings to which he  
60 is a party as director.

61 4. The term "person" as used in this section shall include any individual, partnership,  
62 corporation, association or trust, or any other legal entity.] **If the director determines that a**  
63 **person has engaged or is engaging in a violation of sections 354.010 to 354.380 or a rule**  
64 **adopted or order issued pursuant thereto, or a person has materially aided or is materially**  
65 **aiding an act, practice, omission, or course of business constituting a violation of sections**  
66 **354.010 to 354.380 or a rule adopted or order issued pursuant thereto, the director may**  
67 **issue such administrative orders as authorized under section 374.046, RSMo. A violation**  
68 **of these sections is a level two violation under section 374.049, RSMo, except for any**  
69 **violation of sections 354.320 and 354.350, which is a level three violation.**

70           **2. If the director believes that a person has engaged, or is engaging in a violation**  
71 **of sections 354.010 to 354.380 or a rule adopted or order issued pursuant thereto, or that**  
72 **a person has materially aided or is materially aiding an act, practice, omission, or course**  
73 **of business constituting a violation of sections 354.010 to 354.380 or a rule adopted or order**  
74 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
75 **under section 374.048, RSMo. A violation of these sections is a level two violation under**  
76 **section 374.049, RSMo, except for any violation of sections 354.320 and 354.350, which is**  
77 **a level three violation.**

          354.210. [1. Notwithstanding any other provisions of chapter 354,] **If the director [may,**  
2 **after a hearing, order as a forfeiture to the state of Missouri a sum not to exceed one hundred**  
3 **dollars for each violation by any person or corporation willfully violating any provision of**  
4 **sections 354.010 to 354.380 for which no specific punishment is provided, or order of the**  
5 **director made in accordance with such sections. Such forfeiture may be recovered by a civil**  
6 **action brought by and in the name of the director of insurance. The civil action may be brought**  
7 **in the county which has venue of an action against the person or corporation under other**  
8 **provisions of law.**

9           **2. Nothing contained in this section shall be construed to prohibit the director and the**  
10 **corporation or its enrollment representative from agreeing to a voluntary forfeiture of the sum**  
11 **mentioned herein without civil proceedings being instituted. Any sum so agreed upon shall be**  
12 **paid into the school fund as provided by law for other fines and penalties] has reason to believe**  
13 **that any health services corporation is in such financial condition that the assumption of**  
14 **additional obligations would be hazardous to its members or the general public, the**  
15 **director may issue orders to seek relief to protect the public under the provisions of section**  
16 **354.180.**

          354.350. 1. [When upon investigation the director finds that any] **It is unlawful for any**  
2 **corporation subject to the provisions of sections 354.010 to 354.380 transacting business in this**  
3 **state [has conducted] to:**  
4           **(1) Conduct** its business fraudulently[, is not carrying] ;  
5           **(2) Fail to carry** out its contracts in good faith[, or is] ; **or**  
6           **(3) Habitually and as a matter of business practice [compelling] compel** claimants under  
7 **policies or liability judgment creditors of its members to either accept less than the amount due**  
8 **under the terms of the policy or resort to litigation against the corporation to secure payment of**  
9 **the amount due[, and that a proceeding in respect thereto would be in the interest of the public,**  
10 **he shall issue and serve upon the corporation a statement of the charges in that respect and a**  
11 **notice of a hearing thereon].**

12           2. [If after the hearing the director shall determine that the corporation subject to the  
13 provisions of sections 354.010 to 354.380 has fraudulently conducted its business as defined in  
14 this section, he shall order the corporation to cease and desist from the fraudulent practice and  
15 may suspend the corporation's certificate of authority for a period not to exceed thirty days and  
16 may in addition order a forfeiture to the state of Missouri of a sum not to exceed one thousand  
17 dollars, which forfeiture may be recovered by a civil action brought by and in the name of the  
18 director of insurance. The civil action may be brought in the circuit court of Cole County or, at  
19 the option of the director of insurance, in another county which has venue of an action against  
20 the corporation under other provisions of law] **If the director determines that a person has**  
21 **engaged or is engaging in a violation of this section or a rule adopted or order issued**  
22 **pursuant thereto or that a person has materially aided or is materially aiding an act,**  
23 **practice, omission, or course of business constituting a violation of this section or a rule**  
24 **adopted or order issued pursuant thereto, the director may issue such administrative**  
25 **orders as authorized under section 374.046, RSMo. A violation of this section is a level**  
26 **three violation under section 374.049, RSMo.** The director of insurance may also suspend or  
27 revoke the license or certificate of authority of a corporation subject to the provisions of  
28 sections 354.010 to 354.380 or enrollment representative for any such willful violation.

29           **3. If the director believes that a person has engaged or is engaging in a violation of**  
30 **this section or a rule adopted or order issued pursuant thereto or that a person has**  
31 **materially aided or is materially aiding an act, practice, omission, or course of business**  
32 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
33 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
34 **A violation of this section is a level three violation under section 374.049, RSMo.**

354.444. 1. [Notwithstanding any other provisions of chapter 354,] **If the director [may,**  
2 **after a hearing, order a forfeiture to the state of Missouri a sum not to exceed one hundred dollars**  
3 **for each violation by any person knowingly violating any provision] determines that a person**  
4 **has engaged or is engaging in a violation of sections 354.400 to 354.636 [for which no specific**  
5 **punishment is provided, or order a specific punishment in accordance with such sections. Such**  
6 **forfeiture may be recovered by a civil action brought by and in the name of the department of**  
7 **insurance. The civil action may be brought in the county which has venue for an action against**  
8 **the person or corporation] , or a rule adopted or order issued pursuant thereto or that a**  
9 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
10 **business constituting a violation of sections 354.400 to 354.636 or a rule adopted or order**  
11 **issued pursuant thereto, the director may issue such administrative orders as authorized**  
12 **under section 374.046, RSMo. A violation of any of these sections is a level one violation**  
13 **under section 374.049, RSMo.**



14           2. [Nothing contained in this section shall be construed to prohibit the director and the  
 15 corporation or its enrollment representative from agreeing to a voluntary forfeiture of the sum  
 16 mentioned herein without civil proceedings being instituted. Any payment under this section  
 17 shall be paid into the school fund as provided by article IX, section 7 of the Missouri  
 18 Constitution for fines and penalties] **If the director believes that a person has engaged or is**  
 19 **engaging in a violation of sections 354.400 to 354.636, or a rule adopted or order issued**  
 20 **pursuant thereto or that a person has materially aided or is materially aiding an act,**  
 21 **practice, omission, or course of business constituting a violation of sections 354.400 to**  
 22 **354.636 or a rule adopted or order issued pursuant thereto, the director may maintain a**  
 23 **civil action for relief authorized under section 374.048, RSMo. A violation of any of these**  
 24 **sections is a level one violation under section 374.049, RSMo.**

          354.495. Every health maintenance organization subject to sections 354.400 to 354.550  
 2 shall pay to the director the following fees:

3           (1) [Issuance or renewal of certificate of	
4                 authority . . . . .	\$150.00
5           (2) Filing of articles of amendment . . . . .	1.00
6           (3) Filing each annual statement . . . . .	100.00
7           (4) Filing articles of acceptance and issuing	
8                 a certificate of acceptance . . . . .	20.00
9           (5) Filing any other statement or report . . . . .	20.00
10          (6) For the certification of any document, and	
11                 affixing the seal thereto . . . . .	10.00
12          (7) For filing statement and pertinent admission	
13                 papers required of a foreign health	
14                 maintenance organization . . . . .	200.00
15          (8) For each appointment of an agent by the	
16                 health maintenance organization . . . . .	5.00
17          (9) For copies of papers, records and documents	
18                 filed in the office of the director, an amount not to exceed, at the director's	
19                 discretion . . . . .	1.00
20	per page
21          (10) For each service of process upon the director, on behalf of the health	
22                 maintenance organization . . . . .	10.00]
23 <b>For filing the declaration required on organization of each domestic company, two</b>	
24 <b>hundred fifty dollars;</b>	

25           **(2) For filing statement and certified copy of charter required of foreign companies,**  
26 **two hundred fifty dollars;**

27           **(3) For filing application to renew certificate of authority and all required annual**  
28 **reports, including the annual statement, actuarial statement, risk-based capital report,**  
29 **report of valuation of policies or other obligations of assurance, and audited financial**  
30 **report of any company doing business in this state, one thousand five hundred dollars;**

31           **(4) For filing any paper, document, or report not filed under subdivisions (1) to (3)**  
32 **of this section which are required to be filed in the office of the director of the department**  
33 **of insurance, fifty dollars per paper, document, or report;**

34           **(5) For affixing the seal of the office of the director of the department of insurance,**  
35 **ten dollars;**

36           **(6) For accepting each service of process upon the company, ten dollars.**

354.722. 1. The director may suspend or revoke any certificate of authority issued to a  
2 prepaid dental plan corporation pursuant to sections 354.700 to 354.723 if he finds that any of  
3 the following conditions exist:

4           (1) The prepaid dental plan corporation is operating substantially in contravention of its  
5 basic organizational document or is not fulfilling its contracts;

6           (2) [The prepaid dental plan corporation issues a contract, contract certificate or  
7 amendment which has not been filed with the director and approved or deemed approved by the  
8 director;

9           (3)] The prepaid dental plan corporation is no longer financially responsible and may  
10 reasonably be expected to be unable to meet its contractual obligations to enrollees, or  
11 prospective enrollees;

12           [(4)] (3) The prepaid dental plan corporation, or any person on its behalf, has advertised  
13 or merchandised its prepaid dental benefits in an untrue, misrepresentative, misleading,  
14 deceptive, or unfair manner; **or**

15           [(5)] (4) The continued operation of the prepaid dental plan corporation would be  
16 hazardous to its enrollees[; or

17           (6) The prepaid dental plan corporation has failed to substantially comply with the  
18 provisions of sections 354.700 to 354.723 or any rules or regulations promulgated thereunder].

19           2. [When the director believes that grounds for the suspension or revocation of the  
20 corporation's certificate of authority exists, he shall notify the corporation in writing, stating the  
21 grounds and fixing a date and time for a hearing. At least twenty days' notice of such hearing  
22 shall be given. The hearing and any appeals therefrom shall be in accordance with chapter 536,  
23 RSMo.

24           3. The director may, in lieu of the suspension or revocation of the corporation's  
25 certification of authority, file suit in circuit court to seek a civil penalty in an amount not less  
26 than one hundred dollars nor more than one thousand dollars.

27           4.] **If the director determines that a person has engaged or is engaging in a violation**  
28 **of sections 354.700 to 354.723 or a rule adopted or order issued pursuant thereto or that**  
29 **a person has materially aided or is materially aiding an act, practice, omission, or course**  
30 **of business constituting a violation of sections 354.700 to 354.723 or a rule adopted or order**  
31 **issued pursuant thereto, the director may issue such administrative orders as authorized**  
32 **under section 374.046, RSMo. A violation of this section is a level two violation under**  
33 **section 374.049, RSMo. The director of insurance may also suspend or revoke the**  
34 **certificate of authority of a corporation for any such willful violation.**

35           3. When the certificate of authority of a prepaid dental plan corporation is suspended,  
36 the prepaid dental plan corporation shall not, during the period of such suspension, enroll any  
37 additional enrollees except newborn children or other newly acquired dependent of existing  
38 enrollees and shall not engage in any advertising or solicitation whatsoever.

39           [5.] 4. When the certificate of authority of a prepaid dental plan corporation is revoked,  
40 such corporation shall proceed, immediately following the effective date of the order of  
41 revocation, to wind up its affairs and shall conduct no further business except as may be essential  
42 to the orderly conclusion of the affairs of such corporation. It shall engage in no further  
43 advertising or solicitation whatsoever.

          374.046. 1. [(1) The director may issue cease and desist orders whenever it appears to  
2 him upon competent and substantial evidence that any person is acting in violation of any law  
3 of this state or any rule or regulation promulgated by the director relating to the business of  
4 insurance. Before any cease and desist order shall be issued, a copy of the proposed order  
5 together with an order to show cause why such cease and desist order should not be issued shall  
6 be served either personally or by certified mail on any person named therein.

7           (2) (a) Upon issuing any order to show cause the director shall notify the person named  
8 therein that the person is entitled to a public hearing before the director if a request for a hearing  
9 is made in writing to the director within fifteen days from the day of the service of the order to  
10 show cause why the cease and desist order should not be issued.

11           (b) The cease and desist order shall be issued fifteen days after the service of the order  
12 to show cause if no request for a public hearing is made as above provided.

13           (c) Upon receipt of a request for a hearing the director shall set a time and place for the  
14 hearing which shall not be less than ten days or more than fifteen days from the receipt of the  
15 request or as otherwise agreed upon by the parties. Notice of the time and place shall be given  
16 by the director not less than five days before the hearing.

17 (d) At the hearing the person may be represented by counsel and shall be entitled to be  
18 advised of the nature and source of any adverse evidence procured by the director and shall be  
19 given the opportunity to submit any relevant written or oral evidence in his behalf to show cause  
20 why the cease and desist order should not be issued.

21 (e) At the hearing the director shall have such powers as are conferred upon him in  
22 section 374.190.

23 (f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue  
24 the cease and desist order as proposed or as subsequently modified or notify the person that no  
25 order shall be issued.

26 (g) The circuit court of Cole County shall have jurisdiction to review any cease and  
27 desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if  
28 any person against whom an order is issued fails to request judicial review, or if, after judicial  
29 review, the director's cease and desist order is upheld, the order shall become final.

30 **2.] If the director determines based upon substantial and competent evidence that**  
31 **a person has engaged or is engaging in an act, practice, omission, or course of business**  
32 **constituting a violation of the laws of this state relating to insurance in this chapter,**  
33 **chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued**  
34 **pursuant thereto or that a person has materially aided or is materially aiding an act,**  
35 **practice, omission, or course of business constituting a violation of the laws of this state**  
36 **relating to insurance in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo,**  
37 **or a rule adopted or order issued pursuant thereto, the director may order the following**  
38 **relief:**

39 (1) **An order directing the person to cease and desist from engaging in the act,**  
40 **practice, omission, or course of business;**

41 (2) **A curative order or order directing the person to take other action necessary**  
42 **or appropriate to comply with the insurance laws of this state;**

43 (3) **Order a civil penalty or forfeiture as provided in section 374.049; and**

44 (4) **Award reasonable costs of the investigation.**

45 **2. In determining any relief sought, the director shall consider, among other**  
46 **factors, whether:**

47 (1) **The violations are likely to continue or reoccur;**

48 (2) **Actual financial loss was sustained by consumers and restitution has been made;**

49 (3) **The act, practice, omission, or course of business was detected as part of a self-**  
50 **audit or internal compliance program and immediately reported to the director; and**

51 (4) **The act, practice, omission, or course of business had previously been detected,**  
52 **but inadequate policies and procedures were implemented to prevent reoccurrence.**

53           **3. Unless the director determines that a summary order is appropriate under**  
54 **subsection 4 of this section, the director shall provide notice of the intent to initiate**  
55 **administrative enforcement by serving a statement of the reasons for the action upon any**  
56 **person subject to the proceedings. A statement of reasons, together with an order to show**  
57 **cause why a cease-and-desist order and other relief should not be issued, shall be served**  
58 **either personally or by certified mail on any person named therein. The director shall**  
59 **schedule a time and place at least ten days thereafter, for hearing, and after notice of and**  
60 **opportunity for hearing to each person subject to the order, the director may issue a final**  
61 **order under subsection 6 of this section.**

62           **4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are**  
63 **being violated and consumers are being aggrieved by the violations, the order issued under**  
64 **subdivision (1) of subsection 1 of this section may be summary and be effective on the date**  
65 **of issuance. Upon issuance of the order, the director shall promptly serve each person**  
66 **subject to the order with a copy of the order and a notice that the order has been entered.**

67           **5. A summary order issued under subsection 4 of this section must include a**  
68 **statement of the reasons for the order, notice within five days after receipt of a request in**  
69 **a record from the person that the matter will be scheduled for a hearing, and a statement**  
70 **whether the department is seeking a civil penalty or costs of the investigation. If a person**  
71 **subject to the order does not request a hearing and none is ordered by the director within**  
72 **thirty days after the date of service of the order, the order becomes final as to that person**  
73 **by operation of law. If a hearing is requested or ordered, the director, after notice of and**  
74 **opportunity for hearing to each person subject to the order, may modify or vacate the**  
75 **order or extend it until final determination.**

76           **6. If a hearing is requested or ordered pursuant to subsection 3 or subsection 5 of**  
77 **this section, a hearing before the director or a hearing officer designated by the director**  
78 **must be provided. A final order may not be issued unless the director makes findings of**  
79 **fact and conclusions of law in a record in accordance with the provisions of chapter 536,**  
80 **RSMo, and procedural rules promulgated by the director. The final order may make final,**  
81 **vacate, or modify the order issued under subsection 5 of this section.**

82           **7. In a final order under subsection 6 of this section, the director may impose a civil**  
83 **penalty or forfeiture as provided in section 374.049. No civil penalty or forfeiture may be**  
84 **imposed against a person unless the person has engaged in the act, practice, omission, or**  
85 **course of business constituting the violation.**

86           **8. In a final order under subsection 6 of this section, the director may charge the**  
87 **actual cost of an investigation or proceeding for a violation of the insurance laws of this**

88 state or a rule adopted or order issued pursuant thereto. These funds shall be paid to the  
89 director to the credit of the insurance dedicated fund.

90 9. The director is authorized to issue subpoenas, compel attendance of witnesses,  
91 administer oaths, hear testimony of witnesses, receive evidence, and require the production  
92 of books, papers, records, correspondence, and all other written instruments or documents  
93 relevant to the proceeding and authorized in contested cases under the provisions of  
94 chapter 536, RSMo, and procedural rules promulgated by the director.

95 10. Statements of charges, notices, orders, and other processes of the director may  
96 be served by anyone duly authorized by the director either in the manner provided by law  
97 for service of process in civil actions, or by registering or certifying and mailing a copy  
98 thereof to the person affected by such statement, notice, order, or other process at his or  
99 its residence or principal office or place of business. The verified return by the person so  
100 serving such statement, notice, order, or other process setting forth the manner of such  
101 service shall be proof of the same, and the return postcard receipt for such statement,  
102 notice, order, or other process, registered and mailed as aforesaid, shall be proof of the  
103 service of the same.

104 11. If a petition for judicial review of a final order is not filed in accordance with  
105 section 374.055, the director may file a certified copy of the final order with the clerk of a  
106 court of competent jurisdiction. The order so filed has the same effect as a judgment of the  
107 court and may be recorded, enforced, or satisfied in the same manner as a judgment of the  
108 court.

109 12. If a person violates or does not comply with an order under this section, the  
110 director may under section 374.048 petition a court of competent jurisdiction to enforce the  
111 order. The court may not require the director to post a bond in an action or proceeding  
112 under this section. If the court finds, after service and opportunity for hearing, that the  
113 person was not in compliance with the order, the court may, in addition to relief authorized  
114 in section 374.048, adjudge the person in civil contempt of the order. A violation of or  
115 failure to comply with an order under this section is a level three violation under section  
116 374.049. The court may impose a further civil penalty against the person for contempt in  
117 an amount not less than two thousand five hundred dollars but not greater than one  
118 hundred thousand dollars for each violation and may grant any other relief the court  
119 determines is just and proper in the circumstances.

120 13. Until the expiration of the time allowed under section 374.055 for filing a  
121 petition for judicial review, if no such petition has been duly filed within such time or if a  
122 petition for review has been filed within such time, then until the transcript of the record  
123 in the proceeding has been filed in the circuit court of Cole County, the director may at any

time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

**14. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.**

**15. The director is authorized to issue administrative consent orders in the public interest as complete or partial settlement of any investigation, examination, or other proceeding, which curative orders may contain any provision necessary or appropriate to assure compliance with the insurance laws of this state, require payment of restitution to be distributed directly or by the director to any aggrieved consumers, civil penalties, or voluntary forfeiture, reimbursement for costs of investigation or examination, or any other relief deemed by the director to be necessary and appropriate. Any remaining matters not addressed in settlement may be submitted to the director through a contested proceeding under this section.**

**16. (1) Any person willfully violating any provision of any cease and desist order of the director after it becomes final, while the same is in force, upon conviction thereof shall be punished by a fine of not more than [one] fifty thousand dollars [or one year in jail] , by imprisonment of up to five years, or by both such fine and [jail sentence] imprisonment.**

**(2) In addition to any other penalty provided, violation of any cease and desist order shall subject the violator to suspension or revocation of any certificate of authority or license as may be applicable under the laws of this state relating to the business of insurance.**

**[3. (1) When it appears to the director that there is a violation of the laws of this state or any rule or regulation promulgated by the director relating to the business of insurance, and that the continuance of the acts or actions of any person as herein defined would produce injury to the insuring public or to any other person in this state, or when it appears that a person is doing or threatening to do some act in violation of the laws of this state relating to insurance, the director may file a petition for injunction in the circuit court of Cole County, Missouri, in which he may ask for a temporary injunction or restraining order as well as a permanent injunction to restrain the act or threatened act. In the event the temporary injunction or restraining order or a permanent injunction is issued by the circuit court of Cole County, Missouri, no person against whom the temporary injunction or restraining order or permanent injunction is granted shall do or continue to do any of the acts or actions complained of in the petition for injunction, unless and until the temporary injunction or restraining order or permanent injunction is vacated, dismissed or otherwise terminated.**

**(2) Any writ of injunction issued under this law may be served and enforced as provided by law in injunctions issued in other cases, but the director of the insurance department shall not be required to give any bond as preliminary to or in the course of any proceedings to which he**

160 is a party as director under this section, either for costs or for any injunction, or in case of appeal  
161 to either the supreme court or to any appellate court.

162 4.] **17.** The term "person" as used in this [section] **chapter** shall include any individual,  
163 partnership, corporation, association or trust, or any other legal entity.

164 **18.** The term "order" as used in this chapter shall include a formal administrative  
165 direction or command of the director issued under this section or in any contested case  
166 subject to the provisions of section 536.063, RSMo, or any lawful administrative  
167 proceeding subject to judicial review, but shall not include department bulletins, no-action  
168 letters, advisory opinions, or any other statement of general applicability that should be  
169 adopted by rule.

374.047. 1. If the director determines, based on substantial and competent  
2 evidence, that a corporation or insurer with a certificate of authority under the laws  
3 relating to insurance willfully has engaged in an act, practice, omission, or course of  
4 business constituting a level three, four, or five violation of the laws of this state relating  
5 to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or been convicted  
6 of any felony or misdemeanor under any state or federal law, the director may, after  
7 hearing, issue an order suspending or revoking the certificate of authority.

8 2. Prior to issuance of the order under this section, the director shall give at least  
9 thirty days' notice with a statement of reasons for the action and afford such corporation  
10 or insurer the opportunity for a hearing upon written request. If such corporation or  
11 insurer requests a hearing in writing, a final order of suspension or revocation may not be  
12 issued unless the director makes findings of fact and conclusions of law in a record in  
13 accordance with the contested case provisions of chapter 536, RSMo, and procedural rules  
14 promulgated by the director.

15 3. The enforcement authority of the director under this section is cumulative to any  
16 other statutory authority of the director.

374.048. 1. If the director believes that a person has engaged or is engaging in an  
2 act, practice, omission, or course of business constituting a violation of the laws of this state  
3 relating to insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule  
4 adopted or order issued pursuant thereto or that a person has engaged or is engaging in  
5 an act, practice, omission, or course of business that materially aids a violation of the laws  
6 of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385,  
7 RSMo, or a rule adopted or order issued pursuant thereto, the director may maintain an  
8 action in the circuit court of any county of the state or any city not within a county to  
9 enjoin the act, practice, omission, or course of business and to enforce compliance with the  
10 laws of this state relating to insurance or a rule adopted or order issued by the director.



11           **2. In an action under this section and on a proper showing, the court may:**

12           **(1) Issue a permanent or temporary injunction, restraining order, or declaratory**  
13 **judgment;**

14           **(2) Order other appropriate or ancillary relief, which may include:**

15           **(a) An asset freeze, accounting, writ of attachment, writ of general or specific**  
16 **execution, and appointment of a receiver or conservator, which may be the director, for**  
17 **the defendant or the defendant's assets;**

18           **(b) Ordering the director to take charge and control of a defendant's property,**  
19 **including accounts in a depository institution, rents, and profits; to collect debts; and to**  
20 **acquire and dispose of property;**

21           **(c) Imposing a civil penalty or forfeiture as provided in section 374.049;**

22           **(d) Upon showing financial loss, injury, or harm to identifiable consumers,**  
23 **imposing an order of restitution or disgorgement directed to a person who has engaged in**  
24 **an act, practice, omission, or course of business in violation of the laws or rules relating to**  
25 **insurance;**

26           **(e) Ordering the payment of prejudgment and post-judgment interest;**

27           **(f) Ordering reasonable costs of investigation and prosecution; and**

28           **(g) Ordering the payment to the insurance dedicated fund an additional amount**  
29 **equal to ten percent of the total restitution or disgorgement ordered, or such other amount**  
30 **as awarded by the court, which shall be appropriated to an insurance consumer education**  
31 **program administered by the director; or**

32           **(3) Order such other relief as the court considers necessary or appropriate.**

33           **3. The director may not be required to post a bond in an action or proceeding**  
34 **under this section.**

35           **4. The case may be brought in the circuit court of Cole County, any county or city**  
36 **not within a county in which a violation has occurred, or any county or city not within a**  
37 **county, which has venue of an action against the person, partnership, or corporation under**  
38 **other provisions of law.**

39           **5. The enforcement authority of the director under this section is cumulative to any**  
40 **other authority of the director to impose orders under other provisions of the insurance**  
41 **laws of this state.**

42           **6. If the director determines it to be in the public interest, the director is authorized**  
43 **to enter into a consent injunction and judgment in the settlement of any proceeding under**  
44 **the laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to**  
45 **385, RSMo.**

46       **7. A "Consumer Restitution Fund" shall be created for the purpose of preserving**  
47 **and distributing to aggrieved consumers disgorgement or restitution funds obtained**  
48 **through enforcement proceedings brought by the director. In addition to the equitable**  
49 **powers of the court authorized above, the court may order that such funds be paid into the**  
50 **consumer restitution fund for distribution to aggrieved consumers. It shall be the duty of**  
51 **the director to distribute such funds to those persons injured by the unlawful acts,**  
52 **practices, omissions, or courses of business by the subject of the proceeding.**  
53 **Notwithstanding the provisions of section 33.080, RSMo, any funds remaining in the**  
54 **director's consumer restitution fund at the end of any biennium shall not be transferred**  
55 **to the general revenue fund, but if the director is unable with reasonable efforts to**  
56 **ascertain the aggrieved consumers, then the funds may be transferred to the insurance**  
57 **dedicated fund to be used for consumer education.**

**374.049. 1. Violations of the laws of this state relating to insurance in this chapter,**  
2 **chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the**  
3 **director, are classified for the purpose of civil penalties and forfeitures into the following**  
4 **five classifications:**

- 5       **(1) Level one violations;**
- 6       **(2) Level two violations;**
- 7       **(3) Level three violations;**
- 8       **(4) Level four violations; and**
- 9       **(5) Level five violations.**

10       **2. An order to impose a civil penalty or forfeiture, when imposed by the director**  
11 **in an administrative proceeding under section 374.046 on a person for any violation of the**  
12 **laws of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385,**  
13 **RSMo, or a rule adopted or order issued by the director, shall be an order to pay an**  
14 **amount not exceeding the following:**

- 15       **(1) No civil penalty or forfeiture for a level one violation;**
- 16       **(2) Five hundred dollars per each level two violation, up to an aggregate civil**  
17 **penalty or forfeiture of twenty-five thousand dollars per annum for multiple violations;**
- 18       **(3) Two thousand five hundred dollars per each level three violation, up to an**  
19 **aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple**  
20 **violations;**
- 21       **(4) Five thousand dollars per each level four violation, up to an aggregate civil**  
22 **penalty or forfeiture of one hundred twenty-five thousand dollars per annum for multiple**  
23 **violations;**

24           (5) Twenty-five thousand dollars per each level five violation, up to an aggregate  
25 civil penalty or forfeiture of one hundred twenty-five thousand dollars per annum for  
26 multiple violations.

27           3. An order to impose a civil penalty or forfeiture, when imposed by the court in  
28 an enforcement proceeding under section 374.048 on a person for any violation of the laws  
29 of this state relating to insurance in this chapter, chapter 354 and chapters 375 to 385,  
30 RSMo, or a rule adopted or order issued by the director, shall be an order to pay an  
31 amount not exceeding the following:

32           (1) No civil penalty or forfeiture for a level one violation;

33           (2) Five hundred dollars per each level two violation, up to an aggregate civil  
34 penalty or forfeiture of twenty-five thousand dollars per annum for multiple violations;

35           (3) Two thousand five hundred dollars per each level three violation, up to an  
36 aggregate civil penalty or forfeiture of one hundred thousand dollars per annum for  
37 multiple violations;

38           (4) Ten thousand dollars per each level four violation, up to an aggregate civil  
39 penalty or forfeiture of five hundred thousand dollars per annum for multiple violations;

40           (5) Five hundred thousand dollars per each level five violation, with no limit to civil  
41 penalties or forfeitures for multiple violations;

42           4. No civil penalty or forfeiture may be imposed against a person, unless the person  
43 has engaged in the act, practice, omission or course of business constituting the violation.

44           5. Any violation of the laws of this state relating to insurance in this chapter,  
45 chapter 354 and chapters 375 to 385, RSMo, which is not classified or does not authorize  
46 a specific range for a civil penalty or forfeiture for violations, shall be classified as a level  
47 one violation. In bringing an action to enforce a rule adopted by the director, unless the  
48 conduct that violates the rule also violates the enabling statute, the violation shall be  
49 classified as a level one violation and shall not be subject to any provision in this section  
50 regarding the enhancement of a civil penalty or forfeiture.

51           6. The civil penalties or forfeitures set forth in this section establish a maximum  
52 range. The court, or the director in administrative enforcement, shall consider all of the  
53 circumstances, including the nature of violations to determine whether, and to any extent,  
54 a civil penalty or forfeiture is justified.

55           7. In any enforcement proceeding, the court, or director in administrative  
56 enforcement, may enhance the civil penalty or forfeiture with a one classification step  
57 increase under this section, if the violation was knowing. The court, or director in  
58 administrative enforcement, may enhance the civil penalty or forfeiture with a two level  
59 increase if the violation was knowingly committed in conscious disregard of the law.

60           **8. In any enforcement proceeding, the court, or director in administrative**  
61 **enforcement, may, after consideration of the factors specified in subsection 2 of section**  
62 **374.046, enhance the civil penalty or forfeiture with a one classification step increase under**  
63 **this section, if the violations resulted in actual financial loss to consumers.**

64           **9. In any enforcement proceeding, the court, or director in administrative**  
65 **enforcement, shall reduce the civil penalty or forfeiture on that person with up to a two**  
66 **classification step reduction under this section, if prior to receiving notice of the violation**  
67 **from the department, the person detects the violation through a self-audit or internal**  
68 **compliance program reasonably designed to detect and prevent insurance law violations**  
69 **and immediately reports the violation to the director.**

70           **10. If more than one error is caused by a single act or omission in the use of data**  
71 **processing equipment and such errors are not known by the violator at the time the error**  
72 **occurs, any such errors shall be regarded as a single violation under this section.**

73           **11. Any civil penalty or forfeiture recovered by the director shall be paid to the**  
74 **treasurer and then distributed to the public schools as required by article IX, section 7 of**  
75 **the Missouri Constitution.**

76           **12. The penalties and forfeitures authorized by this section govern all actions and**  
77 **proceedings that are instituted on the basis of conduct occurring after August 28, 2006.**

**374.051. 1. Any applicant refused a license or the renewal of a license by order of**  
2 **the director under sections 374.755, 374.787, and 375.141 may file a petition with the**  
3 **administrative hearing commission alleging that the director has refused the license. The**  
4 **administrative hearing commission shall conduct hearings and make findings of fact and**  
5 **conclusions of law in determining whether the applicant may be disqualified by statute.**  
6 **Notwithstanding section 621.120, RSMo, the director shall retain discretion in refusing a**  
7 **license or renewal and such discretion shall not transfer to the administrative hearing**  
8 **commission.**

9           **2. If a proceeding is instituted to revoke or suspend a license of any person under**  
10 **sections 374.755, 374.787, and 375.141, the director shall refer the matter to the**  
11 **administrative hearing commission by directing the filing of a complaint. The**  
12 **administrative hearing commission shall conduct hearings and make findings of fact and**  
13 **conclusions of law in such cases. The director shall have the burden of proving cause for**  
14 **discipline. If cause is found, the administrative hearing commission shall submit its**  
15 **findings of fact and conclusions of law to the director, who may determine appropriate**  
16 **discipline.**

17           **3. Hearing procedures before the director or the administrative hearing**  
18 **commission and judicial review of the decisions and orders of the director and of the**

19 **administrative hearing commission, and all other procedural matters under this chapter,**  
20 **shall be governed by the provisions of chapter 536, RSMo. Hearings before the**  
21 **administrative hearing commission shall also be governed by the provisions of chapter 621,**  
22 **RSMo.**

**374.055. 1. Except as otherwise provided, any interested person aggrieved by any**  
2 **order of the director under the laws of this state relating to insurance in this chapter,**  
3 **chapter 354 and chapters 375 to 385, RSMo, or a rule adopted by the director, or by any**  
4 **refusal or failure of the director to make an order pursuant to any of said provisions, shall**  
5 **be entitled to a hearing before the director in accordance with the provisions of chapter**  
6 **536, RSMo. A final order issued by the director is subject to judicial review in accordance**  
7 **with the provisions of chapter 536, RSMo. However, any findings of fact or conclusions**  
8 **of law in any order regarding the actual costs of the investigation or proceedings under**  
9 **section 374.046, or the classification of any violation under section 374.049, shall be subject**  
10 **to de novo review.**

11 **2. A rule adopted by the director is subject to judicial review in accordance with**  
12 **the provisions of chapter 536, RSMo.**

374.150. 1. All fees due the state under the provisions of the insurance laws of this state  
2 shall be paid to the director of revenue and deposited in the state treasury to the credit of the  
3 insurance department fund unless otherwise provided for in subsection 2 of this section.

4 2. There is hereby established in the state treasury a special fund to be known as the  
5 "Department of Insurance Dedicated Fund". The fund shall be subject to appropriation of the  
6 general assembly and shall be devoted solely to the payment of expenditures incurred by the  
7 department of insurance attributable to duties performed by the department **for the regulation**  
8 **of the business of insurance and the operation of the division of consumer affairs** as  
9 required by law which are not paid for by another source of funds. Other provisions of law to  
10 the contrary notwithstanding, beginning on January 1, 1991, all fees charged under any provision  
11 of chapter 325, 354, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 or 385, RSMo, due  
12 the state shall be paid into this fund. The state treasurer shall invest moneys in this fund in the  
13 same manner as other state funds and any interest or earnings on such moneys shall be credited  
14 to the department of insurance dedicated fund. The provisions of section 33.080, RSMo,  
15 notwithstanding, moneys in the fund shall not lapse, be transferred to or placed to the credit of  
16 the general revenue fund unless and then only to the extent to which the unencumbered balance  
17 at the close of the biennium year exceeds two times the total amount appropriated, paid, or  
18 transferred to the fund during such fiscal year.

19 [3. Notwithstanding the provisions of this section to the contrary, fifty-five percent of  
20 the balance in the department of insurance dedicated fund as of the effective date of this act or

21 six million fifteen thousand eight hundred and fifty-five dollars, whichever is greater, shall be  
22 subject to an immediate one-time transfer to the state general revenue fund.]

374.160. 1. The expenses of examinations, valuations or proceedings against any  
2 company, and for dissolving or settling the affairs of companies are to be paid by the company,  
3 or as provided by law. The state shall not be responsible in any manner for the payment of any  
4 such expenses, or any charges connected therewith.

5 2. All other expenses of the department of insurance now or hereafter incurred and  
6 unpaid, or that may be hereafter incurred, including the salaries of the director and deputy  
7 director, shall be paid out of the state treasury in the manner provided by law.

8 3. The director shall assess the expenses of any examination against the company  
9 examined and shall order that the examination expenses be paid into the insurance examiners  
10 fund created by section 374.162. [The director shall also assess an additional amount equal to  
11 fifteen percent of the total expenses of examination, to be paid for the supervision and support  
12 of the examiners. The insurance examiner's sick leave fund created by sections 374.261 to  
13 374.267 shall be combined with the insurance examiners fund.] **Such assessment shall include**  
14 **the costs of compensation, including benefits, for the examiners, analysts, actuaries, and**  
15 **attorneys directly contributing to the examination of the company, any reasonable travel,**  
16 **lodging, and meal expenses related to an on-site examination, subject to limits established**  
17 **for the relevant state agency of the employee incurring such expenses, and other expenses**  
18 **related to the examination of the company, including an allocation for examiners' office**  
19 **space, supplies, and equipment, but not expenses associated with attending a course,**  
20 **seminar, or conference unless solely related to the examination of the company assessed.**  
21 **Any such assessment, if requested by the company being examined, shall include an**  
22 **itemized report prepared by the director or the director's designee that indicates all**  
23 **expenses listed in this subsection.** The director shall pay from the insurance examiners fund  
24 the compensation of insurance examiners [pursuant to section 374.115, any expenses to be paid  
25 from such sick leave fund under sections 374.261 to 374.267, and expenses incurred for  
26 supervision and support of the examiners] , **analysts, actuaries, and attorneys, including**  
27 **standard benefits afforded to state employees, for performance of any such examination**  
28 **and other expenses covered in the assessment.** The general assembly shall annually provide  
29 appropriations sufficient to distribute all receipts into the insurance examiners fund. The  
30 provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the  
31 general revenue fund shall not apply to the insurance examiners fund.

32 4. If any company shall refuse to pay the expenses of any examination, valuation or  
33 proceeding assessed by the director pursuant to this section, the company shall be liable for  
34 double the amount of such expenses and all costs of collection, including attorney's fees. The

35 company shall not be entitled to a credit, pursuant to section 148.400, RSMo, for any fees,  
36 expenses or costs ordered pursuant to this subsection other than in the amount of the expenses  
37 originally assessed by the director. All amounts collected pursuant to this subsection shall be  
38 credited to the insurance examiners fund.

**374.185. 1. The director may cooperate, coordinate, and consult with other**  
2 **members of the National Association of Insurance Commissioners, the commissioner of**  
3 **securities, state securities regulators, the division of finance, the attorney general, federal**  
4 **banking and securities regulators, the National Association of Securities Dealers (NASD),**  
5 **the United States Department of Justice, the Commodity Futures Trading Commission,**  
6 **and the Federal Trade Commission to effectuate greater uniformity in insurance and**  
7 **financial services regulation among state and federal governments, and self-regulatory**  
8 **organizations. The director may share records with any aforesaid entity, except that any**  
9 **record that is confidential, privileged, or otherwise protected from disclosure by law shall**  
10 **not be disclosed unless such entity agrees in writing prior to receiving such record to**  
11 **provide it the same protection. No waiver of any applicable privilege or claim of**  
12 **confidentiality regarding any record shall occur as the result of any disclosure.**

13 **2. In cooperating, coordinating, consulting, and sharing records and information**  
14 **under this section and in acting by rule, order, or waiver under the laws relating to the**  
15 **business of insurance, the director shall, at the discretion of the director, take into**  
16 **consideration in carrying out the public interest the following general policies:**

17 **(1) Maximizing effectiveness of regulation for the protection of insurance**  
18 **consumers;**

19 **(2) Maximizing uniformity in regulatory standards; and**

20 **(3) Minimizing burdens on the business of insurance, without adversely affecting**  
21 **essentials of consumer protection.**

22 **3. The cooperation, coordination, consultation, and sharing of records and**  
23 **information authorized by this section includes:**

24 **(1) Establishing or employing one or more designees as a central electronic**  
25 **depository for licensing and rate and form filings with the director and for records**  
26 **required or allowed to be maintained;**

27 **(2) Encouraging insurance companies and producers to implement electronic filing**  
28 **through a central electronic depository;**

29 **(3) Developing and maintaining uniform forms;**

30 **(4) Conducting joint market conduct examinations and other investigations**  
31 **through collaboration and cooperation with other insurance regulators;**

32 **(5) Holding joint administrative hearings;**

- 33           (6) Instituting and prosecuting joint civil or administrative enforcement  
34 proceedings;  
35           (7) Sharing and exchanging personnel;  
36           (8) Coordinating licensing under section 375.014;  
37           (9) Formulating rules, statements of policy, guidelines, forms, no action  
38 determinations, and bulletins; and  
39           (10) Formulating common systems and procedures.

374.210. 1. **It is unlawful for** any person [testifying falsely in reference to any matter  
2 material to the investigation, examination or inquiry shall be deemed guilty of perjury.] **in any**  
3 **investigation, examination, inquiry, or other proceeding under this chapter, chapter 354,**  
4 **RSMo, and chapters 375 to 385, RSMo, to:**

5           [2. Any person who shall refuse to give such director full and truthful information, and  
6 answer in writing to any inquiry or question made in writing by the director, in regard to the  
7 business of insurance carried on by such person, or to appear and testify under oath before the  
8 director in regard to the same, shall be deemed guilty of a misdemeanor, and, upon conviction  
9 thereof, shall be punished by a fine not exceeding five hundred dollars, or imprisonment not  
10 exceeding three months.

11           3. Any director, officer, manager, agent or employee of any insurance company, or any  
12 other person, who shall]

13           **(1) Knowingly make or cause to be made a false statement in testimony upon oath**  
14 **or affirmation or in any record that is submitted to the director or used in any proceeding**  
15 **under this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo; or**

16           **(2) Make any false certificate or entry or memorandum upon any of the books or papers**  
17 **of any insurance company, or upon any statement or exhibit offered, filed or offered to be filed**  
18 **in the department of insurance [department], or used in the course of any examination, inquiry,**  
19 **or investigation[, with intent to deceive the director or any person employed or appointed by him**  
20 **to make any examination, inquiry or investigation, shall, upon conviction, be punished by a fine**  
21 **not exceeding one thousand dollars, and by imprisonment not less than two months in the county**  
22 **or city jail, nor more than five years in the penitentiary] under this chapter, chapter 354,**  
23 **RSMo, and chapters 375 to 385, RSMo.**

24           **2. It is unlawful for any person to not appear or refuse to testify, file a statement,**  
25 **produce records, or otherwise not comply with a subpoena issued by the director.**

26           **3. It is unlawful for any person to fail to appear or refuse to testify, file a statement,**  
27 **produce records, or otherwise not comply with a written request as required by the**  
28 **director, or in response to any specific inquiry or question made in writing by the director**



29 in regard to the business of insurance carried on by such person, to refuse to provide the  
30 requested information in a written answer.

31 **4. If the director determines that a person has engaged or is engaging in a violation**  
32 **of this section, or a rule adopted or order issued pursuant thereto, or that a person has**  
33 **materially aided or is materially aiding an act, practice, omission, or course of business**  
34 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
35 **the director may issue such administrative orders as authorized under section 374.046. A**  
36 **violation of subsection 1 of this section is a level four violation under section 374.049. A**  
37 **violation of subsection 2 of this section is a level three violation under section 374.049. A**  
38 **violation of subsection 3 of this section is a level two violation under section 374.049. The**  
39 **director of insurance may also suspend or revoke the license or certificate of authority of**  
40 **such person for any willful violation.**

41 **5. If the director believes that a person has engaged or is engaging in a violation of**  
42 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
43 **materially aided or is materially aiding an act, practice, omission, or course of business**  
44 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
45 **the director may maintain a civil action for relief authorized under section 374.048. A**  
46 **violation of subsection 1 of this section is a level four violation under section 374.049. A**  
47 **violation of subsection 2 of this section is a level three violation under section 374.049. A**  
48 **violation of subsection 3 of this section is a level two violation under section 374.049.**

49 **6. Any person who knowingly engages in any act, practice, omission, or course of**  
50 **business in violation of subsection 1 of this section is guilty of a class D felony. Any person**  
51 **who knowingly engages in any act, practice, omission, or course of business in violation of**  
52 **subsection 2 of this section is guilty of a class B misdemeanor. If the offender holds a**  
53 **license or certificate of authority under the insurance laws of this state, the court imposing**  
54 **sentence shall order the department of insurance to revoke such license or certificate of**  
55 **authority.**

56 **7. The director may refer such evidence as is available concerning violations of this**  
57 **section to the proper prosecuting attorney, who with or without a criminal reference, or**  
58 **the attorney general under section 27.030, RSMo, may institute the appropriate criminal**  
59 **proceedings.**

60 **8. Nothing in this section shall limit the power of the state to punish any person for**  
61 **any conduct that constitutes a crime under any other state statute.**

374.215. 1. If any insurance company **or other entity regulated by the director** doing  
2 business in this state fails to timely make and file any statutorily required report or statement, the  
3 department of insurance shall notify such company **or entity** of such failure by first class mail.

4 Any **insurance** company **or entity** notified by the department of insurance pursuant to this  
5 section shall [have] **file such report or statement within** fifteen days [to make and file such  
6 report. If such company fails to make and file such report within the fifteen days, it shall forfeit  
7 one hundred dollars for each day after the fifteen-day grace period expires] **of receiving**  
8 **notification. After the expiration of such fifteen days, each day in which the insurance**  
9 **company or entity fails to file such report or statement is a separate violation of this**  
10 **section.**

11 2. [Any insurance company doing business in this state which knowingly or intentionally  
12 files or which has filed on its behalf any materially false report or statement forfeits not more  
13 than one thousand dollars] **If the director determines that a person has engaged in a violation**  
14 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
15 **materially aided an act, practice, omission, or course of business constituting a violation**  
16 **of this section or a rule adopted or order issued pursuant thereto, the director may issue**  
17 **such administrative orders as authorized under section 374.046. A violation of this section**  
18 **is a level two violation under section 374.049. The director of insurance may also suspend**  
19 **or revoke the certificate of authority of such person for any willful violation.**

20 3. [Any forfeiture required or permitted by this section shall be considered a civil penalty  
21 which the director of the department of insurance may order pursuant to the provisions of  
22 sections 374.040 and 374.280] **If the director believes that a person has engaged in a**  
23 **violation of this section or a rule adopted or order issued pursuant thereto, or that a person**  
24 **has materially aided an act, practice, omission, or course of business constituting a**  
25 **violation of this section or a rule adopted or order issued pursuant thereto, the director**  
26 **may maintain a civil action for relief authorized under section 374.048. A violation of this**  
27 **section is a level two violation under section 374.049.**

374.230. Every insurance company doing business in this state shall pay to the director  
2 of revenue the following fees:

3 (1) [For making valuations of policies or other obligations of assurance, one thousand  
4 dollars for all ordinary forms of policies, and the cost of computing special evaluation tables for  
5 policy forms requiring such shall be added;

6 (2)] For filing the declaration required on organization of each company, **two hundred**  
7 **fifty dollars;**

8 [(3)] **(2)** For filing statement and certified copy of charter required of foreign companies,  
9 **two hundred** fifty dollars;

10 [(4) For filing annual statement of any company doing business in this state, two hundred  
11 fifty dollars;

12           (5)] (3) For filing application to renew certificate of authority and all required  
13 annual reports, including the annual statement, actuarial statement, risk-based capital  
14 report, report of valuation of policies or other obligations of assurance, and audited  
15 financial report of any company doing business in this state, one thousand five hundred  
16 dollars;

17           (4) For filing supplementary annual statement of any company doing business in this  
18 state, [ten] **fifty** dollars;

19           [(6)] (5) For filing any [other] paper, **document, or report not filed under subdivisions**  
20 **(1) to (3) of this section, but** required to be filed in the office of the director of the department  
21 of insurance, fifty dollars each;

22           [(7)] (6) For [each agent's copy of his] **a copy of a** company's certificate of authority or  
23 **producer or agent** license, [two] **ten** dollars;

24           [(8) For copies of papers, records, and documents filed in the office of the director of the  
25 department of insurance, twenty cents per folio;

26           (9)] (7) For affixing the seal of office of the director of the department of insurance, ten  
27 dollars;

28           [(10)] (8) For accepting each service of process upon the company, ten dollars.

          374.280. 1. [Notwithstanding any other provisions of chapters 374, 375, 376, 377, 378  
2 and 379, RSMo,] The director may, after a hearing **under subsection 374.046**, order a **civil**  
3 **penalty or** forfeiture to the state of Missouri a sum [not to exceed one hundred dollars for each  
4 violation by any person, partnership or corporation knowingly violating any provision of chapters  
5 374, 375, 376, 377, 378 and 379, RSMo, or order of the director of insurance made in accordance  
6 with those chapters] **authorized by section 374.049**, which **penalty or** forfeiture, **if unpaid**  
7 **within ten days**, may be recovered by a civil action brought by and in the name of the director  
8 of insurance **under section 374.048**. The civil action may be brought in the county which has  
9 venue of an action against the person, partnership or corporation under other provisions of law.  
10 The director of insurance may also suspend or revoke the license [of an insurer, agent, broker or  
11 agency] **or certificate of authority of such person** for any willful violation.

12           2. Nothing contained in this section shall be construed to prohibit the director and [the  
13 insurer, agent, broker or agency] **any person subject to an investigation, examination, or**  
14 **other proceeding** from agreeing to a voluntary forfeiture of the sum mentioned herein without  
15 civil proceedings being instituted. Any sum so agreed upon shall be paid into the school fund  
16 as provided by law for other fines and penalties.

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

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

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

- 22 **ARTICLE II. DEFINITIONS**

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

- 28           **2. "Bylaws" mean those bylaws established by the Commission for its governance,**  
29           **or for directing or controlling the Commission's actions or conduct.**

30       **3. "Compacting State" means any State which has enacted this Compact legislation**  
31 **and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated**  
32 **pursuant to Article XIV, Section 2.**

33       **4. "Commission" means the "Interstate Insurance Product Regulation**  
34 **Commission" established by this Compact.**

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

37       **6. "Domiciliary State" means the state in which an Insurer is incorporated or**  
38 **organized; or, in the case of an alien Insurer, its state of entry.**

39       **7. "Insurer" means any entity licensed by a State to issue contracts of insurance for**  
40 **any of the lines of insurance covered by this Act.**

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

43       **9. "Non-compacting State" means any State which is not at the time a Compacting**  
44 **State.**

45       **10. "Operating Procedures" mean procedures promulgated by the Commission**  
46 **implementing a Rule, Uniform Standard or a provision of this Compact.**

47       **11. "Product" means the form of a policy or contract, including any application,**  
48 **endorsement, or related form which is attached to and made a part of the policy or**  
49 **contract, and any evidence of coverage or certificate, for an individual or group annuity,**  
50 **life insurance, disability income or long-term care insurance product that an Insurer is**  
51 **authorized to issue.**

52       **12. "Rule" means a statement of general or particular applicability and future**  
53 **effect promulgated by the Commission, including a Uniform Standard developed pursuant**  
54 **to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy**  
55 **or describing the organization, procedure, or practice requirements of the Commission,**  
56 **which shall have the force and effect of law in the Compacting States.**

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

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

60       **15. "Uniform Standard" means a standard adopted by the Commission for a**  
61 **Product line, pursuant to Article VII of this Compact, and shall include all of the Product**  
62 **requirements in aggregate; provided, that each Uniform Standard shall be construed,**  
63 **whether express or implied, to prohibit the use of any inconsistent, misleading or**  
64 **ambiguous provisions in a Product and the form of the Product made available to the**

65 public shall not be unfair, inequitable or against public policy as determined by the  
66 Commission.

67 **ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE**

68 **1. The Compacting States hereby create and establish a joint public agency known**  
69 **as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the**  
70 **Commission will have the power to develop Uniform Standards for Product lines, receive**  
71 **and provide prompt review of Products filed therewith, and give approval to those Product**  
72 **filings satisfying applicable Uniform Standards; provided, it is not intended for the**  
73 **Commission to be the exclusive entity for receipt and review of insurance product filings.**  
74 **Nothing herein shall prohibit any Insurer from filing its product in any State wherein the**  
75 **Insurer is licensed to conduct the business of insurance; and any such filing shall be subject**  
76 **to the laws of the State where filed.**

77 **2. The Commission is a body corporate and politic, and an instrumentality of the**  
78 **Compacting States.**

79 **3. The Commission is solely responsible for its liabilities except as otherwise**  
80 **specifically provided in this Compact.**

81 **4. Venue is proper and judicial proceedings by or against the Commission shall be**  
82 **brought solely and exclusively in a Court of competent jurisdiction where the principal**  
83 **office of the Commission is located.**

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

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

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

89 **2. To exercise its rule-making authority and establish reasonable Uniform**  
90 **Standards for Products covered under the Compact, and Advertisement related thereto,**  
91 **which shall have the force and effect of law and shall be binding in the Compacting States,**  
92 **but only for those Products filed with the Commission, provided, that a Compacting State**  
93 **shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the**  
94 **extent and in the manner provided in this Compact, and, provided further, that any**  
95 **Uniform Standard established by the Commission for long-term care insurance products**  
96 **may provide the same or greater protections for consumers as, but shall not provide less**  
97 **than, those protections set forth in the National Association of Insurance Commissioners'**  
98 **Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation,**  
99 **respectively, adopted as of 2001. The Commission shall consider whether any subsequent**  
100 **amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care**

Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;

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

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

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

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

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

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

9. To establish and maintain offices;

10. To purchase and maintain insurance and bonds;

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

12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the

Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;

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

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

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

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

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

18. To provide for dispute resolution among Compacting States;

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

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

21. To establish a budget and make expenditures;

22. To borrow money;

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

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

25. To adopt and use a corporate seal; and

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

## ARTICLE V. ORGANIZATION OF THE COMMISSION

### 1. Membership, Voting and Bylaws

a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting



173 **State. Any Member may be removed or suspended from office as provided by the law of**  
174 **the State from which he or she shall be appointed. Any vacancy occurring in the**  
175 **Commission shall be filled in accordance with the laws of the Compacting State wherein**  
176 **the vacancy exists. Nothing herein shall be construed to affect the manner in which a**  
177 **Compacting State determines the election or appointment and qualification of its own**  
178 **Commissioner.**

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

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

187 **i. Establishing the fiscal year of the Commission;**

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

190 **iii. Providing reasonable standards and procedures: (i) for the establishment and**  
191 **meetings of other committees, and (ii) governing any general or specific delegation of any**  
192 **authority or function of the Commission;**

193 **iv. Providing reasonable procedures for calling and conducting meetings of the**  
194 **Commission that consists of a majority of Commission members, ensuring reasonable**  
195 **advance notice of each such meeting and providing for the right of citizens to attend each**  
196 **such meeting with enumerated exceptions designed to protect the public's interest, the**  
197 **privacy of individuals, and insurers' proprietary information, including trade secrets. The**  
198 **Commission may meet in camera only after a majority of the entire membership votes to**  
199 **close a meeting *en toto* or in part. As soon as practicable, the Commission must make**  
200 **public (i) a copy of the vote to close the meeting revealing the vote of each Member with no**  
201 **proxy votes allowed, and (ii) votes taken during such meeting;**

202 **v. Establishing the titles, duties and authority and reasonable procedures for the**  
203 **election of the officers of the Commission;**

204 **vi. Providing reasonable standards and procedures for the establishment of the**  
205 **personnel policies and programs of the Commission. Notwithstanding any civil service or**  
206 **other similar laws of any Compacting State, the Bylaws shall exclusively govern the**  
207 **personnel policies and programs of the Commission;**

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

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

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

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

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

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

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

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

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

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

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

iii. Overseeing the offices of the Commission; and

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

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

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

### 3. Legislative and Advisory Committees

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

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

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

### 4. Corporate Records of the Commission

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

### 5. Qualified Immunity, Defense and Indemnification

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

b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising

out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

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

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

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

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

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

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

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

2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative

316 Procedure Act of 1981 as amended, as may be appropriate to the operations of the  
317 Commission. Before the Commission adopts a Uniform Standard, the Commission shall  
318 give written notice to the relevant state legislative committee(s) in each Compacting State  
319 responsible for insurance issues of its intention to adopt the Uniform Standard. The  
320 Commission in adopting a Uniform Standard shall consider fully all submitted materials  
321 and issue a concise explanation of its decision.

322       **3. Effective Date and Opt Out of a Uniform Standard.** A Uniform Standard shall  
323 become effective ninety (90) days after its promulgation by the Commission or such later  
324 date as the Commission may determine; provided, however, that a Compacting State may  
325 opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as  
326 any action by a Compacting State to decline to adopt or participate in a promulgated  
327 Uniform Standard. All other Rules and Operating Procedures, and amendments thereto,  
328 shall become effective as of the date specified in each Rule, Operating Procedure or  
329 amendment.

330       **4. Opt Out Procedure.** A Compacting State may opt out of a Uniform Standard,  
331 either by legislation or regulation duly promulgated by the Insurance Department under  
332 the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt  
333 out of a Uniform Standard by regulation, it must (a) give written notice to the Commission  
334 no later than ten (10) business days after the Uniform Standard is promulgated, or at the  
335 time the State becomes a Compacting State and (b) find that the Uniform Standard does  
336 not provide reasonable protections to the citizens of the State, given the conditions in the  
337 State. The Commissioner shall make specific findings of fact and conclusions of law, based  
338 on a preponderance of the evidence, detailing the conditions in the State which warrant a  
339 departure from the Uniform Standard and determining that the Uniform Standard would  
340 not reasonably protect the citizens of the State. The Commissioner must consider and  
341 balance the following factors and find that the conditions in the State and needs of the  
342 citizens of the State outweigh: (i) the intent of the legislature to participate in, and the  
343 benefits of, an interstate agreement to establish national uniform consumer protections for  
344 the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted  
345 by the Commission provides reasonable protections to consumers of the relevant Product.  
346 Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this  
347 Compact, prospectively opt out of all Uniform Standards involving long-term care  
348 insurance products by expressly providing for such opt out in the enacted Compact, and  
349 such an opt out shall not be treated as a material variance in the offer or acceptance of any  
350 State to participate in this Compact. Such an opt out shall be effective at the time of  
351 enactment of this Compact by the Compacting State and shall apply to all existing Uniform

352 Standards involving long-term care insurance products and those subsequently  
353 promulgated.

354       **5. Effect of Opt Out.** If a Compacting State elects to opt out of a Uniform  
355 Standard, the Uniform Standard shall remain applicable in the Compacting State electing  
356 to opt out until such time the opt out legislation is enacted into law or the regulation opting  
357 out becomes effective. Once the opt out of a Uniform Standard by a Compacting State  
358 becomes effective as provided under the laws of that State, the Uniform Standard shall  
359 have no further force and effect in that State unless and until the legislation or regulation  
360 implementing the opt out is repealed or otherwise becomes ineffective under the laws of the  
361 State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard  
362 has been made effective in that State, the opt out shall have the same prospective effect as  
363 provided under Article XIV for withdrawals.

364       **6. Stay of Uniform Standard.** If a Compacting State has formally initiated the  
365 process of opting out of a Uniform Standard by regulation, and while the regulatory opt  
366 out is pending, the Compacting State may petition the Commission, at least fifteen (15)  
367 days before the effective date of the Uniform Standard, to stay the effectiveness of the  
368 Uniform Standard in that State. The Commission may grant a stay if it determines the  
369 regulatory opt out is being pursued in a reasonable manner and there is a likelihood of  
370 success. If a stay is granted or extended by the Commission, the stay or extension thereof  
371 may postpone the effective date by up to ninety (90) days, unless affirmatively extended by  
372 the Commission; provided, a stay may not be permitted to remain in effect for more than  
373 one (1) year unless the Compacting State can show extraordinary circumstances which  
374 warrant a continuance of the stay, including, but not limited to, the existence of a legal  
375 challenge which prevents the Compacting State from opting out. A stay may be terminated  
376 by the Commission upon notice that the rulemaking process has been terminated.

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

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

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

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

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

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

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

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not

approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

#### ARTICLE IX. DISPUTE RESOLUTION

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

#### ARTICLE X. PRODUCT FILING AND APPROVAL

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

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

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

#### ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

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



or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

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

## ARTICLE XII. FINANCE

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

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

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

4. The Commission shall be exempt from all taxation in and by the Compacting States.

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

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be

shared with the Commissioner of any Compacting State upon request provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

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

#### ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

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

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

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

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

##### 1. Withdrawal

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

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

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

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

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

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

## 2. Default

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

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

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

## 3. Dissolution of Compact

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

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

#### ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

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

#### ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

##### 1. Other Laws

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

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

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

##### 2. Binding Effect of this Compact

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

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

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

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

374.512. 1. Whenever the director has reason to believe that a utilization review agent subject to sections 374.500 to 374.515 has been or is engaged in conduct which violates the provisions of sections 374.500 to 374.515, the director shall notify the utilization review agent of the alleged violation. The utilization review agent shall have thirty days from the date the notice is received to respond to the alleged violation.

2. If the director [believes] **determines** that the utilization review agent has [violated the provisions of sections 374.500 to 374.515, or is not satisfied that the alleged violation has been corrected, he shall conduct a hearing on the alleged violation, in accordance with chapter 536, RSMo] **engaged or is engaging in a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of any of these sections is a level two violation under section 374.049. The director of insurance may also suspend or revoke the license or certificate of authority of such person for any willful violation.**

3. [If, after such hearing, the director determines that the utilization review agent has engaged in violations of sections 374.500 to 374.515, he shall reduce his findings to writing and shall issue and cause to be served upon the utilization review agent a copy of such findings and an order requiring the utilization review agent to cease and desist from engaging in such violations. The director may also, at his discretion, order:

(1) Payment of a monetary penalty of not more than ten thousand dollars for a violation which occurred if the utilization review agent consciously disregarded sections 374.500 to 374.515 or which occurred with such frequency as to indicate a general business practice; or

(2) Suspension or revocation of the authority to do business in this state as a utilization review agent if the utilization review agent knew that it was in violation of sections 374.500 to

27 374.515] If the director believes that a person has engaged in a violation of sections 374.500  
28 to 374.515 or a rule adopted or order issued pursuant thereto, or that a person has  
29 materially aided an act, practice, omission, or course of business constituting a violation  
30 of sections 374.500 to 374.515 or a rule adopted or order issued pursuant thereto, the  
31 director may maintain a civil action for relief authorized under section 374.048. A  
32 violation of any of these sections is a level two violation under section 374.049.

374.707. Upon receiving notice of a forfeiture from the court, the department of  
2 insurance shall notify any general bail bond agent who is listed as having a forfeited bond.  
3 Such attempt by the department to notify the general bail bond agent shall be made by fax  
4 or email within forty-eight hours of the forfeiture being listed with the department.

374.710. 1. Except as otherwise provided in sections 374.695 to 374.775, no person or  
2 other entity shall practice as a bail bond agent or general bail bond agent, as defined in section  
3 374.700, in Missouri unless and until the department has issued to him or her a license, to be  
4 renewed every two years as hereinafter provided, to practice as a bail bond agent or general bail  
5 bond agent. **The department shall include the photograph of the bail bond agent or general**  
6 **bail bond agent, provided under section 374.715, on the license.**

7 2. An applicant for a bail bond and general bail bond agent license shall submit with the  
8 application proof that he or she has received twenty- four hours of initial basic training in areas  
9 of instruction in subjects determined by the director deemed appropriate to professionals in the  
10 bail bond profession. Bail bond agents and general bail bond agents who are licensed at the date  
11 which this act becomes law shall be exempt from such twenty-four hours of initial basic training.

12 3. In addition to the twenty-four hours of initial basic training to become a bail bond  
13 agent or general bail bond agent, there shall be eight hours of biennial continuing education for  
14 all bail bond agents and general bail bond agents to maintain their state license. The director  
15 shall determine said appropriate areas of instruction for said biennial continuing education. The  
16 director shall determine which institutions, organizations, associations, and individuals shall be  
17 eligible to provide the initial basic training and the biennial continuing education instruction.  
18 The department may allow state institutions, organizations, associations, or individuals to  
19 provide courses for the initial basic training and the biennial continuing education training. The  
20 cost shall not exceed two hundred dollars for the initial basic training and one hundred fifty  
21 dollars for biennial continuing education.

22 4. Upon completion of said basic training or biennial continuing education and the  
23 licensee meeting the other requirements as provided under sections 374.695 to 374.789, the  
24 director shall issue a two-year license for the bail bond agent or general bail bond agent for a fee  
25 not to exceed one hundred fifty dollars.

26           5. A person shall provide the name, address, and telephone number of each  
27 employer for whom he or she works or operates under as an independent contractor to the  
28 department upon receiving a license to be a bail bond agent or general bail bond agent.  
29 A bail bond agent shall not begin writing bond as a new employee or as an independent  
30 contractor on behalf of a general bail bond agent, unless the general bail bond agent and  
31 the bail bond agent have updated such information with the department.

32           6. Nothing in sections 374.695 to 374.775 shall be construed to prohibit any person from  
33 posting or otherwise providing a bail bond in connection with any legal proceeding, provided  
34 that such person receives no fee, remuneration or consideration therefor.

35           7. For any new appointment of a bail bond agent, the bail bond agent shall file an  
36 affidavit with the department of insurance and the appointing general bail bond agent  
37 stating that there are no outstanding premiums owed and that the newly appointed bail  
38 bond agent shall discharge all outstanding forfeitures and judgments on any previous  
39 bonds written. If the newly appointed bail bond agent does not satisfy or discharge such  
40 forfeitures or judgments, the former general bail bond agent shall file a notice, along with  
41 supporting documents with the department of insurance, and provide such notice to the  
42 newly appointed bail bond agent and the appointing general bail bond agent, stating under  
43 oath the facts that the newly appointed bail bond agent has failed to satisfy the forfeiture  
44 or judgments on bonds written by them. Upon receipt of such notification and supporting  
45 documents, the appointing general bail bond agent shall immediately cancel the newly  
46 appointed bail bond agent's authority. Such authority shall remain canceled until such  
47 forfeiture or judgments are satisfied.

374.715. 1. Applications for examination and licensure as a bail bond agent or general  
2 bail bond agent shall be in writing and on forms prescribed and furnished by the department, and  
3 shall contain such information as the department requires. Each application shall be  
4 accompanied by proof satisfactory to the department that the applicant is a citizen of the United  
5 States, is at least twenty-one years of age, has a high school diploma or general education  
6 development certificate (GED), is of good moral character, and meets the qualifications for  
7 surety on bail bonds as provided by supreme court rule. Each application shall be accompanied  
8 by the examination [and] , the application fee set by the department, the results of a  
9 fingerprinting performed and submitted in a manner approved by the highway patrol in  
10 accordance with section 43.543, RSMo, and the results of a criminal history record  
11 information check processed by the highway patrol under sections 43.500 to 43.543, RSMo.  
12 Individuals currently employed as bail bond agents and general bail bond agents shall not be  
13 required to meet the education requirements needed for licensure pursuant to this section.

14           2. In addition, each applicant for licensure as a general bail bond agent shall furnish  
15 proof satisfactory to the department that the applicant or, if the applicant is a corporation, that  
16 each officer thereof has completed at least two years as a bail bond agent, and that the applicant  
17 possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment  
18 of ten thousand dollars to the state of Missouri. The assignment shall become effective upon the  
19 applicant's violating any provision of sections 374.695 to 374.789. The assignment required by  
20 this section shall be in the form and executed in the manner prescribed by the department. The  
21 director may require by regulation conditions by which additional assignments of assets of the  
22 general bail bond agent may occur when the circumstances of the business of the general bail  
23 bond agent warrants additional funds. However, such additional funds shall not exceed  
24 twenty-five thousand dollars.

          374.755. 1. The [department] **director** may [cause a complaint to be filed with the  
2 administrative hearing commission as provided by chapter 621, RSMo, against any holder of any  
3 license required by sections 374.695 to 374.775] **suspend, revoke, refuse to issue, refuse to**  
4 **renew or limit a license authorized under sections 374.695 to 374.775, or censure or bar** any  
5 person who has failed to renew or has surrendered his or her license for any [one or any  
6 combination] of the following causes:

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

10          (2) Final adjudication or a plea of guilty or nolo contendere [within the past fifteen years]  
11 in a criminal prosecution under any state or federal law for a felony or a crime involving moral  
12 turpitude whether or not a sentence is imposed[,] prior to issuance of license date;

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

15          (4) Obtaining or attempting to obtain any compensation as a member of the profession  
16 licensed by sections 374.695 to [374.775] **374.789** by means of fraud, deception or  
17 misrepresentation;

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

22          (6) Violation of any provision of or any obligation imposed by the laws of this state,  
23 department of insurance rules and regulations, or aiding or abetting other persons to violate such  
24 laws, orders, rules or regulations, or subpoenas;

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



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

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

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

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

35 (12) Failing to provide a copy of the bail contract, [renumbered] **prenumbered** written  
36 receipt for acceptance of money, or other collateral for the taking of bail to the principal, if  
37 requested by any person who is a party to the bail contract, or any person providing funds or  
38 collateral for bail on the principal's behalf.

39 2. After the filing of [such] **a** complaint **under section 374.051**, the proceedings shall  
40 be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the  
41 administrative hearing commission that one or more of the causes stated in subsection 1 of this  
42 section have been met, the director may suspend or revoke the license or enter into an agreement  
43 for a [monetary or other penalty pursuant to section 374.280] **consent order under section**  
44 **374.780**.

45 3. In lieu of filing a complaint at the administrative hearing commission, the director and  
46 the bail bond agent or general bail bond agent may enter into an agreement for a [monetary or  
47 other penalty pursuant to section 374.280] **consent order under section 374.780**.

48 4. [In addition to any other remedies available, the director may issue a cease and desist  
49 order or may seek an injunction in a court of competent jurisdiction pursuant to the provisions  
50 of section 374.046 whenever it appears that any person is acting as a bail bond agent or general  
51 bail bond agent without a license or violating any other provisions of sections 374.695 to  
52 374.789.] **Any bail bond agent or general bail bond agent who has his or her license**  
53 **revoked by the director shall immediately return such license to the department.**

**374.761. If qualified as provided by supreme court rule, a bail bond agent shall be**  
2 **qualified to write bail in a municipal or circuit court if the general bail bond agent who**  
3 **employs the agent or directs the agent as an independent contractor is licensed and**  
4 **qualified to write bail in such court, and the bail bond agent also is licensed under sections**  
5 **374.695 to 374.789 and is in good standing with the department of insurance.**

**374.773. Any licensed general bail bond agent or bail bond agent who is arrested**  
2 **for a felony shall notify the department of insurance within ten days of his or her arrest.**

**374.780. 1. If the director determines that a person has engaged or is engaging in a violation of sections 374.695 to 374.789 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 374.695 to 374.789 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046. A violation of any of these sections is a level one violation under section 374.049.**

**2. If the director believes that a person has engaged or is engaging in a violation of sections 374.695 to 374.789 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of sections 374.695 to 374.789 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048. A violation of any of these sections is a level one violation under section 374.049.**

374.787. 1. The director may [cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any] **suspend, revoke, refuse to issue, refuse to renew, or limit a surety recovery agent license authorized under sections 374.783 to 374.789, or censure or bar** any person who has failed to renew or has surrendered his or her license, for any [one or any combination] of the following causes:

(1) Violation of any provisions of, or any obligations imposed by, the laws of this state, the department of insurance rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules, or regulations;

(2) Final adjudication or a plea of guilty or nolo contendere in a criminal prosecution under state or federal law for a felony or a crime involving moral turpitude, whether or not a sentence is imposed;

(3) Using fraud, deception, misrepresentation, or bribery in securing a license or in obtaining permission to take any examination required by sections 374.783 to 374.789;

(4) Obtaining or attempting to obtain any compensation as a surety recovery agent by means of fraud, deception, or misrepresentation;

(5) Acting as a surety recovery agent or aiding or abetting another in acting as a surety recovery agent without a license;

(6) Incompetence, misconduct, gross negligence, fraud, or misrepresentation in the performance of the functions or duties of a surety recovery agent;

(7) Having a license revoked or suspended that was issued by another state.

2. After the filing of [the] a complaint **under section 374.051**, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the

23 administrative hearing commission that one or more of the causes stated in subsection 1 of this  
24 section have been met, the director may suspend or revoke the license or enter into an agreement  
25 for a [monetary or other penalty pursuant to section 374.280] **consent order under section**  
26 **374.780.**

27 3. In lieu of filing a complaint with the administrative hearing commission, the director  
28 and the surety recovery agent may enter into an agreement for a [monetary or other penalty  
29 pursuant to section 374.280] **consent order under section 374.780.**

30 [4. In addition to any other remedies available, the director may issue a cease and desist  
31 order or may seek an injunction in a court of law pursuant to section 374.046 whenever it appears  
32 that any person is acting as a surety recovery agent without a license.]

374.789. 1. [A] **It is unlawful for any person** [is guilty of a class D felony if he or she  
2 does not hold a valid] **to engage in any of the following acts unless the person is licensed by**  
3 **the director as a surety recovery agent** [license or] , a bail bond [license and commits any of the  
4 following acts] **agent, or a general bail bond agent:**

5 (1) Holds himself or herself out to be a licensed surety recovery agent within this state;

6 (2) Claims that he or she can render surety recovery agent services; or

7 (3) Engages in fugitive recovery in this state.

8 2. **If the director determines that a person has engaged or is engaging in a violation**  
9 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
10 **materially aided or is materially aiding an act, practice, omission, or course of business**  
11 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
12 **the director may issue such administrative orders as authorized under section 374.046. A**  
13 **violation of any of these sections is a level three violation under section 374.049.**

14 3. **If the director believes that a person has engaged or is engaging in a violation of**  
15 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
16 **materially aided or is materially aiding an act, practice, omission, or course of business**  
17 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
18 **the director may maintain a civil action for relief authorized under section 374.048. A**  
19 **violation of any of these sections is a level three violation under section 374.049.**

20 4. **Any person who knowingly engages in any act, practice, omission, or course of**  
21 **business in violation of this section is guilty of a class D felony. If the offender holds a**  
22 **license or certificate of authority under the insurance laws of this state, the court imposing**  
23 **sentence shall order the department of insurance to revoke such license or certificate of**  
24 **authority.**

25 5. **The director may refer such evidence as is available concerning violations of this**  
26 **chapter to the proper prosecuting attorney, who with or without a criminal reference, or**

27 the attorney general under section 27.030, RSMo, may institute the appropriate criminal  
28 proceedings.

29 6. Nothing in this section shall limit the power of the state to punish any person for  
30 any conduct that constitutes a crime under any other state statute.

31 7. Any person who engages in fugitive recovery in this state and wrongfully causes  
32 damage to any person or property, including, but not limited to, unlawful apprehension, unlawful  
33 detainment, or assault, shall be liable for such damages and may be liable for punitive damages.

375.001. As used in sections 375.001 to [375.008] **375.010** the following words and  
2 terms mean:

3 (1) "Claim", any request or demand for payment of a benefit, the payment of a  
4 covered benefit by an insurer, a loss reserve established by an insurer, a loss adjustment  
5 expense incurred by an insurer, a written formal denial of a benefit request or demand  
6 issued by an insurer, or a payment made to the insured or a claimant;

7 (2) "Inquiry", request for information regarding the terms, conditions, or coverage  
8 under a policy that does not result in a claim;

9 (3) "Insurer", all insurance companies, reciprocals, or interinsurance exchanges  
10 transacting the business of insurance in this state;

11 [(2)] (4) "Nonpayment of premium", failure of the named insured to discharge when due  
12 any of his obligations in connection with the payment of premiums on the policy, or any  
13 installment of the premium, whether the premium is payable directly to the insurer or its [agent]  
14 producer or indirectly under any premium finance plan or extension of credit;

15 [(3)] (5) "Nonrenewal", the determination of an insurer not to issue or deliver a policy  
16 replacing at the end of the policy period a policy previously issued and delivered by the same  
17 insurer or a certificate or notice extending the term of a policy beyond its policy period or term;

18 [(4)] (6) "Policy", a contract of insurance providing fire and extended coverage  
19 insurance, whether separately or in combination with other coverages, on owner-occupied  
20 habitational property not exceeding two families. "Policy" does not include any insurance  
21 contracts issued under a property insurance inspection and placement program ("FAIR" plan) or  
22 an assigned risk plan, or any insurance contracts insuring property not used predominantly for  
23 habitational purposes, or an insurance contract insuring a mobile home;

24 [(5)] (7) "Renewal" or "to renew", the issuance and delivery by an insurer of a policy  
25 replacing at the end of the policy period a policy previously issued and delivered by the same  
26 insurer, or the issuance and delivery of a certificate or notice extending the term of the policy  
27 beyond its policy period or term. Any policy with a policy period or term of less than six months  
28 shall for the purposes of sections 375.001 to [375.008] **375.010** be considered as if written for  
29 a policy period or term of six months. Any policy written for a term longer than one year or any

30 policy with no fixed expiration date, shall for the purpose of sections 375.001 to [375.008]  
31 **375.010**, be considered as if written for successive policy periods or terms of one year, and the  
32 policy may be terminated at the expiration of any annual period upon giving thirty days' notice  
33 of cancellation prior to the anniversary date, and the cancellation shall not be subject to any other  
34 provisions of sections 375.001 to [375.008] **375.010**;

35 (8) "Weather-related claim", loss in which wind, tornado, hail, or lightning was the  
36 prevailing factor that caused damage to the property and where the damage to the  
37 property or severity of the damage to the property was not due to the failure to maintain  
38 the property or the negligence of the insured.

375.010. 1. An insurer shall not cancel a policy on the basis of any inquiry or  
2 weather-related claim that occurs after such policy is issued.

3 2. An insurer shall not refuse to renew a policy on the basis of any inquiry.

4 3. An insurer shall not refuse to renew a policy solely on the basis of the first  
5 weather-related claim made within the five-year period immediately preceding the  
6 upcoming renewal date of the policy.

7 4. Notwithstanding subsections 2 and 3 of this section, an insurer may refuse to  
8 renew a policy based on the known condition or use of the premises, the fraudulent acts of  
9 the insured, or any other applicable underwriting factor.

375.012. 1. Sections 375.012 to 375.146 may be cited as the "Insurance Producers  
2 Act".

3 2. As used in sections 375.012 to 375.158, the following words mean:

4 (1) "Business entity", a corporation, association, partnership, limited liability company,  
5 limited liability partnership or other legal entity;

6 (2) "Director", the director of the department of insurance;

7 (3) "Home state", the District of Columbia and any state or territory of the United States  
8 in which the insurance producer maintains his or her principal place of residence or principal  
9 place of business and is licensed to act as an insurance producer;

10 (4) "Insurance", any line of authority, including life, accident and health or sickness,  
11 property, casualty, variable life and variable annuity products, personal, credit and any other line  
12 of authority permitted by state law or regulation;

13 (5) "Insurance company" or "insurer", any person, reciprocal exchange, interinsurer,  
14 Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of  
15 insurance, including health services corporations, health maintenance organizations, prepaid  
16 limited health care service plans, dental, optometric and other similar health service plans, unless  
17 their exclusion from this definition can be clearly ascertained from the context of the particular  
18 statutory section under consideration. Insurer shall also include all companies organized,

19 incorporated or doing business pursuant to the provisions of chapters 375, 376, 377, 378, 379,  
20 381 and 384, RSMo. Trusteed pension plans and profit-sharing plans qualified pursuant to the  
21 United States Internal Revenue Code as now or hereafter amended shall not be considered to be  
22 insurance companies or insurers within the definition of this section;

23 (6) "Insurance producer" or "producer", a person required to be licensed pursuant to the  
24 laws of this state to sell, solicit or negotiate insurance;

25 (7) "License", a document issued by the director authorizing a person to act as an  
26 insurance producer for the lines of authority specified in the document. The license itself shall  
27 not create any authority, actual, apparent or inherent, in the holder to represent or commit an  
28 insurance company;

29 (8) "Limited line credit insurance", credit life, credit disability, credit property, credit  
30 unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage  
31 disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance  
32 offered in connection with an extension of credit that is limited to partially or wholly  
33 extinguishing that credit obligation that the director determines should be designated a form of  
34 limited line credit insurance;

35 (9) "Limited line credit insurance producer", a person who sells, solicits or negotiates  
36 one or more forms of limited line credit insurance coverage through a master, corporate, group  
37 or individual policy;

38 (10) "Limited lines insurance", insurance involved in credit transactions, insurance  
39 contracts issued primarily for covering the risk of travel or any other line of insurance that the  
40 director deems necessary to recognize for the purposes of complying with subsection 5 of section  
41 375.017;

42 (11) "Limited lines producer", a person authorized by the director to sell, solicit or  
43 negotiate limited lines insurance;

44 (12) "Negotiate", the act of conferring directly with or offering advice directly to a  
45 purchaser or prospective purchaser of a particular contract of insurance concerning any of the  
46 substantive benefits, terms or conditions of the contract, provided that the person engaged in that  
47 act either sells insurance or obtains insurance from insurers for purchasers;

48 (13) "Person", an individual or any business entity;

49 (14) "Personal lines insurance", property and casualty insurance coverage sold to  
50 individuals and families for primarily noncommercial purposes;

51 (15) "Sell", to exchange a contract of insurance by any means, for money or its  
52 equivalent, on behalf of an insurance company;

53 (16) "Solicit", attempting to sell insurance or asking or urging a person to apply for a  
54 particular kind of insurance from a particular company;

55 (17) "Terminate", the cancellation of the relationship between an insurance producer and  
56 the insurer or the termination of the authority of the producer to transact the business of  
57 insurance;

58 (18) "Uniform business entity application", the current version of the National  
59 Association of Insurance Commissioners uniform business entity application for resident and  
60 nonresident business entities seeking an insurance producer license;

61 (19) "Uniform application", the current version of the National Association of Insurance  
62 Commissioners uniform application for resident and nonresident producer licensing.

63 [2.] **3.** All statutory references to "insurance agent" or "insurance broker" shall mean  
64 "insurance producer", as that term is defined pursuant to subsection 1 of this section.

375.020. 1. Beginning January 1, [1990] **2007**, each insurance producer, unless exempt  
2 pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete  
3 courses of study as required by this section. Any person licensed to act as an insurance producer  
4 shall, during each two years, attend courses or programs of instruction or attend seminars  
5 equivalent to a minimum of [ten] **twenty-four** hours of instruction for a life or accident and  
6 health license or both a life and an accident and health license and a minimum [ten] **twenty-four**  
7 hours of instruction for a property or casualty license or both a property and a casualty license.  
8 [Sixteen] **Twenty-four** hours of training will suffice for those with a life, health, accident,  
9 property and casualty license. Of the [sixteen] **twenty-four** hours' training required above, the  
10 hours need not be divided equally. The courses or programs shall include instruction on  
11 Missouri law, **a producer's duties to the department, and business ethics, including sales**  
12 **suitability**. Course credit shall be given to members of the general assembly as determined by  
13 the department.

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

- 17 (1) American College Courses (CLU, ChFC);
- 18 (2) Life Underwriters Training Council (LUTC);
- 19 (3) Certified Insurance Counselor (CIC);
- 20 (4) Chartered Property and Casualty Underwriter (CPCU);
- 21 (5) Insurance Institute of America (IIA);
- 22 (6) **Any other professional financial designation approved by the director;**
- 23 (7) An insurance-related course taught by an accredited college or university or qualified  
24 instructor who has taught a course of insurance law at such institution;

25           [(7)] (8) A course or program of instruction or seminar developed or sponsored by any  
26 authorized insurer, recognized producer association or insurance trade association. A local  
27 producer group may also be approved if the instructor receives no compensation for services.

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

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

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

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

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

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

54           8. The provisions of this section shall not apply to a life insurance producer who is  
55 limited by the terms of a written agreement with the insurer to transact only specific life  
56 insurance policies having [an initial face amount of five] **a cumulative initial face amount for**  
57 **any individual of ten** thousand dollars or less, or annuities having an initial face amount of ten  
58 thousand dollars or less, that are designated by the purchaser for the payment of funeral or burial  
59 expenses. The director may require the insurer entering into the written agreements with the



60 insurance producers pursuant to this subsection to certify as to the representations of the  
61 insurance producers.

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

65 (1) Course content and hour credits: The insurance advisory board established by section  
66 375.019 shall be utilized by the director to assist him in determining acceptable content of  
67 courses, programs and seminars to include classroom equivalency;

68 (2) Filing fees for course approval: Every applicant seeking approval by the director of  
69 a continuing education course under this section shall pay to the director a filing fee of fifty  
70 dollars per course. Fees shall be waived for state and local insurance producer groups. Such fee  
71 shall accompany any application form required by the director. Courses shall be approved for  
72 a period of no more than one year. Applicants holding courses intended to be offered for a  
73 longer period must reapply for approval. Courses approved by the director prior to August 28,  
74 1993, for which continuous certification is sought should be resubmitted for approval sixty days  
75 before the anniversary date of the previous approval.

76 10. All funds received pursuant to the provisions of this section shall be transmitted by  
77 the director to the department of revenue for deposit in the state treasury to the credit of the  
78 department of insurance dedicated fund. All expenditures necessitated by this section shall be  
79 paid from funds appropriated from the department of insurance dedicated fund by the legislature.

2 **375.143. In order to effectuate and aid in the interpretation of section 375.141, the**  
3 **director, under section 374.045, may adopt rules and regulations codifying professional**  
4 **standards of producer competency and trustworthiness in the handling of applications,**  
5 **premium funds, conflicts of interest, record-keeping, supervision of others, and customer**  
6 **suitability.**

7 **375.145. 1. If the director determines that a person has engaged or is engaging in**  
8 **a violation of sections 375.012 to 375.144 or a rule adopted or order issued pursuant**  
9 **thereto, or that a person has materially aided or is materially aiding an act, practice,**  
10 **omission, or course of business constituting a violation of sections 375.012 to 375.144, or**  
11 **a rule adopted or order issued pursuant thereto, the director may issue such administrative**  
12 **orders as authorized under section 374.046, RSMo. A violation of any of sections 375.012**  
13 **to 375.142 is a level two violation under section 374.049, RSMo. A violation of section**  
14 **375.144 is a level four violation under 374.049, RSMo.**

15 **2. If the director believes that a person has engaged or is engaging in a violation of**  
16 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
17 **materially aided or is materially aiding an act, practice, omission, or course of business**

12 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
13 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
14 **A violation of any of sections 375.012 to 375.142 is a level two violation under section**  
15 **374.049, RSMo. A violation of section 375.144 is a level four violation under 374.049,**  
16 **RSMo.**

375.152. 1. [If the director finds after a hearing conducted in accordance with chapter  
2 536, RSMo, that any person has violated the provisions of sections 375.147 to 375.153, the  
3 director may order:

4 (1) For each separate violation, imposition of an administrative penalty in an amount of  
5 five hundred dollars. All moneys collected as a result of imposition of such penalties shall be  
6 transferred to the state treasurer for deposit to general revenue of the state;

7 (2) Revocation or suspension of the producer's license, provided that such action may  
8 be taken only after compliance with chapter 621, RSMo;

9 (3)] **If the director determines that a person has engaged or is engaging in a**  
10 **violation of sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto,**  
11 **or that a person has materially aided or is materially aiding an act, practice, omission, or**  
12 **course of business constituting a violation of sections 375.147 to 375.153 or a rule adopted**  
13 **or order issued pursuant thereto, the director may issue such administrative orders as**  
14 **authorized under section 374.046, RSMo. A violation of any of these sections is a level two**  
15 **violation under section 374.049, RSMo.**

16 **2. If the director believes that a person has engaged or is engaging in a violation of**  
17 **sections 375.147 to 375.153 or a rule adopted or order issued pursuant thereto, or that a**  
18 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
19 **business constituting a violation of sections 375.147 to 375.153 or a rule adopted or order**  
20 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
21 **under section 374.048, RSMo. A violation under any of these sections is a level two**  
22 **violation under section 374.049, RSMo. In addition to the relief available in this section,**  
23 **the director may also order** the managing general agent to reimburse the insurer, the  
24 rehabilitator or liquidator of the insurer, for any losses incurred by the insurer caused by a  
25 violation of sections 375.147 to 375.153 committed by the managing general agent.

26 [2. The decision, determination or order of the director made pursuant to subsection 1  
27 of this section shall be subject to judicial review pursuant to sections 536.100 to 536.140,  
28 RSMo.]

29 3. Nothing contained in this section shall affect the right of the director to impose any  
30 other penalties provided for in the insurance law.

31 4. Nothing contained in sections 375.147 to 375.153 is intended to or shall in any  
32 manner limit or restrict the rights of policyholders, claimants and creditors.

375.236. Other provisions of law notwithstanding, the director may suspend or revoke,  
2 after a hearing, the certificate of authority or license of any insurance company including a  
3 reciprocal or interinsurance exchange for the same reasons and upon the same grounds as set  
4 forth in section [375.560] **374.047, RSMo.**

375.298. 1. If a policyholder has taken a loan against an insurance policy, the insurer  
2 of such policy shall annually notify the policyholder of any interest due on the loan.

3 **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.306. 1. It [shall not be lawful] **is unlawful** for any person to act within this state as  
2 agent, **producer**, or otherwise, in receiving or procuring applications for insurance, or in any  
3 manner to aid in transacting the business referred to in [sections 375.010 to 375.920] **this**  
4 **chapter** for any company or association doing business in this state, unless the company is  
5 possessed of the amount of capital and of actual paid-up capital, or of premium notes, cash  
6 premiums or guarantee fund, of the kind, character and amounts required of companies organized  
7 under the provisions of [sections 375.010 to 375.920] **this chapter.**

8 2. The guarantee fund of companies other than those of this state shall be deposited with  
9 the proper officer of the state or country under the laws of which the company is organized, or  
10 with the director of the insurance department of this state, in the manner provided by section  
11 379.050, RSMo, in regard to the making of such deposit by companies organized under [sections  
12 375.010 to 375.920] **this chapter.**

13 3. Whenever any insurance company doing business in this state advertises its assets,  
14 either in any newspaper or periodical, or by any sign, circular, card, policy of insurance or  
15 certificate of renewal thereof, it shall, in the same connection, equally conspicuously advertise  
16 its liabilities, and the amount of its assets available for fire and life losses separately, the same  
17 to be determined in the manner required in making statement to the insurance department, and  
18 all advertisements purporting to show the amount of capital of the company shall show only the  
19 amount of capital actually paid up in cash.

20 4. [Any insurance company or agent thereof violating the provisions of this section shall  
21 be liable to a fine of not less than fifty dollars nor more than five hundred dollars] **If the director**  
22 **determines that a person has engaged or is engaging in a violation of this section or a rule**  
23 **adopted or order issued pursuant thereto, or that a person has materially aided or is**  
24 **materially aiding an act, practice, omission, or course of business constituting a violation**  
25 **of this section or a rule adopted or order issued pursuant thereto, the director may issue**  
26 **such administrative orders as authorized under section 374.046, RSMo. A violation of this**  
27 **section is a level two violation under section 374.049, RSMo.**

28       **5. If the director believes that a person has engaged or is engaging in a violation of**  
29 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
30 **materially aided or is materially aiding an act, practice, omission, or course of business**  
31 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
32 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
33 **A violation of this section is a level two violation under section 374.049, RSMo.**

375.310. 1. **It is unlawful for any person, association of individuals, [and] or any**  
2 **corporation [transacting] to transact in this state any insurance business[, without being] unless**  
3 **the person, association, or corporation is duly authorized by the director [of the insurance**  
4 **department of this state so to do, or after the authority so to do has been suspended, revoked, or**  
5 **has expired, shall be subject to suit by the director who may institute proceedings in the circuit**  
6 **court of the county or city in which said company was organized, or in which it has, or last had,**  
7 **its principal or chief office or place of business, or in the county of Cole, to enjoin said company**  
8 **from the further transaction of its business, either temporarily or perpetually, and for such other**  
9 **decrees and relief as the court shall deem advisable; or said association of individuals or**  
10 **corporation shall be liable to a penalty of two hundred and fifty dollars for each offense, which**  
11 **penalty may be recovered by ordinary civil action in the name of the state, and shall, when**  
12 **recovered, become part of the school fund, as by law provided for other fines and penalties; suit**  
13 **for said penalty may be brought by the attorney general, the director of the insurance department,**  
14 **or any county, circuit or prosecuting attorney, in either the city or county in which the policy was**  
15 **delivered, or in which the money was paid to any agent of such association or corporation, or in**  
16 **which the receipt was delivered, or in any county or city in which an attorney for service or any**  
17 **agent of said association or corporation may be found; and if the plaintiff recover, an attorney**  
18 **fee to be allowed by the court for each cause of action upon which recovery is had shall be taxed**  
19 **as and added to the costs; service shall be made of process in any such action, either as in other**  
20 **civil actions or as provided in sections 375.010 to 375.920 for service on insurance companies]**  
21 **under a certificate of authority or appropriate licensure, or is an insurance company**  
22 **exempt from certification under section 375.786.**

23       **2. If the director determines that a person has engaged or is engaging in a violation**  
24 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
25 **materially aided or is materially aiding an act, practice, omission, or course of business**  
26 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
27 **the director may issue such administrative orders as authorized under section 374.046,**  
28 **RSMo. A violation of this section is a level four violation under section 374.049, RSMo.**

29       **3. If the director believes that a person has engaged or is engaging in a violation of**  
30 **this section or a rule adopted or order issued pursuant thereto, or that a person has**

31 **materially aided or is materially aiding an act, practice, omission, or course of business**  
32 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
33 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
34 **A violation of this section is a level four violation under section 374.049, RSMo.**

35 **4. Any person who knowingly engages in any act, practice, omission, or course of**  
36 **business in violation of this section is guilty of a class D felony.**

37 **5. The director may refer such evidence as is available concerning violations of this**  
38 **chapter to the proper prosecuting attorney, who with or without a criminal reference, or**  
39 **the attorney general under section 27.030, RSMo, may institute the appropriate criminal**  
40 **proceedings.**

41 **6. Nothing in this section shall limit the power of the state to punish any person for**  
42 **any conduct that constitutes a crime under any other state statute.**

375.320. 1. No insurance company formed under the laws of this state shall, directly or  
2 indirectly, deal or trade in any goods, wares, merchandise or other commodities whatsoever,  
3 except such as may be incident to and necessary in connection with the ownership and operation  
4 of property held under the provisions of sections 375.330 and 375.340.

5 **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

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

4 (1) Such as shall be necessary for its accommodation in the transaction of its business;  
5 provided that before the purchase of real estate for any such purpose, the approval of the director  
6 of the department of insurance must be first had and obtained, and except with the approval of  
7 the director, the value of such real estate, together with all appurtenances thereto, purchased for  
8 such purpose shall not exceed twenty percent of the insurance company's capital and surplus as  
9 shown by its last annual statement; or

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

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

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

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

18 (6) Such as shall have been acquired under the provisions of the Urban Redevelopment  
19 Corporations Act permitting such company to purchase, own, hold or convey real estate; or

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

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

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

33 3. Provided, no such insurance company shall invest more than ten percent of its  
34 admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed  
35 with the director of the department of insurance of the state of Missouri, in the total amount of  
36 real estate acquired under subdivision (7) of subsection 1, nor more under subdivision (7) of  
37 subsection 1 than one percent of its admitted assets or ten percent of its capital and surplus,  
38 whichever is greater, in any one property, nor more under subdivision (7) of subsection 1 than  
39 one percent of its admitted assets or ten percent of its capital and surplus, whichever is greater,  
40 in total properties leased or rented to any one individual, partnership or corporation.

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

47 5. The director of the department of insurance may, for good cause shown, extend the  
48 time for holding such real estate acquired in paying of a debt, by foreclosure or otherwise, and  
49 real estate exchanged therefor, and not held by the company under subdivision (7) of subsection  
50 1, for such period as he may find to be to the best interests of the policyholders of said company.

51 6. If a life insurance company depositing under section 376.170, RSMo, becomes the  
52 owner of real estate pursuant to this section, the company may execute its own deed for the real  
53 estate to the director of the department of insurance, as trustee. The deed may be deposited with  
54 the director as proper security, under and according to the provisions of sections 376.010 to  
55 376.670, RSMo, the value to be subject to the approval of the director.

56           **7. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.340. 1. In all cases in which life insurance companies, benefit societies or other  
2 associations doing business in this state shall have legally acquired by foreclosure or in payment  
3 of a debt previously contracted any real estate or personal property situated in this state or  
4 elsewhere, said company, society or association may upon the sale of said property take in  
5 payment or part payment thereof the stocks or bonds of any company or corporation purchasing  
6 said property and may exchange any real estate acquired in foreclosure or in payment of debts,  
7 in whole or in part, for other real estate.

8           **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.345. 1. As used in this section, the following words and terms mean:

2           (1) "Admitted assets", assets permitted to be reported as admitted assets on the statutory  
3 financial statement of the insurance company most recently required to be filed with the director,  
4 but excluding assets of separate accounts, the investments of which are not subject to the  
5 provisions of law governing the general investment account of the insurance company;

6           (2) "Cap", an agreement obligating the seller to make payments to the buyer, with each  
7 payment based on the amount by which a reference price, level, performance, or value of one or  
8 more underlying interests exceeds a predetermined number, sometimes called the strike rate or  
9 strike price;

10          (3) "Collar", an agreement to receive payments as the buyer of an option, cap, or floor  
11 and to make payments as the seller of a different option, cap, or floor;

12          (4) "Counterparty exposure amount":

13          (a) The amount of credit risk attributable to an over-the-counter derivative instrument.  
14 The amount of credit risk equals:

15           a. The market value of the over-the-counter derivative instrument if the liquidation of  
16 the derivative instrument would result in a final cash payment to the insurance company; or

17           b. Zero if the liquidation of the derivative instrument would not result in a final cash  
18 payment to the insurance company;

19          (b) If over-the-counter derivative instruments are entered into under a written master  
20 agreement which provides for netting of payments owed by the respective parties, and the  
21 domicile of the counterparty is either within the United States or within a foreign jurisdiction  
22 listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting,  
23 the net amount of credit risk shall be the greater of zero or the net sum of:

24           a. The market value of the over-the-counter derivative instruments entered into under  
25 the agreement, the liquidation of which would result in a final cash payment to the insurance  
26 company; and

27           b. The market value of the over-the-counter derivative instruments entered into under  
28 the agreement, the liquidation of which would result in a final cash payment by the insurance  
29 company to the business entity;

30           (c) For open transactions, market value shall be determined at the end of the most recent  
31 quarter of the insurance company's fiscal year and shall be reduced by the market value of  
32 acceptable collateral held by the insurance company or placed in escrow by one or both parties;

33           (5) "Derivative instrument", an agreement, option, instrument, or a series or combination  
34 thereof that makes, takes delivery of, assumes, relinquishes, or makes a cash settlement in lieu  
35 of a specified amount of one or more underlying interests, or that has a price, performance, value,  
36 or cash flow based primarily upon the actual or expected price, level, performance, value or cash  
37 flow of one or more underlying interests. Derivative instruments also include options, warrants  
38 used in a hedging transaction and not attached to another financial instrument, caps, floors,  
39 collars, swaps, forwards, futures and any other agreements, options or instruments substantially  
40 similar thereto, and any other agreements, options, or instruments permitted under rules or orders  
41 promulgated by the director;

42           (6) "Derivative transaction", a transaction involving the use of one or more derivative  
43 instruments;

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

45           (8) "Floor", an agreement obligating the seller to make payments to the buyer in which  
46 each payment is based on the amount by which a predetermined number, sometimes called the  
47 floor rate or price, exceeds a reference price, level, performance, or value of one or more  
48 underlying interests;

49           (9) "Forward", an agreement other than a future to make or take delivery of, or effect a  
50 cash settlement based on the actual or expected price, level, performance or value of, one or  
51 more underlying interests, but not including spot transactions effected within customary  
52 settlement periods, when issued purchases or other similar cash market transactions;

53           (10) "Future", an agreement traded on an exchange to make or take delivery of, or effect  
54 a cash settlement based on the actual or expected price, level, performance or value of one or  
55 more underlying interests and which includes an insurance future;

56           (11) "Hedging transaction", a derivative transaction that is entered into and maintained  
57 to reduce:

58           (a) The risk of economic loss due to a change in the value, yield, price, cash flow or  
59 quantity of assets or liabilities that the insurance company has acquired or incurred or anticipates  
60 acquiring or incurring;

61           (b) The currency exchange rate risk or the degree of exposure as to assets or liabilities  
62 that the insurance company has acquired or incurred or anticipates acquiring or incurring; or



63 (c) Risk through such other derivative transactions as may be specified to constitute  
64 hedging transactions by rules or orders adopted by the director;

65 (12) "Income generation transaction":

66 (a) A derivative transaction involving the writing of covered call options, covered put  
67 options, covered caps or covered floors that is intended to generate income or enhance return;  
68 or

69 (b) Such other derivative transactions as may be specified to constitute income  
70 generation transactions in rules or orders adopted by the director;

71 (13) "Initial margin", the amount of cash, securities or other consideration initially  
72 required to be deposited to establish a futures position;

73 (14) "NAIC", the National Association of Insurance Commissioners;

74 (15) "Option", an agreement giving the buyer the right to buy or receive, sell or deliver,  
75 enter into, extend, terminate or effect a cash settlement based on the actual or expected price,  
76 level, performance or value of one or more underlying interests;

77 (16) "Over-the-counter derivative instrument", a derivative instrument entered into with  
78 a business entity other than through an exchange or clearinghouse;

79 (17) "Potential exposure", the amount determined in accordance with the NAIC Annual  
80 Statement Instructions;

81 (18) "Replication transaction", a derivative transaction effected either separately or in  
82 conjunction with cash market investments included in the insurer's investment portfolio and  
83 intended to replicate the investment characteristic of another authorized transaction, investment  
84 or instrument or to operate as a substitute for cash market transactions. A derivative transaction  
85 that is entered into as a hedging transaction or an income generation transaction shall not be  
86 considered a replication transaction;

87 (19) "SVO", the Securities Valuation Office of the NAIC or any successor office  
88 established by the NAIC;

89 (20) "Swap", an agreement to exchange or to net payments at one or more times based  
90 on the actual or expected price, level, performance or value of one or more underlying interests;

91 (21) "Underlying interest", the assets, liabilities, other interests, or a combination thereof  
92 underlying a derivative instrument, such as any one or more securities, currencies, rates, indices,  
93 commodities or derivative instruments;

94 (22) "Warrant", an instrument that gives the holder the right to purchase an underlying  
95 financial instrument at a given price and time or at a series of prices and times outlined in the  
96 warrant agreement.

2. An insurance company, **including those organized under chapter 376, RSMo**, may, directly or indirectly through an investment subsidiary, engage in derivative transactions pursuant to this section under the following conditions:

(1) In general:

(a) An insurance company may use derivative instruments pursuant to this chapter to engage in hedging transactions and certain income generation transactions;

(b) Upon request, an insurance company shall demonstrate to the director the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses;

(2) An insurance company shall only maintain its position in any outstanding derivative instrument used as part of a hedging transaction for as long as the hedging transaction continues to be effective;

(3) An insurance company may enter into hedging transactions if as a result of and after giving effect to the transaction:

(a) The aggregate statement value of options, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions then engaged in by the insurer does not exceed seven and one-half percent of its admitted assets;

(b) The aggregate statement value of options, caps and floors written in hedging transactions then engaged in by the insurer does not exceed three percent of its admitted assets; and

(c) The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions then engaged in by the insurer does not exceed six and one-half percent of its admitted assets;

(4) An insurance company may only enter into the following types of income generation transactions if as a result of and after giving effect to an income generation transaction, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, shall not exceed ten percent of its admitted assets:

(a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;

(b) Sales of covered call options on equity securities if the insurance company holds in its portfolio or can immediately acquire through the exercise of options, warrants or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(c) Sales of covered puts on investments that the insurance company is permitted to acquire under the applicable insurance laws of the state, if the insurance company has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or

(d) Sales of covered caps or floors if the insurance company holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding;

(5) An insurance company may use derivative instruments for replication transactions only after the director promulgates reasonable rules that set forth methods of disclosure, reserving for risk-based capital, and determining the asset valuation reserve for these instruments. Any asset being replicated is subject to all the provisions and limitations on the making thereof specified in this chapter and chapters 376 and 379, RSMo, with respect to investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset;

(6) An insurance company shall include all counterparty exposure amounts in determining compliance with this state's single-entity investment limitations;

(7) The director may approve, by rule or order, additional transaction conditions involving the use of derivative instruments for other risk management purposes.

3. Written investment policies and record-keeping procedures shall be approved by the board of directors of the insurance company or by a committee authorized by such board before the insurance company may engage in the practices and activities authorized by this section. These policies and procedures must be specific enough to define and control permissible and suitable investment strategies with regard to derivative transactions with a view toward the protection of the policyholders. The minutes of any such committee shall be recorded and regular reports of such committee shall be submitted to the board of directors.

4. The director may promulgate reasonable rules and regulations pursuant to the provisions of chapter 536, RSMo, not inconsistent with this section and any other insurance laws of this state, establishing standards and requirements relating to practices and activities authorized in this section, including, but not limited to, rules which impose financial solvency standards, valuation standards, and reporting requirements.

375.390. 1. No officer, stockholder, agent or employee of any insurance company, formed under the laws of this state, or doing business herein, shall, directly or indirectly, use or employ, or permit others to use or employ, any of the money, funds or securities of such company for private profit or gain, and any such use shall be deemed a felony, punishable, upon

5 conviction, by imprisonment in the penitentiary not less than two years nor more than five years  
6 for each offense.

7 **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.424. **1.** It shall be unlawful for any beneficial owner, director or officer, directly or  
2 indirectly, to sell any equity security of such company if the person selling the security or his  
3 principal does not own the security sold, or if owning the security, does not deliver it against  
4 such sale within twenty days thereafter, or does not within five days after such sale deposit it in  
5 the mails or other usual channels of transportation; but no person shall be deemed to have  
6 violated this section if he proves that notwithstanding the exercise of good faith he was unable  
7 to make such delivery or deposit within such time, or that to do so would cause undue  
8 inconvenience or expense.

9 **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.445. **1.** [When upon investigation the director finds that] **It is unlawful for any**  
2 **insurance** company transacting business [in] **under the laws of** this state [has conducted] **to:**

3 **(1) Conduct** its business fraudulently[, is not carrying] ;

4 **(2) Fail to carry** out its contracts in good faith[, ] ; or [is]

5 **(3)** Habitually and as a matter of business practice [compelling] **compel** claimants under  
6 policies or liability judgment creditors of the insured to either accept less than the amount due  
7 under the terms of the policy or resort to litigation against the company to secure payment of the  
8 amount due[, and that a proceeding in respect thereto would be in the interest of the public, he  
9 shall issue and serve upon the company a statement of the charges in that respect and a notice  
10 of a hearing thereon].

11 **2.** [If after the hearing the director shall determine that the company has fraudulently  
12 conducted its business as defined in this section, he shall order the company to cease and desist  
13 from the fraudulent practice and may suspend the company's certificate of authority for a period  
14 not to exceed thirty days and may in addition order a forfeiture to the state of Missouri of a sum  
15 not to exceed one thousand dollars, which forfeiture may be recovered by a civil action brought  
16 by and in the name of the director of insurance. The civil action may be brought in the circuit  
17 court of Cole County or, at the option of the director of insurance, in another county which has  
18 venue of an action against the person, partnership or corporation under other provisions of law.]

19 **If the director determines that a person has engaged or is engaging in a violation of this**  
20 **section or a rule adopted or order issued pursuant thereto, or that a person has materially**  
21 **aided or is materially aiding an act, practice, omission, or course of business constituting**  
22 **a violation of this section or a rule adopted or order issued pursuant thereto, the director**  
23 **may issue such administrative orders as authorized under section 374.046, RSMo. A**  
24 **violation of this section is a level three violation under section 374.049, RSMo.** The director

25 of insurance may also suspend or revoke the license [of an insurer or agent] or **certificate of**  
26 **authority of such person** for any [such] willful violation.

27 **3. If the director believes that a person has engaged or is engaging in a violation of**  
28 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
29 **materially aided or is materially aiding an act, practice, omission, or course of business**  
30 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
31 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
32 **A violation of this section is a level three violation under section 374.049, RSMo.**

375.480. 1. When any company, which has on deposit the securities named in [sections]  
2 **section 376.170 [and 376.300], RSMo,** with the director of the insurance department, shall desire  
3 to relinquish and cease its business in this state, said director shall, upon application of such  
4 company, under the oath of the president or vice president and secretary or assistant secretary,  
5 give notice of such intention in any newspaper of general circulation published in the county or  
6 city in which said company is located, if it is a company of this state, or in some newspaper  
7 published in the city of St. Louis, if it is a company of another state or government, at least twice  
8 a week for six weeks.

9 2. After such publication he shall deliver up and transfer to said company the securities  
10 held by him and belonging to the company; but before making such transfer, the director shall  
11 be satisfied, by an examination of the books and papers of such company, to be made by himself  
12 or some competent person to be appointed by him, or by the oath of the acting president and  
13 secretary or assistant secretary of said company if it be a company organized under the laws of  
14 this state, that all debts and liabilities of every kind that are due, or may become due, upon all  
15 contracts or agreements made with the policyholders in said company, or in any company  
16 reinsured by said company, if the deposit is that of a reinsured company and is held for the  
17 security of the policyholders of said reinsured company under sections 375.010 to 375.920, are  
18 released, satisfied or extinguished; or if it be a company not organized under the laws of this  
19 state, that all debts and liabilities of every kind, whether fixed or contingent, due or that may  
20 become due to this state or to any county or municipality or citizen thereof, are released, satisfied  
21 or extinguished; and the said director may, from time to time, authorize the delivery in the  
22 manner aforesaid, to such company or its assigns, of any portion of such securities, on being  
23 satisfied in the manner and form aforesaid, that all debts and liabilities of every kind as aforesaid  
24 are less than one-half the amount of the said securities which are retained.

375.532. 1. The capital, reserve and surplus of a domestic insurer may be invested in  
2 bonds, notes or other evidences of indebtedness, or preferred or guaranteed stocks or shares,  
3 issued, assumed or guaranteed by an institution organized under the laws of the United States,  
4 any state, territory or possession of the United States, or the District of Columbia, if such bonds,

5 notes or other evidences of indebtedness, or preferred or guaranteed stocks or shares, shall carry  
6 at least the second highest designation or quality rating conferred by the Securities Valuation  
7 Office of the National Association of Insurance Commissioners, or some similar or equivalent  
8 rating by a nationally recognized rating agency which has been approved by the director.

9 2. As used in this section, the term "institution" means a corporation, a joint stock  
10 company, an association, a trust, a business partnership, a business joint venture or similar entity.

11 **3. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.534. 1. In addition to other foreign investments permitted by Missouri law for the  
2 type or kind of insurance company involved, the capital, reserves and surplus of all insurance  
3 companies of whatever kind and character organized under the laws of this state, having admitted  
4 assets of not less than one hundred million dollars, may be invested in securities, investments  
5 and deposits issued, guaranteed or assumed by a foreign government or foreign corporation, or  
6 located in a foreign country, whether denominated in United States dollars or in foreign currency,  
7 subject to the following conditions:

8 (1) Such securities, investments and deposits shall be of substantially the same kind,  
9 class and quality of like United States investments eligible for investment by an insurance  
10 company under Missouri law;

11 (2) An insurance company shall not invest or deposit in the aggregate more than five  
12 percent of its admitted assets under this section, except that an insurance company may reinvest  
13 or redeposit any income or profits generated by investments permitted under this section; and

14 (3) Such securities, investments and deposits shall be aggregated with United States  
15 investments of the same class in determining compliance with percentage limitations imposed  
16 under Missouri law for investments in that class for the type or kind of insurance company  
17 involved.

18 **2. This section shall not apply to an insurer organized under chapter 376, RSMo.**

375.720. 1. Whenever, by chapter 375, or by any other law of this state, the director is  
2 authorized or required to take possession of any of the general assets of any insurer, **it is**  
3 **unlawful for** any person or company [who shall] **to** knowingly neglect or refuse to deliver to the  
4 director, on [his] order or demand **of the director**, any books, papers, evidences of title or debt,  
5 or any property belonging to any such insurer in its, his or their possession, or under his, its or  
6 their control[, shall be guilty of a class C felony].

7 **2. If the director determines that a person has engaged or is engaging in a violation**  
8 **of this section or a rule adopted or order issued pursuant thereto, or a that person has**  
9 **materially aided or is materially aiding an act, practice, omission, or course of business**  
10 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
11 **the director may issue such administrative orders as authorized under section 374.046,**

12 **RSMo. A violation of this section is a level three violation under section 374.049, RSMo.**  
13 **The director of insurance may also suspend or revoke the license or certificate of authority**  
14 **of such person for any willful violation.**

15 **3. If the director believes that a person has engaged or is engaging in a violation of**  
16 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
17 **materially aided or is materially aiding an act, practice, omission, or course of business**  
18 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
19 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
20 **A violation of this section is a level three violation under section 374.049, RSMo.**

21 **4. Any person who knowingly engages in any act, practice, omission, or course of**  
22 **business in violation of this section is guilty of a class C felony. If the offender holds a**  
23 **license or certificate of authority under the insurance laws of this state, the court imposing**  
24 **sentence shall order the department of insurance to revoke such license.**

25 **5. The director may refer such evidence as is available concerning violations of this**  
26 **section to the proper prosecuting attorney, who with or without a criminal reference, or**  
27 **the attorney general under section 27.030, RSMo, may institute the appropriate criminal**  
28 **proceedings.**

29 **6. Nothing in this section shall limit the power of the state to punish any person for**  
30 **any conduct that constitutes a crime under any other state statute.**

375.777. 1. The director shall:

2 (1) Notify the association of the existence of an insolvent insurer not later than three days  
3 after he receives notice of the determination of the insolvency;

4 (2) Upon request of the board of directors, provide the association with a statement of  
5 the net direct written premiums of each member insurer; and

6 (3) Notify the agents of the insolvent insurer of the determination of insolvency and of  
7 the insureds' rights under sections 375.771 to 375.779. Such notification shall be by first class  
8 mail at their last known address, where available, but if sufficient information for notification  
9 by mail is not available, notice by publication in a newspaper of general circulation shall be  
10 sufficient.

11 2. The director may[:

12 (1)]require each agent of the insolvent insurer to give prompt written notice, by first class  
13 mail, at the insured's last known address, to each insured of the insolvent insurer for whom he  
14 was agent of record, provided the agent has received the notification of subsection 1 of this  
15 section[]; and

16 (2) Suspend or revoke, after notice and hearing, the certificate of authority to transact  
17 insurance in this state of] .

18       **3. It is unlawful for** any member insurer [which fails] **to fail** to pay an assessment when  
19 due or [fails] **fail** to comply with the plan of operation. [As an alternative, the director may levy  
20 an administrative penalty on any member insurer which fails to pay an assessment when due.  
21 Such administrative penalty shall not exceed five percent of the unpaid assessment per month,  
22 except that no administrative penalty shall be less than one hundred dollars per month.

23       3. Any final action or order of the director under this section shall be subject to judicial  
24 review in the circuit court of Cole County] **Every day in which the member insurer fails to**  
25 **pay is a separate violation.**

26       **4. If the director determines that a person has engaged or is engaging in a violation**  
27 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
28 **materially aided or is materially aiding an act, practice, omission, or course of business**  
29 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
30 **the director may issue such administrative orders as authorized under section 374.046,**  
31 **RSMo. A violation of this section is a level two violation under section 374.049, RSMo.**  
32 **The director of insurance may also suspend or revoke the license or certificate of authority**  
33 **of such person for any willful violation.**

34       **5. If the director believes that a person has engaged or is engaging in a violation of**  
35 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
36 **materially aided or is materially aiding an act, practice, omission, or course of business**  
37 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
38 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
39 **A violation of this section is a level two violation under section 374.049, RSMo.**

      375.780. [Every violation of] **1. A person commits a crime if he willfully violates** any  
2 of the provisions of [sections 375.010 to 375.920] **this chapter. If** not otherwise specifically  
3 provided for [shall be deemed a misdemeanor, and shall subject the individual, association of  
4 individuals or corporation violating the same to a penalty of not less than fifty nor more than five  
5 hundred dollars for each offense; such penalty may be recovered and sued for against  
6 corporations or associations in the manner provided and by any of the officers designated in  
7 section 375.310, and against individuals by civil action, by information or by indictment, and an  
8 attorney's fee of twenty-five dollars shall be taxed as costs against the defendant, as in said  
9 section; all fines and penalties recovered under sections 375.010 to 375.920 shall be turned into  
10 the school fund, as provided by law for other fines and penalties] **, the crime is a class B**  
11 **misdemeanor.**

12       **2. The director may refer such evidence as is available concerning violations of this**  
13 **section to the proper prosecuting attorney, who with or without a criminal reference, or**



14 **the attorney general under section 27.030, RSMo, may institute the appropriate criminal**  
15 **proceedings.**

16 **3. Nothing in this section shall limit the power of the state to punish any person for**  
17 **any conduct that constitutes a crime under any other state statute.**

375.786. 1. It [shall be] is unlawful for any insurance company to transact insurance  
2 business in this state, as set forth in subsection 2, without a certificate of authority from the  
3 director; provided, however, that this section shall not apply to:

4 (1) The lawful transaction of insurance as provided in chapter 384, RSMo;

5 (2) The lawful transaction of reinsurance by insurance companies;

6 (3) Transactions in this state involving a policy lawfully solicited, written and delivered  
7 outside of this state covering only subjects of insurance not resident, located or expressly to be  
8 performed in this state at the time of issuance, and which transactions are subsequent to the  
9 issuance of such policy;

10 (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of  
11 claims or losses;

12 (5) Transactions in this state involving group life and group sickness and accident or  
13 blanket sickness and accident insurance or group annuities where the master policy of such  
14 groups was lawfully issued and delivered in and pursuant to the laws of a state in which the  
15 insurance company was authorized to do an insurance business, to a group organized for  
16 purposes other than the procurement of insurance, and where the policyholder is domiciled or  
17 otherwise has a bona fide situs;

18 (6) Transactions in this state involving any policy of insurance or annuity contract issued  
19 prior to August 13, 1972;

20 (7) Transactions in this state relative to a policy issued or to be issued outside this state  
21 involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection  
22 and indemnity or other risk, including strikes and war risks commonly insured under ocean or  
23 wet marine forms of policy;

24 (8) Except as provided in chapter 384, RSMo, transactions in this state involving  
25 contracts of insurance issued to one or more industrial insureds; provided that nothing herein  
26 shall relieve an industrial insured from taxation imposed upon independently procured insurance.  
27 An "industrial insured" is hereby defined as an insured:

28 (a) Which procures the insurance of any risk or risks other than life, health and annuity  
29 contracts by use of the services of a full-time employee acting as an insurance manager or buyer  
30 or the services of [a regularly and continuously retained qualified insurance consultant] **an**  
31 **insurance producer whose services are wholly compensated by such insured and not by the**  
32 **insurer;**

33 (b) Whose aggregate annual premiums for insurance excluding workers' compensation  
34 insurance premiums total at least [twenty-five] **one hundred** thousand dollars; and

35 (c) Which has at least twenty-five full-time employees;

36 (9) Transactions in this state involving life insurance, health insurance or annuities  
37 provided to educational or religious or charitable institutions organized and operated without  
38 profit to any private shareholder or individual for the benefit of such institutions and individuals  
39 engaged in the service of such institutions, provided that any company issuing such contracts  
40 under this paragraph shall:

41 (a) File a copy of any policy or contract issued to Missouri residents with the director;

42 (b) File a copy of its annual statement prepared pursuant to the laws of its state of  
43 domicile, as well as such other financial material as may be requested, with the director; and

44 (c) Provide, in such form as may be acceptable to the director, for the appointment of the  
45 director as its true and lawful attorney upon whom may be served all lawful process in any action  
46 or proceeding against such company arising out of any policy or contract it has issued to, or  
47 which is currently held by, a Missouri citizen, and process so served against such company shall  
48 have the same form and validity as if served upon the company;

49 (10) Transactions in this state involving accident, health, personal effects, liability or any  
50 other travel or auto-related products or coverages provided or sold by a rental company after  
51 January 1, 1994, to a renter in connection with and incidental to the rental of motor vehicles.

52 2. Any of the following acts in this state effected by mail or otherwise by or on behalf  
53 of an unauthorized insurance company is deemed to constitute the transaction of an insurance  
54 business in this state: (The venue of an act committed by mail is at the point where the matter  
55 transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurance  
56 company" as used in sections 375.786 to 375.790 includes all corporations, associations,  
57 partnerships and individuals engaged as principals in the business of insurance and also includes  
58 interinsurance exchanges and mutual benefit societies.)

59 (1) The making of or proposing to make an insurance contract;

60 (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty  
61 or suretyship as a vocation and not merely incidental to any other legitimate business or activity  
62 of the guarantor or surety;

63 (3) The taking or receiving of any application for insurance;

64 (4) The receiving or collection of any premium, commission, membership fees,  
65 assessments, dues or other consideration for any insurance or any part thereof;

66 (5) The issuance or delivery of contracts of insurance to residents of this state or to  
67 persons authorized to do business in this state;

68           (6) Directly or indirectly acting as an agent for or otherwise representing or aiding on  
69 behalf of another any person or insurance company in the solicitation, negotiation, procurement  
70 or effectuation of insurance or renewals thereof or in the dissemination of information as to  
71 coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection  
72 of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction  
73 of matters subsequent to effectuation of the contract and arising out of it, or in any other manner  
74 representing or assisting a person or insurance company in the transaction of insurance with  
75 respect to subjects of insurance resident, located or to be performed in this state. The provisions  
76 of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured  
77 from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of  
78 such employer;

79           (7) The transaction of any kind of insurance business specifically recognized as  
80 transacting an insurance business within the meaning of the statutes relating to insurance;

81           (8) The transacting or proposing to transact any insurance business in substance  
82 equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

83           3. (1) The failure of an insurance company transacting insurance business in this state  
84 to obtain a certificate of authority shall not impair the validity of any act or contract of such  
85 insurance company and shall not prevent such insurance company from defending any action at  
86 law or suit in equity in any court of this state, but no insurance company transacting insurance  
87 business in this state without a certificate of authority shall be permitted to maintain an action  
88 in any court of this state to enforce any right, claim or demand arising out of the transaction of  
89 such business until such insurance company shall have obtained a certificate of authority.

90           (2) In the event of failure of any such unauthorized insurance company to pay any claim  
91 or loss within the provisions of such insurance contract, any person who assisted or in any  
92 manner aided directly or indirectly in the procurement of such insurance contract shall be liable  
93 to the insured for the full amount of the claim or loss in the manner provided by the provisions  
94 of such insurance contract.

95           **4. If the director determines that a person has engaged or is engaging in a violation**  
96 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
97 **materially aided or is materially aiding an act, practice, omission, or course of business**  
98 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
99 **the director may issue such administrative orders as authorized under section 374.046,**  
100 **RSMo. A violation of this section is a level four violation under section 374.049, RSMo.**

101           **5. If the director believes that a person has engaged or is engaging in a violation of**  
102 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
103 **materially aided or is materially aiding an act, practice, omission, or course of business**

104 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
105 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
106 **A violation of this section is a level four violation under section 374.049, RSMo.**

107 **6.** Any person who transacts insurance business without a certificate of authority, as  
108 provided in this section, is guilty of a class C felony.

109 **7.** The director may refer such evidence as is available concerning violations of this  
110 chapter to the proper prosecuting attorney, who with or without a criminal reference, or  
111 the attorney general under section 27.030, RSMo, may institute the appropriate criminal  
112 proceedings.

113 **8.** Nothing in this section shall limit the power of the state to punish any person for  
114 any conduct that constitutes a crime in any other state statute.

375.881. [1.] The director may revoke or suspend the certificate of authority of a foreign  
2 insurance company [or may by order require the insurance company to pay to the people of the  
3 state of Missouri a penalty in a sum not exceeding five hundred dollars and upon failure of the  
4 insurance company to pay the penalty within twenty days after the mailing of the order, postage  
5 prepaid, certified, and addressed to the last known place of business of the insurance company,  
6 unless the order is stayed by an order of a court of competent jurisdiction, the director of  
7 insurance may revoke or suspend the license of the insurance company for any period of time]  
8 **under section 374.047, RSMo, or issue such administrative orders as appropriate under**  
9 **section 374.046, RSMo,** whenever he finds that the company

10 (1) Is insolvent;

11 (2) Fails to comply with the requirements for admission in respect to capital, the  
12 investment of its assets or the maintenance of deposits in this or other state or fails to maintain  
13 the surplus which similar domestic companies transacting the same kinds of business are  
14 required to maintain;

15 (3) Is in such a financial condition that its further transaction of business in this state  
16 would be hazardous to policyholders and creditors in this state and to the public;

17 (4) Has refused or neglected to pay a valid final judgment against the company within  
18 thirty days after the rendition of the judgment;

19 (5) Has refused to submit to the jurisdiction of a court of this state upon the grounds of  
20 diversity of citizenship in a cause of action arising out of business transacted, acts done, or  
21 contracts made in this state by the foreign insurance company;

22 (6) Has violated any law of this state or has in this state violated its charter or exceeded  
23 its corporate powers;

24 (7) Has refused to submit its books, papers, accounts, records, or affairs to the reasonable  
25 inspection or examination of the director, his actuaries, deputies or examiners;

26 (8) Has an officer who has refused upon reasonable demand to be examined under oath  
27 touching its affairs;

28 (9) Fails to file its annual statement within thirty days after the date when it is required  
29 by law to file the statement;

30 (10) Fails to file with the director a copy of an amendment to its charter or articles of  
31 association within thirty days after the effective date of the amendment;

32 (11) Fails to file with the director copies of the agreement and certificate of merger and  
33 the financial statements of the merged companies, if required, within thirty days after the  
34 effective date of the merger;

35 (12) Fails to pay any fees, taxes or charges prescribed by the laws of this state within  
36 thirty days after they are due and payable; provided, however, that in case of objection or legal  
37 contest the company shall not be required to pay the tax until thirty days after final disposition  
38 of the objection or legal contest;

39 (13) Fails to file any report for the purpose of enabling the director to compute the taxes  
40 to be paid by the company within thirty days after the date when it is required by law to file the  
41 report;

42 (14) Has had its corporate existence dissolved or its certificate of authority revoked in  
43 the state or country in which it was organized;

44 (15) Has had all its risks reinsured in their entirety in another company; or

45 (16) Has ceased to transact the business of insurance in this state for a period of one year.

46 [2. The director shall not revoke or suspend the certificate of authority of a foreign  
47 insurance company until he has given the company at least twenty days' notice of the revocation  
48 or suspension and of the grounds therefor and has afforded the company an opportunity for a  
49 hearing.]

375.940. [1.] Whenever the director shall have reason to believe that any person or  
2 insurer has been engaged or is engaging in this state in any unfair method of competition or any  
3 unfair or deceptive act or practice **in violation of sections 375.930 to 375.948**, and that a  
4 proceeding by [him] **the director** in respect thereto would be to the interest of the public, [he]  
5 **the director** shall issue and serve upon such person or insurer a statement of the charges [in that  
6 respect and a notice of hearing thereon to be held at a time and place fixed in the notice which  
7 shall not be less than twenty days after the date of service thereof.

8 2. At the time and place fixed for such hearing, such person or insurer shall have an  
9 opportunity to be heard to show cause why an order should not be made by the director requiring  
10 such person or insurer to cease and desist from the acts, methods or practices so complained of.  
11 Upon good cause shown, the director shall permit any person to intervene, appear and be heard  
12 at such hearing by counsel or in person. Nothing herein shall preclude the informal disposition

13 of any case by stipulation, consent order, or default, or by agreed settlement where such  
14 settlement is in conformity with law.

15 3. Nothing contained in sections 375.930 to 375.948 shall require the observance at any  
16 such hearing of formal rules of pleading or evidence.

17 4. Upon such hearing, the director shall have power to examine and cross-examine  
18 witnesses, receive oral and documentary evidence, administer oaths, subpoena witnesses and  
19 compel their attendance, and require the production of books, papers, records, correspondence  
20 and all other written instruments or documents which he deems relevant to the inquiry. The  
21 director, upon any such hearing, shall cause to be made a record of all the evidence and all the  
22 proceedings had at such hearing. In case of a refusal of any person to comply with any subpoena  
23 issued hereunder or to testify with respect to any matter concerning which he may be lawfully  
24 interrogated, the circuit court of Cole County or the county where such party resides, or may be  
25 found, on application of the director, may issue an order requiring such person to comply with  
26 such subpoena and to testify; and any failure to obey any such order of the court may be punished  
27 by the court as a contempt thereof.

28 5. Statements of charges, notices, orders, and other processes of the director under  
29 sections 375.930 to 375.948 may be served by anyone duly authorized by the director either in  
30 the manner provided by law for service of process in civil actions, or by registering or certifying  
31 and mailing a copy thereof to the person affected by such statement, notice, order, or other  
32 process at his or its residence or principal office or place of business. The verified return by the  
33 person so serving such statement, notice, order or other process, setting forth the manner of such  
34 service, shall be proof of the same, and the return postcard receipt for such statement, notice,  
35 order or other process, registered and mailed as aforesaid, shall be proof of the service of the  
36 same] **under the procedures set forth in section 374.046, RSMo.**

375.942. 1. [If, after such hearing, the director determines that the person charged has  
2 engaged in an unfair method of competition or in an unfair or deceptive act or practice prohibited  
3 by section 375.934 or 375.937, he shall reduce his findings to writing and shall issue and cause  
4 to be served upon the person charged with the violation a copy of such findings and an order  
5 requiring such person to cease and desist from engaging in such method of competition, act or  
6 practice, and thereafter the director may, at his discretion, order one or more of the following:

7 (1) Payment of a monetary penalty of not more than one thousand dollars for each  
8 violation but not to exceed an aggregate penalty of one hundred thousand dollars in any  
9 twelve-month period unless the violation was committed flagrantly and in conscious disregard  
10 of section 375.934 or 375.937, in which case the penalty shall be not more than twenty-five  
11 thousand dollars for each violation but not to exceed an aggregate penalty of two hundred fifty  
12 thousand dollars in any twelve-month period;

13 (2) Suspension or revocation of the insurer's license if such insurer knew or reasonably  
14 should have known it was in violation of section 375.934 or 375.937.

15 2. Until the expiration of the time allowed under section 375.944 for filing a petition for  
16 judicial review, if no such petition has been duly filed within such time or, if a petition for  
17 review has been filed within such time, then until the transcript of the record in the proceeding  
18 has been filed in the circuit court of Cole County, the director may at any time, upon such notice  
19 and in such manner as he shall deem proper, modify or set aside in whole or in part any order  
20 issued by him under this section.

21 3. After the expiration of the time allowed for filing such a petition for review, if no such  
22 petition has been duly filed within such time, the director may at any time, after notice and  
23 opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order  
24 issued by him under this section, whenever in his opinion conditions of fact or of law have so  
25 changed as to require such action or if the public interest shall so require.

26 4. Nothing contained in sections 375.930 to 375.948 shall be construed to prohibit the  
27 director and the person from agreeing to a voluntary forfeiture with or without proceedings being  
28 instituted. Any sum so agreed upon shall be paid into the school fund as provided by law for  
29 other fines and penalties] **If the director determines that an insurer has engaged or is**  
30 **engaging in a violation of sections 375.930 to 375.948 or a rule adopted or order issued**  
31 **pursuant thereto, or that a person has materially aided or is materially aiding a practice**  
32 **constituting a violation of sections 375.930 to 375.948 or a rule adopted or order issued**  
33 **pursuant thereto, the director may issue such administrative orders as authorized under**  
34 **section 374.046, RSMo. Each practice in violation of section 375.934 is a level two violation**  
35 **under section 374.049, RSMo. Each act as part of a trade practice does not constitute a**  
36 **separate violation under section 374.049, RSMo. The director of insurance may also**  
37 **suspend or revoke the license or certificate of authority of an insurer for any willful**  
38 **violation.**

39 2. **If the director believes that an insurer has engaged or is engaging in a violation**  
40 **of sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, or that**  
41 **a person has materially aided or is materially aiding a practice constituting a violation of**  
42 **sections 375.930 to 375.948 or a rule adopted or order issued pursuant thereto, the director**  
43 **may maintain a civil action for relief authorized under section 374.048, RSMo. Each**  
44 **practice in violation of section 375.934 is a level two violation under section 374.049, RSMo.**  
45 **Each act as part of a trade practice does not constitute a separate violation under section**  
46 **374.049, RSMo.**

375.946. [Any person who violates] **It is unlawful for any person to violate any**  
2 **provision of** a cease and desist order of the director under section 375.942[, while such order is

3 in effect, may, after notice and hearing, and upon order of the director, be subject to either or  
4 both of the following:

5 (1) A monetary penalty of not more than twenty-five thousand dollars for each and every  
6 act or violation not to exceed an aggregate amount of two hundred fifty thousand dollars  
7 pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of authority]. **The**  
9 **director may institute an action under sections 374.046 and 374.047, RSMo, as necessary**  
10 **to enforce any such order.**

375.994. 1. Department investigators shall have the power to serve subpoenas issued  
2 for the examination, investigation, and trial of all offenses determined by their investigations.

3 2. It is unlawful for any person to interfere, either by abetting or assisting such resistance  
4 or otherwise interfering, with department investigators in the duties imposed upon them by law  
5 or department rule.

6 3. Any moneys, or other property which is awarded to the department as costs of  
7 investigation, or as a fine, shall be credited to the department of insurance dedicated fund created  
8 by section 374.150, RSMo.

9 4. **If the director determines that a person has engaged or is engaging in a violation**  
10 **of section 375.991 or a rule adopted or order issued pursuant thereto, or that a person has**  
11 **materially aided or is materially aiding an act, practice, omission, or course of business**  
12 **constituting a violation of section 375.991 or a rule adopted or order issued pursuant**  
13 **thereto, the director may issue such administrative orders as authorized under section**  
14 **374.046, RSMo. A violation of any of these sections is a level two violation under section**  
15 **374.049, RSMo. The director of insurance may also suspend or revoke the license or**  
16 **certificate of authority of such person for any willful violation.**

17 5. **If the director believes that a person has engaged or is engaging in a violation of**  
18 **section 375.991 or a rule adopted or order issued pursuant thereto, or that a person has**  
19 **materially aided or is materially aiding an act, practice, omission, or course of business**  
20 **constituting a violation of section 375.991 or a rule adopted or order issued pursuant**  
21 **thereto, the director may maintain a civil action for relief authorized under section 374.048,**  
22 **RSMo. A violation of any of these sections is a level two violation under section 374.049,**  
23 **RSMo.**

24 6. Nothing in this section shall be construed as prohibiting the department of insurance  
25 from regulating unfair or fraudulent trade practices as provided for in sections 375.930 to  
26 375.948.

27 [5. In the event] 7. **If the director determines that a person regulated under this chapter**  
28 **has conducted its business fraudulently with respect to sections 375.991 to 375.994, or has as a**



29 matter of business practice abused its rights under said sections, such conduct shall [be  
30 considered] **constitute** either an unfair trade practice under the provisions of sections 375.930  
31 to 375.948 or an unfair claims settlement practice under the provisions of sections 375.1000 to  
32 375.1018. [The director shall have the power and authority, pursuant to the unfair trade practices  
33 act and the unfair claims settlement practices act to subject such persons to the monetary penalty  
34 or suspend or revoke such person's license or certificate of authority, under such acts.]

375.1010. 1. [Whenever the director shall have reason to believe that any insurer has  
2 been engaged or is engaging in this state in any improper claims practice, and that a proceeding  
3 by him in respect thereto would be to the interest of the public, he shall issue and serve upon  
4 such person or insurer a statement of the charges in that respect and a notice of hearing thereon  
5 to be held at a time and place fixed in the notice which shall not be less than twenty days after  
6 the date of service thereof.

7 2. At the time and place fixed for such hearing, such insurer shall have an opportunity  
8 to be heard to show cause why an order should not be made by the director requiring such insurer  
9 to cease and desist from the acts, methods or practices so complained of. Upon good cause  
10 shown, the director shall permit any person to intervene, appear and be heard at such hearing by  
11 counsel or in person. Nothing in sections 375.1000 to 375.1018 shall preclude the informal  
12 disposition of any case by stipulation, consent order, or default, or by agreed settlement where  
13 such settlement is in conformity with law.

14 3. Nothing contained in sections 375.1000 to 375.1018 shall require the observance at  
15 any such hearing of formal rules of pleading or evidence.

16 4. Upon such hearing, the director may examine and cross-examine witnesses, receive  
17 oral and documentary evidence, administer oaths, subpoena witnesses and compel their  
18 attendance, and require the production of books, papers, records, correspondence and all other  
19 written instruments or documents which he deems relevant to the inquiry. The director, upon  
20 any such hearing, shall cause to be made a record of all the evidence and all the proceedings had  
21 at such hearing. In case of a refusal of any person to comply with any subpoena issued hereunder  
22 or to testify with respect to any matter concerning which he may be lawfully interrogated, the  
23 circuit court of Cole County or the county where such party resides, or may be found, on  
24 application of the director, may issue an order requiring such person to comply with such  
25 subpoena and to testify; and any failure to obey any such order of the court may be punished by  
26 the court as a contempt thereof.

27 5. Statements of charges, notices, orders, and other processes of the director under  
28 sections 375.1000 to 375.1018 may be served by anyone duly authorized by the director either  
29 in the manner provided by law for service of process in civil actions, or by registering or  
30 certifying and mailing a copy thereof to the person affected by such statement, notice, order, or

31 other process at his or its residence or principal office or place of business. The verified return  
32 by the person so serving such statement, notice, order or other process, setting forth the manner  
33 of such service, shall be proof of the same, and the return postcard receipt for such statement,  
34 notice, order or other process, registered and mailed as aforesaid, shall be proof of the service  
35 of the same.] **If the director determines that an insurer has engaged or is engaging in a**  
36 **violation of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant**  
37 **thereto, or that a person has materially aided or is materially aiding an act, practice,**  
38 **omission, or course of business constituting a violation of sections 375.1000 to 375.1018 or**  
39 **a rule adopted or order issued pursuant thereto, the director may issue such administrative**  
40 **orders as authorized under section 374.046, RSMo. Each practice in violation of section**  
41 **375.1005 is a level two violation under section 374.049, RSMo. Each act as part of a claims**  
42 **settlement practice does not constitute a separate violation under section 374.049, RSMo.**  
43 **The director of insurance may also suspend or revoke the license or certificate of authority**  
44 **of an insurer for any willful violation.**

45       **2. If the director believes that an insurer has engaged or is engaging in a violation**  
46 **of sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto, or that**  
47 **a person has materially aided or is materially aiding an act, practice, omission, or course**  
48 **of business constituting a violation of sections 375.1000 to 375.1018 or a rule adopted or**  
49 **order issued pursuant thereto, the director may maintain a civil action for relief authorized**  
50 **under section 374.048, RSMo. Each practice in violation of section 375.1005 is a level two**  
51 **violation under section 374.049, RSMo. Each act as part of a claims settlement practice**  
52 **does not constitute a separate violation under section 374.049, RSMo.**

375.1014. 1. [Any person, including any person who has been permitted to intervene,  
2 who is aggrieved by a final order or decision of the director shall be entitled to judicial review  
3 thereof.

4       2. The court shall make and enter upon the pleadings evidence and proceedings set forth  
5 in the transcript a degree modifying, affirming or reversing the order of the director, in whole or  
6 in part. To the extent that the order of the director is affirmed, the court shall thereupon issue  
7 its own order commanding obedience to the terms of such order of the director. If either party  
8 shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction  
9 of the court that such additional evidence is material and that there were reasonable grounds for  
10 the failure to adduce such evidence in the proceeding before the director, the court may order  
11 such additional evidence to be taken before the director and to be adduced upon the hearing in  
12 such manner and upon such terms and conditions as the court may deem proper. The director  
13 may modify his findings of fact, or make new findings by reason of the additional evidence so  
14 taken, and he shall file such modified or new findings which are supported by evidence on the

15 record and his recommendation, if any, for the modification or setting aside of his original order,  
16 with the return of such additional evidence.

17 3. An order issued by the director under section 375.1012 shall become final:

18 (1) Upon the expiration of the time allowed for filing a petition for review if no such  
19 petition has been duly filed within such time; except that the director may thereafter modify or  
20 set aside his order to the extent provided in subsection 2 of section 375.1012; or

21 (2) Upon the final decision of the court if the court directs that the order of the director  
22 be affirmed or the petition for review dismissed.

23 4.] **A final order issued by the director under sections 375.1000 to 375.1018 is**  
24 **subject to judicial review in accordance with the provisions of chapter 536, RSMo, in the**  
25 **circuit court of Cole County.**

26 2. No order of the director under section 375.942 or order of a court to enforce the same  
27 shall in any way relieve or absolve any person affected by such order from any liability under any  
28 other laws of this state.

375.1016. [Any person who violates] **It is unlawful for any person to violate any**  
2 **provision of** a cease and desist order of the director under section 375.1012, [while such order  
3 is in effect, may, after notice and hearing, and upon order of the director, be subject to either or  
4 both of the following:

5 (1) A monetary penalty of not more than twenty-five thousand dollars for each and every  
6 act or violation not to exceed an aggregate amount of two hundred fifty thousand dollars  
7 pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of authority] **and the**  
9 **director may institute an action under sections 374.046 and 374.047, RSMo, as necessary**  
10 **to enforce any such order.**

375.1070. 1. Sections 375.1070 to 375.1075 may be cited as the "Investments in  
2 Medium and Lower Quality Obligations Law".

3 2. **Sections 375.1070 to 375.1075 shall not apply to an insurer organized under**  
4 **chapter 376, RSMo.**

375.1072. As used in sections 375.1070 to 375.1075, the following terms mean:

2 (1) "Admitted assets", the amount thereof as of the last day of the most recently  
3 concluded annual statement year, computed in the same manner as admitted assets in sections  
4 [376.300 to 376.309] **376.291 to 376.307**, RSMo, for life insurers and section 379.080, RSMo,  
5 for insurers other than life;

6 (2) "Aggregate amount of medium to lower quality obligations", the aggregate statutory  
7 statement value thereof;

8 (3) "Institution", a corporation, a joint-stock company, an association, a trust, a business  
9 partnership, a business joint venture or similar entity;

10 (4) "Medium to lower quality obligations", obligations which are rated three, four, five  
11 and six by the Securities Valuation Office of the National Association of Insurance  
12 Commissioners.

375.1075. 1. No domestic insurer shall acquire, directly or indirectly, any medium or  
2 lower quality obligation of any institution if, after giving effect to any such acquisition, the  
3 aggregate amount of all medium and lower quality obligations then held by the domestic insurer  
4 would exceed twenty percent of its admitted assets, and no more than ten percent of its admitted  
5 assets consists of obligations rated four, five or six by the Securities Valuation Office, and no  
6 more than three percent of its admitted assets consists of obligations rated five or six by the  
7 Securities Valuation Office, and no more than one percent of its admitted assets consists of  
8 obligations rated six by the Securities Valuation Office. Attaining or exceeding the limit of any  
9 one category shall not preclude an insurer from acquiring obligations in other categories subject  
10 to the specific and multicategory limits.

11 2. The provisions of this section shall not prohibit a domestic insurer from acquiring any  
12 obligations which it has committed to acquire if the insurer would have been permitted to acquire  
13 that obligation pursuant to this section on the date on which such insurer committed to purchase  
14 that obligation.

15 3. Notwithstanding the other provisions of this section, a domestic insurer may acquire  
16 an obligation of an institution in which the insurer already has one or more obligations, if the  
17 obligation is acquired in order to protect an investment previously made in the obligations of the  
18 institution, provided that all such acquired obligations shall not exceed one-half of one percent  
19 of the insurer's admitted assets.

20 4. The board of directors of any domestic insurance company which acquires or invests  
21 in, directly or indirectly, medium or lower quality obligations of any institution shall adopt a  
22 written plan for the making of such investments. The plan, in addition to guidelines with respect  
23 to the quality of the obligations invested in, shall contain diversification standards including, but  
24 not limited to, standards for issuer, industry, duration, liquidity and geographic location.

25 5. No investments in excess of the limitations provided by this act shall be recognized  
26 as an asset of the insurer pursuant to section [376.307, RSMo, and section] 379.080, RSMo.

375.1135. 1. [A reinsurance intermediary, insurer or reinsurer found by the director,  
2 after a hearing conducted in accordance with chapter 536, RSMo, to be in violation of any  
3 provisions of sections 375.1110 to 375.1140, shall:

4 (1) For each separate violation, pay a penalty in an amount not exceeding five thousand  
5 dollars;

6 (2) Be subject to revocation or suspension of its license; and

7 (3)] **If the director determines that a reinsurance intermediary, insurer, or reinsurer**  
8 **has engaged or is engaging in a violation of sections 375.1110 to 375.1140 or a rule adopted**  
9 **or order issued pursuant thereto, or that a person has materially aided or is materially**  
10 **aiding an act, practice, omission, or course of business constituting a violation of sections**  
11 **375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto, the director may**  
12 **issue such administrative orders as authorized under section 374.046, RSMo. A violation**  
13 **of any of these sections is a level two violation under section 374.049, RSMo. The director**  
14 **of insurance may also suspend or revoke the license or certificate of authority of a**  
15 **reinsurance intermediary, insurer, or reinsurer for any willful violation.**

16 **2. If the director believes that a reinsurance intermediary, insurer, or reinsurer has**  
17 **engaged or is engaging in a violation of sections 375.1110 to 375.1140 or a rule adopted or**  
18 **order issued pursuant thereto, or that a person has materially aided or is materially aiding**  
19 **an act, practice, omission, or course of business constituting a violation of sections 375.1110**  
20 **to 375.1140 or a rule adopted or order issued pursuant thereto, the director may maintain**  
21 **a civil action for relief authorized under section 374.048, RSMo. A violation of any of these**  
22 **sections is a level two violation under section 374.049, RSMo.**

23 **3. In addition to any other relief authorized by sections 374.046 and 374.047,**  
24 **RSMo, if a violation was committed by the reinsurance intermediary, such reinsurance**  
25 **intermediary shall make restitution to the insurer, reinsurer, rehabilitator or liquidator of the**  
26 **insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to such**  
27 **violation.**

28 [2. The decision, determination or order of the director pursuant to subsection 1 of this  
29 section shall be subject to judicial review pursuant to sections 536.100 to 536.140, RSMo.

30 3. Nothing contained in this section shall affect the right of the director to impose any  
31 other penalties provided by law.]

32 4. Nothing contained in sections 375.1110 to 375.1140 is intended to or shall in any  
33 manner limit or restrict the rights of policyholders, claimants, creditors or other third parties or  
34 confer any rights to such persons.

375.1156. 1. Any officer, manager, director, trustee, owner, employee or agent of any  
2 insurer, or any other persons with authority over or in charge of any segment of the insurer's  
3 affairs, shall cooperate with the director or any receiver in any proceeding under sections  
4 375.1150 to 375.1246 or any investigation preliminary to the proceeding. The term "person" as  
5 used in this section, shall include any person who exercises control directly or indirectly over  
6 activities of the insurer through any holding company or other affiliate of the insurer. "To  
7 cooperate" shall include, but shall not be limited to, the following:

8 (a) To reply promptly in writing to any inquiry from the director requesting such a reply;  
9 and

10 (b) To make available to the director any books, accounts, documents, or other records  
11 or information or property of or pertaining to the insurer and in its possession, custody or control.

12 2. [No] **It is unlawful for any person [shall] included in subsection 1 of this section**  
13 **to** obstruct or interfere with the director in the conduct of any delinquency proceeding or any  
14 investigation preliminary or incidental thereto.

15 3. This section shall not be construed to abridge otherwise existing legal rights, including  
16 the right to resist a petition for liquidation or other delinquency proceedings, or other orders.

17 [4. Any person included within subsection 1 of this section who fails to cooperate with  
18 the director, or any person who knowingly obstructs or interferes with the director in the conduct  
19 of any delinquency proceeding or any investigation preliminary or incidental thereto, or who  
20 knowingly violates any order the director issued validly under sections 375.1150 to 375.1246  
21 shall be guilty of a class A misdemeanor, and, in addition thereto, after a hearing, shall be subject  
22 to the imposition by the director of an administrative penalty not to exceed ten thousand dollars  
23 for each occurrence or violation and shall be subject further to the revocation or suspension of  
24 any insurance licenses issued by the director. Moneys collected pursuant to the imposition of  
25 such administrative penalties shall be transferred to the state treasurer and deposited to the  
26 general revenue fund.

27 5.] 4. In any proceeding under sections 375.1150 to 375.1246, the director and his  
28 deputies shall be responsible on their official bonds for the faithful performance of their duties.  
29 If the court deems it desirable for the protection of the assets, it may at any time require an  
30 additional bond from the director or his deputies, and such bonds shall be paid for out of the  
31 assets of the insurer as a cost of administration.

375.1160. 1. As used in this section:

2 (1) "Exceeded its powers" means one or more of the following conditions:

3 (a) The insurer has refused to permit examination of its books, papers, accounts, records  
4 or affairs by the director, his deputy, employees or duly commissioned examiners;

5 (b) A domestic insurer has unlawfully removed from this state or is unable to produce  
6 books, papers, accounts or records necessary for an examination of the insurer;

7 (c) The insurer has failed to promptly comply with the applicable financial reporting  
8 statutes or rules and requests relating thereto;

9 (d) The insurer has neglected or refused to observe an order of the director to make good,  
10 within the time prescribed by law, any prohibited deficiency in its capital, capital stock or  
11 surplus;

- 12 (e) The insurer is continuing to transact insurance or write business after its license has  
13 been revoked or suspended by the director;
- 14 (f) The insurer, by contract or otherwise, has unlawfully or has in violation of an order  
15 of the director or has without first having obtained written approval of the director if approval  
16 is required by law:
- 17 a. Totally reinsured its entire outstanding business, or  
18 b. Merged or consolidated substantially its entire property or business with another  
19 insurer;
- 20 (g) The insurer engaged in any transaction in which it is not authorized to engage under  
21 the laws of this state;
- 22 (h) A domestic insurer has committed or engaged in, or is about to commit or engage in,  
23 any act, practice or transaction that would subject it to delinquency proceedings under sections  
24 375.1150 to 375.1246; or
- 25 (i) The insurer refused to comply with a lawful order of the director;
- 26 (2) "Consent" means agreement to administrative supervision by the insurer.
- 27 2. (1) An insurer may be subject to administrative supervision by the director if upon  
28 examination or at any other time it appears in the director's discretion that:
- 29 (a) The insurer's condition renders the continuance of its business hazardous to the public  
30 or to its insureds;
- 31 (b) The insurer exceeded its powers granted under its certificate of authority and  
32 applicable law;
- 33 (c) The insurer has failed to comply with the laws of this state relating to insurance;
- 34 (d) The business of the insurer is being conducted fraudulently; or
- 35 (e) The insurer gives its consent.
- 36 (2) If the director determines that the conditions set forth in subdivision (1) of this  
37 subsection exist, the director shall:
- 38 (a) Notify in writing the insurer of his determination;
- 39 (b) Furnish to the insurer a written list of his requirements to rescind his determination;  
40 and
- 41 (c) Notify the insurer that it is under the supervision of the director and that the director  
42 is applying and effectuating the provisions of this section.
- 43 (3) The notice of supervision under this subsection and any order issued pursuant to this  
44 section shall be served upon the insurer in writing by registered mail. The notice of supervision  
45 shall state the conduct, condition or ground upon which the director bases his order.
- 46 (4) If placed under administrative supervision, the insurer shall have sixty days, or  
47 another period of time as designated by the director, to comply with the requirements of the

48 director subject to the provisions of this section. In the event of such insurer's failure to comply  
49 with such time periods, the director may institute proceedings under section 375.1165 or  
50 375.1175 to have a rehabilitator or liquidator appointed, or to extend the period of supervision.

51 (5) If it is determined that none of the conditions giving rise to the supervision exist, the  
52 director shall release the insurer from supervision.

53 3. (1) Except as set forth in this subsection, all proceedings, hearings, notices, orders,  
54 correspondence, reports, records and other information in the possession of the director or the  
55 department of insurance relating to the supervision of any insurer are confidential except as  
56 provided by this section.

57 (2) Personnel of the department of insurance shall have access to these proceedings,  
58 hearings, notices, orders, correspondence, reports, records or information as permitted by the  
59 director.

60 (3) The director may open the proceedings or hearings or disclose the notices, orders,  
61 correspondence, reports, records or information to a department, agency or instrumentality of this  
62 or another state or the United States if the director determines that the disclosure is necessary or  
63 proper for the enforcement of the laws of this or another state of the United States.

64 (4) The director may open the proceedings or hearings or make public the notices, orders,  
65 correspondence, reports, records or other information if the director deems that it is in the best  
66 interest of the public or in the best interest of the insurer, its insureds, creditors or the general  
67 public.

68 (5) This subsection does not apply to hearings, notices, correspondence, reports, records  
69 or other information obtained upon the appointment of a receiver for the insurer by a court of  
70 competent jurisdiction.

71 4. During the period of supervision, the director or his designated appointee shall serve  
72 as the administrative supervisor. The director may provide that the insurer shall not do any of  
73 the following things during the period of supervision, without the prior approval of the director  
74 or the appointed supervisor:

75 (1) Dispose of, convey or encumber any of its assets or its business in force;

76 (2) Withdraw any of its bank accounts;

77 (3) Lend any of its funds;

78 (4) Invest any of its funds;

79 (5) Transfer any of its property;

80 (6) Incur any debt, obligation or liability;

81 (7) Merge or consolidate with another company;

82 (8) Approve new premiums or renew any policies;

83 (9) Enter into any new reinsurance contract or treaty;



84 (10) Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or  
85 contract, except for nonpayment of premiums due;

86 (11) Write any new or renewal business;

87 (12) Release, pay or refund premium deposits, accrued cash or loan values, unearned  
88 premiums, or other reserves on any insurance policy, certificate or contract;

89 (13) Make any material change in management; or

90 (14) Increase salaries and benefits of officers or directors or the preferential payment of  
91 bonuses, dividends or other payments deemed preferential.

92 5. Any insurer subject to a supervision order under this section may seek review pursuant  
93 to section 536.150, RSMo, of that order within thirty days of the entry of the order of  
94 supervision. Such a request for a hearing shall not stay the effect of the order.

95 6. During the period of supervision the insurer may contest an action taken or proposed  
96 to be taken by the administrative supervisor specifying the manner in which the action being  
97 complained of would not result in improving the condition of the insurer. An insurer may  
98 request review pursuant to section 536.150, RSMo, of written denial of the insurer's request to  
99 reconsider pursuant to this subsection.

100 7. If any person has violated any supervision order issued under this section which as to  
101 him was still in effect, the director may [impose an administrative penalty in an amount not to  
102 exceed ten thousand dollars for each violation. Moneys collected pursuant to the imposition of  
103 such penalties shall be transferred to the state treasurer and deposited to the general revenue  
104 fund.

105 8. The director or administrative supervisor may apply for, and any court of general  
106 jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other  
107 orders as may be deemed necessary and proper to enforce a supervision order.

108 **9.] initiate an action under section 375.1161.**

109 **8.** In the event that any person, subject to the provisions of sections 375.1150 to  
110 375.1246, including those persons described in subsection 1 of section 375.1156, shall  
111 knowingly violate any valid order of the director issued under the provisions of this section and,  
112 as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall  
113 suffer loss it would not otherwise have suffered, said person shall become personally liable to  
114 the insurer for the amount of any such reduction or loss. The director or administrative  
115 supervisor is authorized **under subsection 1 of section 375.1161** to bring an action on behalf  
116 of the insurer in any court of competent jurisdiction to recover the amount of reduction or loss  
117 together with any costs.

118 **[10.] 9.** Nothing contained in sections 375.1150 to 375.1246 shall preclude the director  
119 from initiating judicial proceedings to place an insurer in conservation, rehabilitation or

120 liquidation proceedings or other delinquency proceedings, however designated under the laws  
121 of this state, regardless of whether the director has previously initiated administrative supervision  
122 proceedings under this section against the insurer.

123 [11.] 10. The director may adopt reasonable rules necessary for the implementation of  
124 this section.

125 [12.] 11. Notwithstanding any other provision of law, the director may meet with an  
126 administrative supervisor appointed under this section and with the attorney or other  
127 representative of the administrative supervisor, without the presence of any other person, at the  
128 time of any proceeding or during the pendency of any proceeding held under authority of this  
129 section to carry out his duties under this section or for the administrative supervisor to carry out  
130 his duties under this section.

131 [13.] 12. There shall be no liability on the part of, and no cause of action of any nature  
132 shall arise against, the director or the department of insurance or its employees or agents for any  
133 action taken by them in the performance of their powers and duties under this section.

375.1161. 1. If the director determines that a person has engaged or is engaging in  
2 a violation of sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant  
3 thereto, or that a person has materially aided or is materially aiding an act, practice,  
4 omission, or course of business constituting a violation of sections 375.1150 to 375.1246 or  
5 a rule adopted or order issued pursuant thereto, the director may issue such administrative  
6 orders as authorized under section 374.046, RSMo. A violation of any of these sections is  
7 a level four violation under section 374.049, RSMo. The director of insurance may also  
8 suspend or revoke the license or certificate of authority of such person for any willful  
9 violation.

10 2. If the director believes that a person has engaged or is engaging in a violation of  
11 sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto, or that  
12 a person has materially aided or is materially aiding an act, practice, omission, or course  
13 of business constituting a violation of sections 375.1150 to 375.1246 or a rule adopted or  
14 order issued pursuant thereto, the director may maintain a civil action for relief authorized  
15 under section 374.048, RSMo. A violation of any of these sections is a level four violation  
16 under section 374.049, RSMo.

375.1204. 1. [An agent, broker] A **producer**, premium finance company, or any other  
2 person, other than the insured, responsible for the payment of a premium, shall be obligated to  
3 pay any unpaid earned premium due the insurer at the time of the declaration of insolvency as  
4 shown on the records of the insurer. The liquidator shall also have the right to recover from such  
5 person any part of an unearned premium that represents commission of such person. Credits or  
6 setoffs or both shall not be allowed to [an agent, broker,] a **producer** or premium finance

7 company for any amounts advanced to the insurer by the [agent, broker,] **producer** or premium  
8 finance company on behalf of, but in the absence of a payment by the insured. An insured shall  
9 be obligated to pay any unpaid earned premium due the insurer at the time of the declaration of  
10 insolvency, as shown on the records of the insurer.

11 2. [Upon satisfactory evidence of a violation of this section, the director may pursue  
12 either one or both of the following courses of action:

13 (1) Suspend or revoke or refuse to renew any licenses issued by the department of  
14 insurance to such offending party or parties;

15 (2) Impose an administrative penalty of not more than one thousand dollars for each and  
16 every act in violation of this section by said party or parties. All amounts collected as a result  
17 of imposition of such administrative penalties shall be paid to the state treasurer for deposit to  
18 the general revenue fund.

19 3. Before the director shall take any action as set forth in subsection 2 of this section, he  
20 shall give written notice to the person, company, association or exchange accused of violating  
21 the law, stating specifically the nature of the alleged violation and fixing a time and place, at  
22 least ten days thereafter, when a hearing on the matter shall be held. After such hearing, or upon  
23 failure of the accused to appear at such hearing, the director, if he shall find such violation, shall  
24 impose such of the penalties under subsection 2 of this section as he deems advisable.

25 4. When the director shall take any action provided by subsection 2 of this section, the  
26 party aggrieved may appeal said action to the court within thirty days of the director's decision]  
27 **If the director determines that a person has engaged or is engaging in a violation of this**  
28 **section or a rule adopted or order issued pursuant thereto, or that a person has materially**  
29 **aided or is materially aiding an act, practice, omission, or course of business constituting**  
30 **a violation of this section or a rule adopted or order issued pursuant thereto, the director**  
31 **may issue such administrative orders as authorized under section 374.046, RSMo. A**  
32 **violation of this section is a level one violation under section 374.049, RSMo. The director**  
33 **of insurance may also suspend, revoke, or refuse to renew any license issued by the director**  
34 **to any offending person for any willful violation.**

35 **3. If the director believes that a person has engaged or is engaging in a violation of**  
36 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
37 **materially aided or is materially aiding an act, practice, omission, or course of business**  
38 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
39 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
40 **A violation of this section is a level one violation under section 374.049, RSMo.**

375.1306. 1. An employer shall not use any genetic information or genetic test results,  
2 as those terms are defined in subdivisions (3) and (4) of section 375.1300, of an employee or

3 prospective employee to distinguish between, discriminate against, or restrict any right or benefit  
4 otherwise due or available to such employee or prospective employee. The requirements of this  
5 section shall not prohibit:

6 (1) Underwriting in connection with individual or group life, disability income or  
7 long-term care insurance;

8 (2) Any action required or permissible by law or regulation;

9 (3) Action taken with the written permission of an employee or prospective employee  
10 or such person's authorized representative; or

11 (4) The use of genetic information when such information is directly related to a person's  
12 ability to perform assigned job responsibilities.

13 2. [Any person who violates the provisions of this section shall be fined not more than  
14 five hundred dollars for each violation of this section] **If the director determines that a person  
15 has engaged or is engaging in a violation of this section or a rule adopted or order issued  
16 pursuant thereto, or that a person has materially aided or is materially aiding an act,  
17 practice, omission, or course of business constituting a violation of this section or a rule  
18 adopted or order issued pursuant thereto, the director may issue such administrative  
19 orders as authorized under section 374.046, RSMo. A violation of any of these sections is  
20 a level two violation under section 374.049, RSMo.**

21 **3. If the director believes that a person has engaged or is engaging in a violation of  
22 this section or a rule adopted or order issued pursuant thereto, or that a person has  
23 materially aided or is materially aiding an act, practice, omission, or course of business  
24 constituting a violation of this section or a rule adopted or order issued pursuant thereto,  
25 the director may maintain a civil action for relief authorized under section 374.048, RSMo.  
26 A violation of any of these sections is a level two violation under section 374.049, RSMo.**

375.1309. 1. Any person who, in the ordinary course of business, practice of a  
2 profession or rendering of a service, creates, stores, receives or furnishes genetic information,  
3 as such term is defined in subdivision (3) of section 375.1300, shall hold such information as  
4 confidential medical records and shall not disclose such genetic information except pursuant to  
5 written authorization of the person to whom such information pertains or to that person's  
6 authorized representative. The requirements of this section shall not apply to:

7 (1) Statistical data compiled without reference to the identity of an individual;

8 (2) Health research conducted in accordance with the provisions of the federal common  
9 rule protecting the rights and welfare of research participants (45 CFR 46 and 21 CFR 50 and  
10 56), or to health research using medical archives or databases in which the identity of individuals  
11 is protected from disclosure by coding or encryption, or by removing all identities;

12 (3) The release of such information pursuant to legal or regulatory process; or

13 (4) The release of such information for body identification.

14 2. [Any person who violates the provisions of this section shall be fined not more than  
15 five hundred dollars.] **If the director determines that a person has engaged or is engaging**  
16 **in violation of this section or a rule adopted or order issued pursuant thereto, or that a**  
17 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
18 **business constituting a violation of this section or a rule adopted or order issued pursuant**  
19 **thereto, the director may issue such administrative orders as authorized under section**  
20 **374.046, RSMo. A violation of any of these sections is a level two violation under section**  
21 **374.049, RSMo.**

22 **3. If the director believes that a person has engaged or is engaging in a violation of**  
23 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
24 **materially aided or is materially aiding an act, practice, omission, or course of business**  
25 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
26 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
27 **A violation of any of these sections is a level two violation under section 374.049, RSMo.**

376.170. All life insurance companies organized under the provisions of sections  
2 376.010 to 376.670 shall deposit with the director of the insurance department, in addition to  
3 other amounts required by law to be deposited by life insurance companies before such  
4 companies are permitted to engage in the business of issuing policies of life insurance and  
5 annuity bonds, cash or securities of the kind and type in which life insurance companies are  
6 required to invest their funds under [section 376.300] **sections 376.291 to 376.307**, as same now  
7 is or as same may be hereafter amended, in an amount sufficient to equal the net value on all  
8 policies or annuity bonds hereafter issued by such companies, the amount thereof to be  
9 determined by an evaluation made in accord with the provisions of sections 376.010 to 376.670.

376.190. The director shall annually cause the registered policies and annuity bonds of  
2 each company outstanding and in force to be carefully valued, and whenever the total of the  
3 actual net value of such policies and annuity bonds exceeds the market value of the securities on  
4 deposit, the company issuing such policies or annuity bonds shall immediately deposit sufficient  
5 securities of the same kind and type provided for in [section 376.300] **sections 376.291 to**  
6 **376.307** to equal the net value of such policies and annuity bonds so that the market value of the  
7 securities deposited shall always be equal to the actual net value of the registered policies and  
8 annuity bonds issued by such company and still in force[; provided, however, that bonds and  
9 other evidences of debt having a fixed term and rate may be valued in accordance with the  
10 provisions of section 376.320].

376.280. 1. No joint stock or stock and mutual company formed under the provisions  
2 of sections 376.010 to 376.670, or the laws of this state, for any purpose mentioned in section

3 376.010, shall commence to do business or issue policies unless upon an actual capital of at least  
4 six hundred thousand dollars and a surplus of at least six hundred thousand dollars, nor shall any  
5 such company commence to do any business unless the full amount of capital stock and surplus  
6 named in its charter or articles of association has been paid in and invested in such securities and  
7 in accordance with all the provisions as is provided for in [section 376.300] **sections 376.291 to**  
8 **376.307**, or as the same may be subsequently amended.

9 2. In order to continue writing new business, any stock company organized under the  
10 provisions of sections 376.010 to 376.670, or the laws of this state, for any purpose mentioned  
11 in section 376.010, shall maintain an actual capital and surplus in the amount required to  
12 commence business.

13 3. Any other provision of this section notwithstanding, a joint stock or stock and mutual  
14 company licensed to do business in this state on August 13, 1982, may renew its license for  
15 business specified therein until December 31, 1984, by maintaining in lieu of the capital and  
16 surplus requirements an actual capital and surplus of at least nine hundred thousand dollars.

17 4. No mutual company formed under the provisions of sections 376.010 to 376.670, or  
18 of the laws of this state, shall commence or continue to do any business mentioned in section  
19 376.010 until agreement, in writing, with such company shall have been entered into by not less  
20 than one hundred persons for assurance upon their own lives, or the lives of other persons for  
21 their benefit, nor until it shall have received premiums on the same in cash, to an aggregate  
22 amount of not less than six hundred thousand dollars and in addition shall have a surplus of six  
23 hundred thousand dollars; provided further, that nothing herein contained shall be so construed  
24 as to prohibit any such company from complying with the provisions of sections 362.180 to  
25 362.195, RSMo.

26 5. Any other provision of this section notwithstanding, a mutual company licensed to do  
27 business in this state on August 13, 1982, may renew its license for business specified therein  
28 until December 31, 1984, by maintaining in lieu of the surplus requirement paid-in premiums  
29 in an aggregate amount of not less than nine hundred thousand dollars.

30 6. Violation of any of the provisions of this section by any insurer is grounds for the  
31 revocation of its certificate of authority by the director.

**376.291. Sections 376.291 to 376.307 shall apply only to investments and investment  
2 practices of domestic insurers organized under the provisions of this chapter. Sections  
3 376.291 to 376.307 shall not apply to separate accounts of an insurer except to the extent  
4 that the provisions of section 376.309 so provide.**

**376.292. As used in sections 376.291 to 376.307, the following terms mean:**

2 (1) "Acceptable collateral", as to securities lending, repurchase, and reverse  
3 repurchase transactions, any financial assets of a type for which securities lent, purchased,

4 or sold are secured by such assets would constitute admitted assets as specified in the  
5 relevant statement of the Statutory Accounting Principles promulgated from time to time  
6 by the NAIC;

7 (2) "Acceptable private mortgage insurance", insurance written by a private  
8 insurer protecting a mortgage lender against loss occasioned by a mortgage loan default  
9 and issued by a licensed mortgage insurance company with an SVO "1" designation or a  
10 rating issued by a nationally recognized statistical rating organization equivalent to an  
11 SVO "1" designation that covers losses to an eighty percent loan-to-value ratio;

12 (3) "Accident and health insurance", protection that provides payment of benefits  
13 for covered sickness or accidental injury, excluding credit insurance, disability insurance,  
14 accidental death and dismemberment insurance, and long-term care insurance;

15 (4) "Accident and health insurer", a licensed life or health insurer or health service  
16 corporation whose insurance premiums and required statutory reserves for accident and  
17 health insurance constitute at least ninety-five percent of total premium considerations or  
18 total statutory required reserves, respectively;

19 (5) "Admitted assets", assets permitted to be reported as admitted assets on the  
20 statutory financial statement of the insurer most recently required to be filed with the  
21 director but excluding assets of separate accounts;

22 (6) "Affiliate", as to any person, another person that, directly or indirectly through  
23 one or more intermediaries controls, is controlled by, or is under common control with the  
24 person;

25 (7) "Asset-backed security", a security or other instrument, excluding shares in a  
26 mutual fund, evidencing an interest in or the right to receive payments from, or payable  
27 from distributions on an asset, a pool of assets, or specifically divisible cash flows which  
28 are legally transferred to a trust or another special purpose bankruptcy-remote business  
29 entity on the following conditions:

30 (a) The trust or other business entity is established solely for the purpose of  
31 acquiring specific types of assets or rights to cash flows, issuing securities and other  
32 instruments representing an interest in or right to receive cash flows from those assets or  
33 rights, and engaging in activities required to service the assets or rights and any credit  
34 enhancement or support features held by the trust or other business entity; and

35 (b) The assets of the trust or other business entity consist solely of interest bearing  
36 obligations or other contractual obligations representing the right to receive payment from  
37 the cash flow from the assets. However, the existence of credit enhancements, such as  
38 letters of credit or guarantees or support features, such as swap agreements, shall not cause  
39 a security or other instrument to be ineligible as an asset-backed security;

40           (8) "Business entity", a sole proprietorship, limited liability company, association,  
41 partnership, joint stock company, joint venture, mutual fund, trust, joint tendency, or  
42 other similar form of business organization, whether organized for- profit or not-for-  
43 profit;

44           (9) "Capital and surplus", the sum of the capital and surplus of the insurer  
45 required to be shown on the statutory financial statement of the insurer most recently  
46 required to be filed with the director;

47           (10) "Cash equivalents", short-term, highly rated, and highly liquid investments  
48 or securities readily convertible to known amounts of cash without penalty and so near  
49 maturity that they present insignificant risk of change in value. Cash equivalents include  
50 government money market mutual funds and class one money market mutual funds. For  
51 purposes of this subdivision:

52           (a) "Short-term" means investments with a remaining term to maturity of ninety  
53 days or less; and

54           (b) "Highly rated" means an investment rated "P-1" by Moody's Investors Service,  
55 Inc., or "A-1" by Standard and Poor's division of The McGraw Hill Companies, Inc., or  
56 its equivalent rating by a nationally recognized statistical rating organization recognized  
57 by the SVO;

58           (11) "Class one bond mutual fund", a mutual fund that at all times qualifies for  
59 investment using the bond class one reserve factor under the Purpose and Procedures of  
60 the Securities Valuation Office or any successor publication;

61           (12) "Class one money market mutual fund", a money market mutual fund that at  
62 all times qualifies for investment using the bond class one reserve factor under the Purpose  
63 and Procedures of the Securities Valuation Office or any successor publication;

64           (13) "Code", this chapter and chapters 374, 375, and 382, RSMo;

65           (14) "Commercial mortgage loan", a loan secured by a mortgage other than a  
66 residential mortgage loan;

67           (15) "Construction loan", a loan less than three years in term made for financing  
68 the cost of construction of a building or other improvement to real estate that is secured  
69 by the real estate;

70           (16) "Control", the possession, directly or indirectly, of the power to direct or cause  
71 the direction of the management and policies of a person, whether through the ownership  
72 of voting securities, by contract, other than a commercial contract for goods or  
73 nonmanagement service, or otherwise, unless the power is the result of an official position  
74 with or corporate office held by the person. Control shall be presumed to exist if a person,  
75 directly or indirectly, owns, controls, holds with power to vote, or holds proxies



76 representing ten percent or more of the voting securities of another person. This  
77 presumption may be rebutted by a showing that control does not exist in fact. The director  
78 may determine after furnishing all interested persons notice and an opportunity to be  
79 heard and making specific findings of fact to support the determination that control exists  
80 in fact, notwithstanding the absence of a presumption to that effect;

81 (17) "Credit tenant loan", a mortgage loan which is made primarily in reliance on  
82 the credit standing of a major tenant, structured with an assignment of the rental payments  
83 to the lender with real estate pledged as collateral in the form of a first lien;

84 (18) "Direct" or "directly", in connection with an obligation, the designated obligor  
85 primarily liable on the instrument representing the obligation;

86 (19) "Dollar roll transaction", two simultaneous transactions with different  
87 settlement dates no more than ninety-six days apart so that in the transaction with the  
88 earlier settlement date an insurer sells to a business entity, and in the other transaction the  
89 insurer is obligated to purchase, from the same business entity, substantially similar  
90 securities of the following types:

91 (a) Asset-backed securities issued, assumed or guaranteed by the Government  
92 National Mortgage Association, the Federal National Mortgage Association, or the Federal  
93 Home Loan Mortgage Corporation or their respective successors; and

94 (b) Other asset-backed securities referred to in section 106 of Title I of the  
95 Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1), as amended;

96 (20) "Domestic jurisdiction", the United States, Canada, any state, any province  
97 of Canada, or any political subdivision of the foregoing;

98 (21) "Equity interest", any of the following that are not rated credit instruments:

99 (a) Common stock;

100 (b) Preferred stock;

101 (c) Trust certificate;

102 (d) Equity investment in an investment company other than a money market  
103 mutual fund or a class one bond mutual fund;

104 (e) Investment in a common trust fund of a bank regulated by a federal or state  
105 agency;

106 (f) An ownership interest in mineral, oil, or gas to which the rights have been  
107 separated from the underlying fee interest in the real estate where the mineral, oil, or gas  
108 are located;

109 (g) Instruments which are mandatory, or at the option of the issuer, convertible to  
110 equity;

(h) Limited partnership interest and those general partnership interests authorized under subdivision (4) of section 376.294;

(i) Member interests in limited liability companies;

(j) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(k) Instruments that would be rated credit instruments except for the provisions under subdivision (48) of this section;

(22) "Foreign currency", currency other than that of a domestic jurisdiction;

(23) (a) "Foreign investment", an investment in a foreign jurisdiction or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction that is substantially of the same type as those eligible for investment under this chapter other than under section 376.304. An investment shall not be deemed foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction unless:

a. The issuing person is a shell business entity; and

b. The investment is not assumed, accepted, guaranteed, or insured or otherwise backed by a domestic jurisdiction, or a person that is not a shell business entity domiciled in a domestic jurisdiction;

(b) For purposes of this definition:

a. "Shell business entity" means a business entity having no economic substance except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction;

b. "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction;

c. "Qualified primary credit score" means the credit score to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction;

(24) "Foreign jurisdiction", a jurisdiction other than a domestic jurisdiction;

(25) "Government money market mutual fund", a money market mutual fund that at all times:

(a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication;

(26) "Government sponsored enterprise", a:

(a) Government agency; or

(b) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose;

(27) "Guaranteed" or "insured", in connection with an obligation acquired under this chapter, the guarantor or insurer has agreed to:

(a) Perform or insure the obligation of the obligor or purchase the obligation; or

(b) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity or sufficient liquidity to enable the obligor to pay the obligation in full;

(28) "High grade investment", a rated credit instruments rated "1", "2", "P1", "P2", "PSF1", or "PSF2" by the SVO;

(29) "Investment company", an investment company as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-1), as amended, and a person described in section 3(c) of that Act;

(30) "Investment company series", an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated;

(31) "Investment subsidiary", a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer if such subsidiary limits its investment in any asset so that its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitation or avoid any other provisions of this chapter applicable to the insurer. As used in this subdivision, the total investment insurer shall include:

(a) Direct investment by the insurer in an asset; and

(b) The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary;

(32) "Investment strategy", the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing;

181           (33) "Letter of credit", a clean, irrevocable, and unconditional letter of credit  
182 issued or confirmed by and payable and presentable at a financial institution on the list of  
183 financial institutions meeting the standards for issuing letters of credit under the Purposes  
184 and Procedures of the Securities Valuation Office or any successor publication. To  
185 constitute applicable collateral for the purposes of section 376.303, a letter of credit shall  
186 have an expiration date beyond the term of the subject transaction;

187           (34) "Limited liability company", a business organization, excluding partnerships  
188 and ordinary business corporation, organized or operating under the laws of the United  
189 States or any state thereof that limits the personal liability of investors to the equity  
190 investment of the investor in the business entity;

191           (35) "Lower grade investment", a rated credit instrument rated "4", "5", "6",  
192 "P4", "P5", "P6", "PSF4", "PSF5", or "PSF6" by the SVO;

193           (36) "Market value":

194           (a) As to cash and credit, the amounts thereof; and

195           (b) As to a security as of any date, the price for the security in that date obtained  
196 from a generally recognized source or the most recent quotation from a source, or to the  
197 extent no generally recognized source exists, the price for the security as determined in  
198 good faith by the insurer plus accrued but unpaid income thereon to the extent not  
199 included in the price as of that date;

200           (37) "Medium grade investment", a rated credit instrument rated "3", "P3", or  
201 "PSF3" by the SVO;

202           (38) "Money market mutual fund", a mutual fund that meets the conditions of 17  
203 C.F.R. 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as  
204 amended or renumbered;

205           (39) "Mortgage loan", an obligation secured by a mortgage, deed of trust, trust  
206 deed, or other consensual lien on real estate;

207           (40) "Multilateral development bank", an international development organization  
208 of which the United States is a member;

209           (41) "Mutual fund", an investment company or in the case of an investment  
210 company that is organized as a series company, an investment company series, that in  
211 either case is registered with the United States Securities and Exchange Commission under  
212 the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended;

213           (42) "NAIC", the National Association of Insurance Commissioners;

214           (43) "Obligation", a bond, note, debenture, trust certificate, including an  
215 equipment trust certificate, production payment, negotiable bank certificate of deposit,  
216 bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other

evidence of indebtedness for the payment of money, or participations, certificates, or other evidence of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment;

(44) "Person", an individual, a business entity, a multilateral development bank, or a government or quasi-government body, such as a political subdivision or a government sponsored enterprise;

(45) "Preferred stock", preferred, preference, or guaranteed stock of a business entity authorized to issue the stock that has a preference in liquidation over the common stock of the business entity;

(46) "Qualified business entity", a business entity that is:

(a) An issuer of obligations or preferred stock that are rated "1" or "2" by the SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of "1" or "2" by the SVO or the equivalent by a nationally recognized statistical rating organization recognized by the SVO;

(b) A primary dealer in the United States government securities recognized by the Federal Reserve Bank of New York;

(c) With respect to securities lending arrangements under section 376.303, an affiliate of an entity that is a qualified business entity under paragraph (a) or (b) of this subdivision whose arrangement with the insurer is guaranteed by the affiliated entity that is a qualified business entity under paragraph (a) or (b) of this subdivision; or

(d) An affiliated entity of the insurer;

(47) "Rated credit instrument":

(a) An obligation or other instrument which gives its holder a contractual right to receive cash or another rated credit instrument from another entity if the instrument:

a. Is rated or required to be rated by the SVO;

b. In the case of an instrument with a maturity of three hundred ninety-seven days or less, is issued, guaranteed, or insured by an entity that is rated by or another instrument of such entity is rated by the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

c. In the case of an instrument with a maturity of ninety days or less, has been issued, assumed, accepted, guaranteed, or insured by a qualified bank;

d. Is a share of a class one bond mutual fund; or

e. Is a share of a money market mutual fund;

(b) "Rated credit instrument" shall not mean:

252           a. An instrument that is mandatorily, or at the option of the issuer, convertible to  
253 an equity interest; or

254           b. A security that has a par value and whose terms provide that the issuer's net  
255 obligation to repay all or part of the security's par value is determined by reference to the  
256 performance of an equity, a commodity, a foreign currency, or an index of equities,  
257 commodities, foreign currencies, or combination thereof;

258           (48) "Real estate":

259           (a) Real property;

260           (b) Interests in real property, such as leaseholds, mineral, oil, and gas that have not  
261 been separated from the underlying fee interest;

262           (c) Improvements and fixtures located on or in real property; and

263           (d) The seller's equity in a contract providing for a deed of real estate;

264  
265 As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if  
266 it has an unexpired term, including renewal options exercisable at the option of the lessee  
267 extending beyond the scheduled maturity date of the obligation that is secured by a  
268 mortgage on a leasehold estate by a period equal to at least twenty percent of the original  
269 term of the obligation or ten years, whichever is greater;

270           (49) "Repurchase transaction", a transaction in which an insurer purchases  
271 securities from a business entity that is obligated to repurchase the purchased securities  
272 or substantially similar securities from the insurer at a specified price within a specified  
273 period of time or on demand;

274           (50) "Required liabilities", total liabilities required to be reported on the statutory  
275 financial statement of the insurer most recently required to be filed with the director;

276           (51) "Residential mortgage loan", a loan primarily secured by a mortgage on real  
277 estate improved with a one-to-four family residence;

278           (52) "Reverse repurchase transaction", a transaction in which an insurer sells  
279 substantially similar securities to a business entity and is obligated to repurchase the sold  
280 securities or securities from the business entity at a specified price within a specified period  
281 of time or upon demand;

282           (53) "Secured location", the contiguous real estate owned by one person;

283           (54) "Securities lending transaction", a transaction in which securities are loaned  
284 by an insurer to a business entity that is obligated to return the loaned securities or  
285 substantially similar securities to the insurer within a specified period of time or upon  
286 demand;

(55) "Series company", an investment company that is organized as series company, as defined in Rule 18f-2 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.), as amended;

(56) "Sinking fund stock", preferred stock that:

(a) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than forty years from the date of acquisition; and

(b) Provides for mandatory sinking fund installments or open market purchases commencing not more than ten and one-half years from the date of issue with the sinking fund installments providing for the purchase or redemption on a cumulative basis commencing ten years from the date of issue of at least two and one-half percent per year of the original number of shares that issue preferred stock;

(57) "Special rated credit instrument", a rated credit instrument that is:

(a) Structured so that if it is held until retired by or on behalf of the issuer, its rate of return based on its purchase cost and any cash flow stream possible under the structure of the transaction may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument shall not be a special rated credit instrument under this paragraph if it is:

a. A share in a class one bond mutual fund;

b. An instrument other than an asset-backed security with payments of par value fixed as to an amount and timing or callable but in any event payable only at par value or greater and interest or dividend cash flows that based on a fixed or variable rate determined by reference to a specified rate or index;

c. An instrument other than an asset-backed security that has a par value and is purchased at a price no greater than one hundred ten percent of par;

d. An instrument, including an asset-backed security, whose rate of return would become negative only as a result of prepayment due to casualty, condemnation, or economic obsolescence of collateral or change of law;

e. An asset-backed security that relies on collateral that meets the requirements of subparagraph b. of this paragraph and the par value of which collateral:

(i) Is not permitted to be paid sooner than one-half of the remaining term to maturity from the date of acquisition;

(ii) Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount of prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

(iii) Is permitted to be paid prior to maturity at a premium at least equal to the yield of a treasury issue of comparable remaining life; or

f. An asset-backed security that relies on cash flow from assets that are not prepayable at any time at par but is not otherwise governed by subparagraph e. of this paragraph if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent of such par amount;

(b) An asset-backed security that:

a. Relies on cash flow from assets that are prepayable at par at any time;

b. Does not make payments of par that are fixed as to amount and timing; and

c. Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with such prepayment threshold assumption defined as either:

(i) Two times the prepayment expectation reported by a recognized publicly available source as being the median of expectations contributed by broker dealers or other entities except insurers engaged in the business of selling or evaluating such securities or assets. At the insurer's election, the prepayment expectation used in this calculation shall be the prepayment expectation for pass-through securities of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type of assets that underlie the asset-backed security in a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

(ii) Another prepayment threshold assumption specified by the director by regulation;

(c) For purposes of paragraph (b) of this subdivision, if the asset-backed security is purchased in combination with one or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that such securities were acquired and are continuing to be held in combination;

(58) "State", a state, territory, or possession of the United States, District of Columbia, or the Commonwealth of Puerto Rico;

(59) "Substantially similar securities", securities that meet all criteria for substantially similar securities specified in the NAIC Accounting Practices and Procedures Manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the PSA The Bond Market Trade Association;



(60) "Subsidiary", as to any person, an affiliate controlled by such person, directly or indirectly, through one or more intermediaries;

(61) "SVO", the Securities Valuation Office of the NAIC or any successor office established by the NAIC;

(62) "Unrestricted surplus", the amount by which total admitted assets exceed one hundred and twenty-five percent of the insurer's required liabilities.

**376.293. 1. (1)** Insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in this chapter or section 375.345, RSMo. Insurers may also acquire, hold, or invest in investments not conforming to the requirements of this section that are not otherwise prohibited by this chapter or section 375.345, RSMo. Investments not conforming to this section shall not be admitted assets unless they are acquired under other authority of this chapter or section 375.345, RSMo. The provisions and definitions of terms of section 375.345, RSMo, related to derivative transactions shall also apply to investments under this chapter.

**(2)** Subject to subdivision (3) of this subsection, an insurer shall not acquire or hold an investment as an admitted asset unless at the time of acquisition:

**(a)** It is eligible for the payment or accrual of interest or discount, whether in cash or other forms of income or securities, eligible to receive dividends or other distributions or is otherwise income producing; or

**(b)** It is acquired under section 375.345, RSMo, subsection 3 of section 376.302, section 376.303 or 376.307 or under the authority of sections of the code other than sections 376.291 to 376.307.

**(3)** An insurer may acquire or hold as admitted assets investments that do not otherwise qualify, as provided in sections 376.291 to 376.307, if this insurer has not acquired the assets investments for the purpose of circumventing any limitations contained in sections 376.291 to 376.307 and if the insurer acquires the investments in the following circumstances and complies with the provisions of sections 376.291 to 376.307 as to the investments:

**(a)** As a payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;

**(b)** As realization of collateral for indebtedness;

**(c)** In connection with an otherwise qualified investment or investment practice as interest on, or a dividend, or other distribution related to the investment or investment practice or in connection with the refinancing of the investment. In each case, no additional or only nominal consideration is necessary;

31           (d) Under lawful and bona fide agreement of recapitalization or voluntary or  
32 involuntary reorganization in connection with an investment held by the insurer; or

33           (e) Under a bulk reinsurance, merger, or consolidation transaction approved by the  
34 director if the assets constitute admissible investments for the ceding, merged, or  
35 consolidated companies.

36           (4) An investment or portion of an investment acquired by an insurer under  
37 subdivision (3) of this subsection shall become a nonadmitted asset three years, or five  
38 years in the case of mortgage loans and real estate, from the date of its acquisition unless  
39 within that period the investment has become a qualified investment under a section of this  
40 chapter other than subdivision (3) of this subsection, but an investment acquired under an  
41 agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer  
42 period if so provided in the plan for reinsurance, merger, or consolidation as approved by  
43 the director. Upon application by the insurer and a showing that the nonadmission of an  
44 asset held under subdivision (3) of this subsection would materially injure the interests of  
45 the insurer, the director may extend the period of admissibility for an additional,  
46 reasonable period of time.

47           (5) Except as provided in subdivisions (6) and (8) of this subsection, an investment  
48 shall qualify under this chapter if on the date the insurer committed to acquire the  
49 investment or on the date of its acquisition it would have qualified under this chapter. For  
50 the purposes of determining limitations contained in this chapter, an insurer shall give  
51 appropriate recognition to any commitments to acquire investments.

52           (6) (a) An investment held as an admitted asset by an insurer on August 28, 2006,  
53 which qualified under this chapter, or chapter 375, RSMo, shall remain qualified as an  
54 admitted asset.

55           (b) Each specific transaction constituting an investment practice of the type  
56 described in this chapter that was lawfully entered into by an insurer and was in effect on  
57 August 28, 2006, shall continue to be permitted under this chapter until its expiration or  
58 termination under its terms, including any expiration or termination after an extension  
59 under its terms.

60           (7) Unless otherwise specified, an investment limitation computed on the basis of  
61 an insurer's admitted assets or capital and surplus shall relate to the amount required to  
62 be shown on the statutory balance sheet of the insurer most recently required to be filed,  
63 annual or last quarter, with the director. Solely for the purposes of computing any  
64 limitation based upon admitted assets, the insurer shall deduct from the amount of its  
65 admitted assets the amount of the liability recorded on such statutory balance sheet for:

66 (a) The return of acceptable collateral received in a reverse repurchase transaction  
67 or a securities lending transaction;

68 (b) Cash received in a dollar roll transaction; and

69 (c) The amount reported as borrowed money in such statutory balance sheet to the  
70 extent not included in paragraph (b) and this paragraph of this subdivision.

71 (8) An investment qualified, in whole or in part, for acquisition or holding as an  
72 admitted asset may be qualified or requalified at the time of acquisition or a later date, in  
73 whole or in part, under any section if the relevant conditions contained in the other section  
74 are satisfied at the time of the qualification or requalification.

75 (9) Upon request of the director, an insurer shall provide evidence demonstrating  
76 that the investments made by the insurer were investments of the type authorized in this  
77 chapter.

78 (10) An insurer shall not enter into an agreement to purchase securities in advance  
79 of their issuance for resale to the public as part of a distribution of the securities by the  
80 issuer or otherwise guarantee the distribution, except that an insurer may acquire privately  
81 placed securities with registration rights.

82 (11) Notwithstanding the provisions of this chapter, the director, for good cause,  
83 may order an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an  
84 investment or investment practice. The authority of the director under this subsection is  
85 in addition to any other authority of the director.

86 2. (1) Within three months after August 28, 2006, an insurer's board of directors  
87 shall adopt a written plan for acquiring and holding investments and for engaging in  
88 investment practices that specifies guidelines as to the quality, maturity, and diversification  
89 of the investments and other specifications, including investment strategies intended to  
90 assure that the investments and investment practices are appropriate for the business  
91 conducted by the insurer, its liquidity needs, and its capital and surplus. The board shall  
92 review and assess the insurer's technical investment and administrative capabilities and  
93 expertise before adopting a written plan concerning an investment strategy or investment  
94 practice.

95 (2) Investments acquired and held under this chapter and section 375.345, RSMo,  
96 shall be acquired and held under the supervision and direction of the board of directors  
97 of the insurer. The board of directors shall evidence by formal resolution at least annually  
98 that it has determined whether all investments have been made in accordance with  
99 delegations, standards, limitations, and investment objectives prescribed by the board or  
100 a committee of the board charged with the responsibility to direct its investments.

101           (3) On no less than a quarterly basis and more often if deemed appropriate, an  
102 insurer's board of directors or committee of the board of directors shall:

103           (a) Receive and review a summary report on the insurer's investment portfolio, its  
104 investments activities, and investment practices engaged in under delegated authority in  
105 order to determine whether the investment activity of the insurer is consistent with its  
106 written plan; and

107           (b) Review and revise, as appropriate, the written plan.

108           (4) In discharging its duties under this section, the board of directors shall require  
109 that records of any authorization or approvals, other documentation as the board may  
110 require, and reports of any action taken under authority delegated under the plan referred  
111 to in subsection 1 of this section shall be made available on a regular basis to the board of  
112 directors.

113           (5) In discharging their duties under this section, the directors of an insurer shall  
114 perform their duties in good faith and with that degree of care that ordinarily prudent  
115 individuals in like positions would use under similar circumstances.

116           (6) If an insurer does not have a board of directors, all references to the board of  
117 directors in sections 376.291 to 376.307 shall be deemed to be references to the governing  
118 body of the insurer having authority equivalent to that of a board of directors.

          376.294. 1. An insurer shall not directly or indirectly:

2           (1) Invest in an obligation or security or make a guarantee for the benefit of or in  
3 favor of an officer or director of the insurer except as provided in section 376.295;

4           (2) Invest in an obligation or security, make a guarantee for the benefit of or in  
5 favor of, or make other investments in a business entity of which ten percent or more of the  
6 voting securities or equity interests are owned directly or indirectly by or for the benefit  
7 of one or more officers or directors in the insurer except under a transaction entered into  
8 in compliance with section 382.195, RSMo, or provided in section 376.295;

9           (3) Engage on its own behalf or through one or more affiliates in a transaction or  
10 series of transactions designed to evade the prohibitions of section 375.345, RSMo, and  
11 sections 376.291 to 376.307, or section 376.311;

12           (4) Invest in a partnership as a general partner, except that an insurer may make  
13 an investment as a general partner:

14           (a) If all other partners in the partnership are subsidiaries of the insurer or other  
15 insurance company affiliates of the insurer;

16           (b) For the purpose of:

17           a. Meeting cash calls committed to prior to August 28, 2006;

18           **b. Completing those specific projects or activities of the partnership in which the**  
19 **insurer was a general partner as of August 28, 2006, that had been undertaken as of that**  
20 **date; or**

21           **c. Making capital improvements to property owned by the partnership on August**  
22 **28, 2006, if the insurer was a general partner as of that date; or**

23           **(c) In accordance with subdivision (3) of subsection 1 of section 376.293; or**

24           **(5) Invest or lend its funds upon the security of shares of its own stock, except as**  
25 **authorized by other provisions of this chapter. However, no such shares shall be admitted**  
26 **assets of the insurer.**

27           **2. Subdivision (4) of subsection 1 of this section shall not prohibit a subsidiary or**  
28 **other affiliate of the insurer from becoming a general partner.**

**376.295. 1. (1) Except as provided in subsection 2 of this section, an insurer shall**  
2 **not without written approval of the director, directly or indirectly, unless it has notified**  
3 **the director in writing of its intention to enter into the transaction at least thirty days prior**  
4 **thereto or any shorter period as the director may permit and the director has not**  
5 **disapproved it within that period:**

6           **(a) Make a loan to or other investment in an officer or director of the insurer or a**  
7 **person in which the officer has any direct or indirect financial interest;**

8           **(b) Make a guarantee for the benefit of in favor of an officer or director of the**  
9 **insurer or a person in which the officer or director has any direct or indirect financial**  
10 **interest; or**

11           **(c) Enter into an agreement for the purchase or sale of property from or to an**  
12 **officer or director of the insurer or a person in which the officer or director has any direct**  
13 **or indirect financial interest.**

14           **(2) For purposes of this section, an officer or director shall not be deemed to have**  
15 **a financial interest by reason of an interest that is held directly or indirectly through the**  
16 **ownership of equity interests representing less than two percent of all outstanding equity**  
17 **interest issued by a person that is a party to the transaction or solely by reason of that**  
18 **individual's position as a director or officer of a person that is a party to the transaction.**

19           **(3) This subsection shall not permit an investment that is prohibited by section**  
20 **376.294.**

21           **(4) This subsection shall not apply to a transaction between an insurer and any of**  
22 **its subsidiaries or affiliates that is entered into in compliance with chapter 382, RSMo,**  
23 **other than a transaction between an insurer and its officer or director.**

24           **2. An insurer may, without the prior written approval of the director make:**

25 (1) Policy loans in accordance with the terms of the policy or contract and section  
26 376.306;

27 (2) Advances to officers or directors for expenses reasonably expected to be  
28 incurred in the ordinary course of the insurer's business or guarantees associated with  
29 credit or charge cards issued or credit extended for the purpose of financing these  
30 expenses;

31 (3) Loans secured by the principal residence of an existing or new officer of the  
32 insurer made in connection with the officer's relocation at the insurer's request if the loans  
33 comply with the requirements of section 376.302 and the terms and conditions otherwise  
34 are the same as those generally available from unaffiliated third parties;

35 (4) Loans and advances to officers or directors made in compliance with state or  
36 federal law specifically related to the loans and advances by a regulated noninsurance  
37 subsidiary or affiliate of the insurer in the ordinary course of business and on terms no  
38 more favorable than available to other customers of the entity; and

39 (5) Secured loans to an existing or new officer of the insurer made in connection  
40 with the officer's relocation at the insurer's request, if the loans:

41 (a) Do not have a term exceeding two years;

42 (b) Are required to finance mortgage loans outstanding at the same time on the  
43 prior and new residences of the officer;

44 (c) Do not exceed an amount equal to the equity of the officer in the prior residence;

45 (d) Are required to be fully repaid upon the earlier of the end of the two-year  
46 period or the sale of the prior residence.

376.296. The value or amount of an investment acquired or held or an investment  
2 practice engaged in under this chapter, unless otherwise specified in this code, shall be the  
3 value at which assets of an insurer are required to be reported for statutory accounting  
4 purposes as determined in accordance with procedures prescribed in published accounting  
5 and valuation standards of the NAIC, including the Purposes and Procedures of the  
6 Securities Valuation Office, the Valuation of Securities manual, the Accounting Practices  
7 and Procedures manual, the Annual Statement Instructions, or any successor valuation  
8 procedures officially adopted by the NAIC.

376.297. 1. (1) Except as otherwise specified in this chapter, an insurer shall not  
2 acquire an investment directly or indirectly through an investment subsidiary if, as a result  
3 of and after giving effect to the investment, the insurer would hold more than three percent  
4 of its admitted assets in the investments of all kinds issued, assumed, accepted, insured, or  
5 guaranteed by a single person.

6           (2) The three percent limitation described in subdivision (1) of this subsection shall  
7 not apply to the aggregate amounts insured by a single financial guaranty insurer with the  
8 highest generic rating issued by a nationally recognized statistical rating organization.

9           (3) Asset-backed securities shall not be subject to the limitations of subdivision (1)  
10 of this subsection; however, except as permitted by subdivision (4) of this subsection, an  
11 insurer shall not acquire an asset-backed security if as a result of and after giving effect  
12 to the investment the aggregate amount of asset-backed securities secured by or evidencing  
13 an interest in a single asset or single pool of assets held by a trust or other business entity  
14 then held by the insurer would exceed three percent of its admitted assets.

15           (4) An insurer's investments in mortgage related securities, as defined by the  
16 Secondary Mortgage Market Enhancement Act of 1984, as amended, that are backed by  
17 any single pool of mortgages and made under the authority of that Act shall not exceed five  
18 percent of its admitted assets.

19           2. (1) An insurer shall not acquire directly or indirectly through an investment  
20 subsidiary an investment under sections 376.298, 376.301, and 376.304, or counterparty  
21 exposure under subdivision (6) of subsection 2 of section 375.345, RSMo, if as a result of  
22 and after giving effect to the investment:

23           (a) The aggregate amount of medium and lower grade investments then held by the  
24 insurer would exceed twenty percent of its admitted assets;

25           (b) The aggregate amount of lower grade investments then held by the insurer  
26 would exceed ten percent of its admitted assets;

27           (c) The aggregate amount of investments rated "5" or "6" by the SVO then held  
28 by the insurer would exceed three percent of its admitted assets;

29           (d) The aggregate amount of investments rated "6" by the SVO then held by the  
30 insurer would exceed one percent of its admitted assets; or

31           (e) The aggregate amount of lower grade investments then held by the insurer that  
32 receive cash income less than the equivalent yield for treasury issues with a comparative  
33 average life would exceed one percent of its admitted assets.

34           (2) An insurer shall not acquire directly or indirectly through an investment  
35 subsidiary an investment under sections 376.298, 376.301, and 376.304, or counterparty  
36 exposure under subdivision (6) of subsection 2 of section 375.345, RSMo, if as a result of  
37 and after giving effect to the investment:

38           (a) The aggregate amount of medium and lower grade investments issued, assumed,  
39 accepted, guaranteed, or insured by any one person or as to asset-backed securities secured  
40 by or evidencing an interest in a single asset or pool of assets then held by the insurer  
41 would exceed one percent of its admitted assets; or

42           (b) The aggregate amount of lower grade investments issued, assumed, accepted,  
43 guaranteed, or insured by any one person or as to asset-backed securities secured by or  
44 evidencing an interest in a single asset or pool of assets then held by the insurer would  
45 exceed one-half of one percent of its admitted assets.

46           (3) If an insurer attains or exceeds the limit of any one rating category referred to  
47 in this subsection, the insured shall not thereby be precluded from acquiring investments  
48 in other rating categories subject to the specific and multi-category limits applicable to  
49 those investments.

50           3. An insurer shall not directly or indirectly through an investment subsidiary or  
51 a Canadian investment authorized by this chapter if as a result of and after giving effect  
52 to the investment the aggregate amount of these investments then held by the insurer would  
53 exceed forty percent of its admitted assets or if the aggregate amount of Canadian  
54 investments not acquired under subsection 2 of section 376.298 then held by the insurer  
55 would exceed twenty-five percent of its admitted assets. However, as to an insurer that is  
56 authorized to do business in Canada or that has outstanding insurance, annuity, or  
57 reinsurance contracts on lives or risks resident or located in Canada and denominated in  
58 Canadian currency, the limitations of this section shall be increased by the greater of:

59           (1) The amount the insurer is required by Canadian law to invest in Canada or to  
60 be denominated in Canadian currency; or

61           (2) One hundred fifteen percent of the amount of its reserves and other obligations  
62 under contracts on lives or risks or located in Canada.

          376.298. 1. Subject to the limitations of subsection 6 of this section and subsection  
2 2 of section 376.297, except for subdivision (4) of subsection 1 of section 376.297, an insurer  
3 may acquire rated credit instruments issued, assumed, guaranteed or issued by:

4           (1) The United States; or

5           (2) A government sponsored enterprise of the United States if the instruments of  
6 the government sponsored enterprise are assumed, guaranteed, or insured by the United  
7 States or are otherwise backed or supported by the full faith and credit clause of the United  
8 States.

9           2. Subject to the limitation of subdivision (6) of this section and subsection 2 of  
10 section 376.297, an insurer may acquire rated credit instruments issued, assumed,  
11 guaranteed, or insured by:

12           (1) Canada; or

13           (2) A government sponsored enterprise of Canada if the instruments of the  
14 government sponsored enterprise are assumed, guaranteed, or insured by Canada or are  
15 otherwise backed or supported by the full faith and credit clause of Canada.



16 An insurer shall not acquire an instrument under this subsection if as a result of and after  
17 giving effect to the investment the aggregate amount of investments then held by the  
18 insurer under this subsection would exceed forty percent of its admitted assets.

19 3. Subject to the limitations of subsection 6 of this section and subsection 2 of  
20 section 376.297, an insurer may acquire rated credit instruments excluding asset-backed  
21 securities:

22 (1) Issued by a government money market mutual fund, a class one money market  
23 mutual fund, or a class one bond mutual fund;

24 (2) Issued, assumed, guaranteed, or insured by a government sponsored enterprise  
25 of the United States other than those eligible under subsection 1 of this section;

26 (3) Issued, assumed, guaranteed, or insured by a state if the instruments are general  
27 obligations of the state; or

28 (4) Issued by a multilateral development bank.  
29

30 An insurer shall not acquire an instrument of any one fund, any one enterprise or entity,  
31 or any one state under this subsection if as a result of and after giving effect to the  
32 investment the aggregate amount of investments then held by the insurer in any one fund,  
33 enterprise, entity, or state under this subsection would exceed ten percent of its admitted  
34 assets.

35 4. Subject to the limitations of subsection 6 of this section and section 376.297, an  
36 insurer may acquire preferred stocks that are not foreign investments and that meet the  
37 requirement of rated credit instruments if as a result of and after giving effect to the  
38 investment:

39 (1) The aggregate amount of preferred stocks then held by the insurer under this  
40 subsection does not exceed thirty-three and one-third percent of its admitted assets; and

41 (2) The aggregate amount of preferred stocks then held by the insurer under this  
42 subsection which are not sinking fund stocks or rated "P1" or "P2" by the SVO does not  
43 exceed fifteen percent of its admitted assets.

44 5. Subject to the limitations of subsection 6 of this section and section 376.297, in  
45 addition to those investments eligible under subsections 1 to 4 of this section, an insurer  
46 may acquire rated credit instruments that are not foreign investments.

47 6. An insurer shall not acquire special rated credit instruments under this section  
48 if as a result of and after giving effect to the investment the aggregate amount of special  
49 rated credit instruments then held by the insurer would exceed five percent of its admitted  
50 assets. The director may by rule under section 376.305 identify certain special rated credit  
51 instruments that will be exempt from the limitation imposed by this subsection.

376.300. 1. [All other laws to the contrary notwithstanding, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized pursuant to the laws of this state shall be invested only in the following:

(1) Bonds, notes or other evidences of indebtedness, issued, assumed or guaranteed as to principal and interest, by the United States, any state, territory or possession of the United States, the District of Columbia, or of an administration, agency, authority or instrumentality of any of the political units enumerated, and of the Dominion of Canada;

(2) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as to principal and interest by any foreign country or state not mentioned in subdivision (1) insofar as such bonds, notes or other evidences of indebtedness may be necessary or required in order to do business in such foreign state or country;

(3) Bonds, notes or other evidences of indebtedness issued, guaranteed or insured as to principal and interest by a city, county, drainage district, levee district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a city, county, state, territory or possession of the United States or of the District of Columbia, provided such obligations are authorized by law;

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

(5) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by a corporation organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, provided such bonds, notes or other evidences of indebtedness shall meet with the requirements of section 375.532, RSMo, and sections 375.1070 to 375.1075, RSMo;

(6) (a) Notes, equipment trust certificates or obligations which are adequately secured, or other adequately secured instruments evidencing an interest in any equipment leased or sold to a corporation, other than the life insurance company making the investment or its parent or affiliates, which qualifies under subdivision (5) of this subsection for investment in its bonds, notes, or other evidences of indebtedness, or to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding one million dollars in the fiscal year immediately preceding purchase, which provide a right to receive determined rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment and which obligatory payments are adequate to retire the obligations within twenty years from date of issue; or

36 (b) Notes, trust certificates, or other instruments which are adequately secured. Such  
37 notes, trust certificates, or other instruments shall be considered adequately secured for the  
38 purposes of this paragraph if a corporation or corporations which qualify under subdivision (5)  
39 of this subsection for investment in their bonds, notes, or other evidences of indebtedness, are  
40 jointly or severally obliged under a binding lease or agreement to make rental, purchase, use, or  
41 other payments for the benefit of the life insurance company making the investment which are  
42 adequate to retire the instruments according to their terms within twenty years from date of issue;

43 (7) Preferred or guaranteed stocks or shares of any solvent corporation created or  
44 existing under the laws of the United States, any state, territory or possession of the United  
45 States, or the District of Columbia, if all of the prior obligations including prior preferred stocks,  
46 if any, of such corporation, at the date of acquisition, are eligible as investments under any  
47 provisions of this section; and if qualified under section 375.532, RSMo, and sections 375.1070  
48 to 375.1075, RSMo;

49 (8) Stocks or shares of insured state-chartered building and loan associations, federal  
50 savings and loan associations, if such shares are insured by the Federal Savings and Loan  
51 Insurance Corporation pursuant to the terms of Title IV of the act of the Congress of the United  
52 States, entitled "The National Housing Act" (12 U.S.C.A. Sections 1724 to 1730), as the same  
53 presently exists or may subsequently be amended, and federal home loan banks;

54 (9) Loans evidenced by notes or other evidences of indebtedness and secured by first  
55 mortgage liens on unencumbered real estate or unencumbered leaseholds having at least  
56 twenty-five years of unexpired term, such real estate or leaseholds to be located in the United  
57 States, any territory or possession of the United States. Such loans shall not exceed eighty  
58 percent of the fair market value of the security of the loan for insurance companies. However,  
59 insurance companies may make loans in excess of eighty percent of the fair market value of the  
60 security for the loan, but not to exceed ninety-five percent of the fair market value of the security  
61 for the loan, if that portion of the total indebtedness in excess of seventy-five percent of the value  
62 of the security for the loan is guaranteed or insured by a mortgage insurance company authorized  
63 by the director of insurance to do business in this state, and provided the mortgage insurance  
64 company is not affiliated with the entity making the loan. In addition, an insurance company  
65 may not place more than two percent of its admitted assets in loans in which the amount of the  
66 loan exceeds ninety percent of the fair market value of the security for the loan. An entity which  
67 is restricted by section 104.440, RSMo, in making investments to those authorized life insurance  
68 companies may make loans in excess of eighty percent of the fair market value of the security  
69 of the loan if that portion of the total indebtedness in excess of eighty percent of the fair market  
70 value is insured by a mortgage insurance company authorized by the director of insurance to do  
71 business in this state. Any life insurance company may sell any real estate acquired by it and

72 take back a purchase money mortgage or deed of trust for the whole or any part of the sale price;  
73 and such percentage may be exceeded if and to the extent such excess is guaranteed or insured  
74 by the United States, any state, territory or possession of the United States, any city within the  
75 United States having a population of one hundred thousand or more or by an administration,  
76 agency, authority or instrumentality of any such governmental units; and such percentage shall  
77 not exceed one hundred percent if such a loan is made to a corporation which qualifies pursuant  
78 to subdivision (5) for investment in its bonds, notes or other evidences of indebtedness, or if the  
79 borrower assigns to the lender a lease or leases on the real estate providing rentals payable to the  
80 borrower in amounts sufficient to repay such loan with interest in the manner specified by the  
81 note or notes evidencing such loan and executed as lessee or lessees by a corporation or  
82 corporations, which qualify pursuant to subdivision (5) for investment in its or their bonds, notes  
83 or other evidences of indebtedness. No mortgage loan upon leasehold shall be made or acquired  
84 pursuant to this subdivision unless the terms of the mortgage loan shall provide for amortization  
85 payments to be made by the borrower on the principal thereof at least once in each year in  
86 amounts sufficient to completely amortize the loan within four-fifths of the term of the leasehold  
87 which is unexpired at the time the loan is made, but in no event exceeding thirty years. Real  
88 estate or a leasehold shall not be deemed to be encumbered by reason of the existence in relation  
89 thereto of:

- 90 (a) Liens inferior to the lien securing the loan made by the life insurance company;
- 91 (b) Taxes or assessment liens not delinquent;
- 92 (c) Instruments creating or reserving mineral, oil or timber rights, rights-of-way,  
93 common or joint driveways, easements for sewers, walls or utilities;
- 94 (d) Building restrictions and other restrictive covenants; or
- 95 (e) An unassigned lease reserving rents or profits to the owner;
- 96 (10) Shares of stock, bonds, notes or other evidences of indebtedness issued, assumed  
97 or guaranteed by an urban redevelopment corporation organized pursuant to the provisions of  
98 chapter 353, RSMo, known as the "Urban Redevelopment Corporations Law", or any  
99 amendments thereto, or any law enacted in lieu thereof; provided, that one or more such life  
100 insurance companies may, with the approval of the director of the department of insurance,  
101 subscribe to and own all of the shares of stock of any such urban redevelopment corporation; and  
102 provided further, that the aggregate investment by any such company pursuant to the terms of  
103 this subdivision shall not be in excess of five percent of the admitted assets of such company;
- 104 (11) Land situated in this state and located within an area subject to redevelopment  
105 within the meaning of the urban redevelopment corporations law, or any amendments thereto,  
106 or any law enacted in lieu thereof, which land is acquired for the purposes specified in such  
107 urban redevelopment corporations law, and any such life insurance company may erect

108 apartments, tenements or other dwelling houses, not including hotels, but including  
109 accommodations for retail stores, shops, offices and other community services reasonably  
110 incident to such projects, and such company may thereafter own, hold, rent, lease, collect or  
111 receive income, maintain and manage such land so acquired and the improvements thereon, as  
112 real estate necessary and proper for the carrying on of its legitimate business; provided, that any  
113 such life insurance company shall have power to own, hold, maintain and manage such land, and  
114 all improvements thereon, in accordance with the urban redevelopment corporations law,  
115 amendments thereto or any law enacted in lieu thereof, and shall have all the powers, duties,  
116 obligations, privileges and immunities, including any tax exemption, credits or relief, granted  
117 an urban redevelopment corporation, pursuant to the urban redevelopment corporations law,  
118 amendments thereto or any law enacted in lieu thereof, the same as if such insurance company  
119 were an urban redevelopment corporation organized pursuant to the provisions of that law;  
120 provided, that two or more such life insurance companies may, with the approval of the director  
121 of the department of insurance, enter into agreements whereby the ownership and management  
122 and control of a redevelopment project is participated in by each such company; and provided  
123 further that the aggregate investment by any such company pursuant to the terms of this  
124 subdivision shall not be in excess of five percent of the admitted assets of such company;

125 (12) Investments in property and processes for the development and production of solar  
126 or geothermal energy, fossil or synthetic fuels, or gasohol, whether made directly or as a  
127 participant in a general partnership, limited partnership or joint venture.] **Subject to the**  
128 **limitations of section 376.297, an insurer may acquire directly or indirectly through an**  
129 **investment subsidiary equity interests in business entities organized under the laws of any**  
130 **domestic jurisdiction; provided, however, that the authorization contained in this section**  
131 **shall be in addition to the authority of an insurer to invest in subsidiaries and affiliates**  
132 **under section 376.355 and chapter 382, RSMo.**

133 2. [No such life insurance company shall invest in any of the foregoing securities in  
134 excess of the following percentages of the admitted assets of such company, as shown by its last  
135 annual statement preceding the date of acquisition, as filed with the director of the insurance  
136 department of the state of Missouri:

137 (1) Ten percent of its admitted assets in the securities issued by any one corporation or  
138 governmental unit falling pursuant to the classification set forth in subdivisions (3), (5), (6), (7)  
139 and (8) of subsection 1;

140 (2) One percent of its admitted assets or ten percent of its capital and surplus, whichever  
141 is greater, in any single loan on real estate pursuant to subdivision (9) of subsection 1;

142 (3) Ten percent of the admitted assets in the total amount of securities described in  
143 subdivision (7) of subsection 1, and no such life insurance company shall own securities

144 described in subdivision (7) of subsection 1 of any one corporation which, in the aggregate,  
145 represents more than five percent of the total of all outstanding shares of stock of that  
146 corporation;

147 (4) One percent of its admitted assets in the bonds, notes or other evidences of  
148 indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1;  
149 provided, however, that in addition thereto any such life insurance company which has  
150 outstanding insurance contracts on lives of persons residing in the Dominion of Canada may  
151 invest in bonds, notes or other evidences of indebtedness of the Dominion of Canada and  
152 mentioned in subdivision (1) of subsection 1, to an amount not in excess of the total amount of  
153 its reserves and other accrued liabilities under such contracts;

154 (5) Five percent of its admitted assets in the notes or trust certificates secured by any  
155 equipment leased or sold to a corporation falling under the classification set forth in subdivision  
156 (5) of subsection 1 or to a common carrier domiciled in the Dominion of Canada and mentioned  
157 in subdivision (6) of subsection 1;

158 (6) Three percent of its admitted assets in loans evidenced by notes or other evidences  
159 of indebtedness and secured by liens on unencumbered leaseholds having at least twenty-five  
160 years of unexpired term and mentioned in subdivision (9) of subsection 1;

161 (7) One percent of its admitted assets, or five percent of that portion of its admitted  
162 assets in excess of two hundred fifty million dollars, whichever is greater, in energy-related  
163 investments specified in subdivision (12) of subsection 1.] **An insurer shall not acquire**  
164 **directly or indirectly through an investment subsidiary an investment under this section**  
165 **if as a result of and after giving effect to the investment the aggregate amount of**  
166 **investments then held by the insurer under this section would exceed twenty percent of its**  
167 **admitted assets, or except for mutual funds, the amount of equity interests then held by the**  
168 **insurer that are not listed on a qualified exchange would exceed five percent of its admitted**  
169 **assets.**

170 3. [The term "corporation", as used in subdivisions (5) and (7) of subsection 1, shall  
171 include private corporations, joint stock associations or business trusts. In applying the earnings  
172 tests, provided herein, to any issuing, assuming or guaranteeing corporation, whether or not in  
173 legal existence during the whole of the test period, and if such corporation has during the test  
174 period acquired the assets of any other corporation or corporations by purchase, merger,  
175 consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings  
176 available for interest and dividends of such other predecessor or constituent corporation or the  
177 corporation so reorganized shall be considered as the earnings of the issuing, assuming or  
178 guaranteeing corporation.] **An insurer shall not acquire under this section any investment**  
179 **that the insurer may acquire under section 376.302.**

180 4. [Nothing contained in this section shall be construed as repealing or affecting the  
181 provisions of sections 375.330, 375.340, and 375.355, RSMo.] **An insurer shall not short sell**  
182 **equity interests unless the insurer covers the short sale by owning the equity interest or an**  
183 **unrestricted right to the equity interest exercisable within six months of the short sale.**

376.301. 1. [In addition to the investments permitted by section 376.300, the capital,  
2 reserve and surplus of all life insurance companies of whatever kind and character, organized  
3 under the laws of this state, may be invested in the following, and the same shall be eligible for  
4 deposit under section 376.170:

5 (1) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as  
6 to principal and interest, by the Dominion of Canada, or any province thereof;

7 (2) Investments in Canada which are substantially of the same kinds, classes and  
8 investment grades or quality as those specified in subsection 1 of section 376.300.] **(1) Subject**  
9 **to the limitations of section 376.297, an insurer may acquire tangible personal property or**  
10 **equity interest therein located or used wholly or in part within a domestic jurisdiction**  
11 **directly or indirectly through limited partnership interest and general partnership interest**  
12 **not otherwise prohibited by subsection 4 of section 376.294, joint ventures, stock of an**  
13 **investment subsidiary or membership interests in a limited liability company, trust**  
14 **certificates, or other similar instruments.**

15 (2) Investments acquired under subdivision (1) of this subsection shall be eligible  
16 only if:

17 (a) The property is subject to a lease or other agreement with a person whose rated  
18 credit instruments in the amount of the purchase prices of the personal property the  
19 insurer could then acquire under section 376.298; and

20 (b) The lease or other agreement provides the insurer the right to receive rental,  
21 purchase, or other fixed payments for this use or purchase of the property and the  
22 aggregate value of the payments, together with the estimated residual value of the property  
23 at the end of its useful life and the estimated tax benefits to the insurer resulting from  
24 ownership of the property shall be adequate to return the cost of the insurer's investment  
25 in the property plus a return deemed adequate by the insurer.

26 2. [No life insurance company shall invest in excess of one percent of its admitted assets  
27 in any one investment under this section and the aggregate amount of all investments under this  
28 section shall not exceed ten percent of its admitted assets; provided, however, that in addition  
29 thereto any life insurance company which has outstanding insurance contracts on lives of persons  
30 residing in the Dominion of Canada may make investments under this section to an amount not  
31 in excess of the total amount of its reserves and other accrued liabilities under such contracts.]  
32 **An insurer shall compute the amount of each investment under this section on the basis of**

33 the out-of-pocket purchase price and applicable related expenses paid by the insurer for  
34 the investment, net of each borrowing made to finance the purchase price, and expenses  
35 to the extent the borrowing is without recourse to the insurer.

36 3. An insurer shall not acquire directly or indirectly through an investment  
37 subsidiary an investment under this section if as a result of and after giving effect to the  
38 investment the aggregate amount of all investments then held by the insurer under this  
39 section would exceed:

40 (1) Two percent of its admitted assets; or

41 (2) One-half of one percent of its admitted assets as to any single item of tangible  
42 personal property.

43 4. For purposes of determining compliance with the limitations of section 376.297,  
44 investments acquired by an insurer under this section shall be aggregated with those  
45 acquired under section 376.298 and each lessee of the property under a lease referred to  
46 in this section shall be deemed the issuer of an obligation in the amount of the investment  
47 of the insurer in the property determined as provided in subsection 2 of this section.

48 5. Nothing in the section is applicable to tangible personal property lease  
49 arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing  
50 arrangement or agreement permitted under chapter 382, RSMo.

376.302. 1. (1) Subject to the limitations of section 376.297, an insurer may acquire  
2 directly or indirectly through limited partnership interests and general partnership  
3 interests not otherwise prohibited by subsection 4 of section 376.294, joint ventures, stock  
4 of an investment subsidiary or membership interests in a limited liability company, trust  
5 certificates, or other similar instruments or obligations secured by mortgages on real estate  
6 situated within a domestic jurisdiction, but a mortgage loan which is secured by other than  
7 a first lien shall not be acquired under this subdivision unless the insurer is the holder of  
8 the first lien. The obligations held by the insurer and any obligations with an equal lien  
9 priority shall not at the time of acquisition of the obligation exceed:

10 (a) Ninety percent of the fair market value of the real estate if the mortgage loan  
11 is secured by a purchase money mortgage or like security received by the insurer upon  
12 disposition of the real estate;

13 (b) Eighty percent of the fair market value of the real estate if the mortgage  
14 requires immediate scheduled payment in periodic installments of principal and interest  
15 and has an amortization period of thirty years or less and periodic payments not less than  
16 annually. Each periodic payment shall be sufficient to assure that at all times:



17           a. The outstanding principal balance of the mortgage loan is not greater than the  
18 outstanding principal balance that would be outstanding under a mortgage loan with the  
19 same original principal balance and interest rate; and

20           b. There are equal payments of principal and interest with the same frequency over  
21 the same amortization period.

22

23 Mortgage loans permitted under this subsection are permitted notwithstanding the fact  
24 that they provide for a payment of the principal balance prior to the end of the period of  
25 the amortization of the loan. For residential mortgage loans, the eighty percent limitation  
26 may be increased to ninety-seven percent if acceptable private mortgage insurance has  
27 been obtained; or

28           (c) Seventy-five percent of the fair market value of the real estate for mortgage  
29 loans that do not meet the requirements of paragraph (a) or (b) of this subdivision.

30           (2) For purposes of subdivision (1) of this subsection, the amount of an obligation  
31 required to be included in the calculation of the loan-to-value ratio may be reduced to the  
32 extent the obligation is insured by the Federal Housing Administration or guaranteed by  
33 the Administrator of Veterans' Affairs, or their successor.

34           (3) Subject to the limitations of section 376.297, an insurer may acquire directly or  
35 indirectly through limited partnership interests and general partnership interest not  
36 otherwise prohibited by subsection 4 of section 376.294, joint ventures, stock of an  
37 investment subsidiary or membership interests in a limited liability company, trust  
38 certificates, or other similar instruments or obligations secured by a second mortgage on  
39 real estate situated within a domestic jurisdiction other than as authorized in subdivision  
40 (1) of this subsection. The obligation held by the insurer shall be the sole second lien  
41 priority obligation and shall not at the time of acquisition of the obligation exceed seventy  
42 percent of the amount by which the fair market value of the real estate exceeds the amount  
43 outstanding under the first mortgage.

44           (4) A mortgage loan that is held by an insurer under subdivision (6) of subsection  
45 1 of section 376.293 or acquired under this section and is restructured in a manner that  
46 meets the requirements of a restructured mortgage loan in accordance with the NAIC  
47 Accounting Practices and Procedures Manual or its successor publication shall continue  
48 to qualify as a mortgage loan.

49           (5) Subject to the limitations of section 376.297, credit lease transactions that do not  
50 qualify for investment under section 376.298 with the following characteristics shall be  
51 exempt from the provisions of subdivision (1) of this subsection:

52           (a) The loan amortizes over the initial fixed lease term at least in an amount  
53 sufficient so that the loan balance at the end of the lease term does not exceed the original  
54 appraised value of the real estate;

55           (b) The lease payments cover or exceed the total debt service over the life of the  
56 loan;

57           (c) A tenant or its affiliated entity whose rated credit instruments have a SVO "1"  
58 or "2" designation or a comparable rating from a nationally recognized statistical rating  
59 organization recognized by the SVO has a full faith and credit obligation to make the lease  
60 payments;

61           (d) The insurer holds or is the beneficial holder of a first lien mortgage on the real  
62 estate;

63           (e) The expenses of the real estate are passed through to the tenant, excluding  
64 exterior structural, parking and heating, ventilation and air conditioning replacement  
65 expenses, unless annual escrow contributions from cash flows derived from the lease  
66 payments cover the expense shortfall; and

67           (f) There is a perfected assignment of the rents due under the lease to or for the  
68 benefit of the insurer.

69           2. (1) An insurer may acquire, manage, and dispose of real estate situated in a  
70 domestic jurisdiction directly or indirectly through limited partnership interests and  
71 general partnership interest not otherwise prohibited by subsection 4 of section 376.294,  
72 joint ventures, stock of an investment subsidiary or membership interests in a limited  
73 liability company, trust certificates, or other similar instruments. The real estate shall be  
74 income producing or intended for improvement or development for investment purposes  
75 under an existing program in which case the real estate shall be deemed to be income  
76 producing.

77           (2) The real estate may be subject to mortgages, liens, or other encumbrances, and  
78 the amount of which shall, to the extent that the obligations secured by the mortgages,  
79 liens, or encumbrances are without recourse to the insurer, be deducted from the amount  
80 of the investment of the insurer in the real estate for purposes of determining compliance  
81 with paragraphs (b) and (c) of subsection 4 of this section.

82           3. An insurer may acquire, manage, and dispose of real estate for the convenient  
83 accommodation of the insurer's (which may include its affiliates) business operations,  
84 including home office, branch office, and field office operations. Such real estate acquired  
85 may:

86           (1) Include excess space for rent to others if the excess space at its fair market value  
87 would otherwise be a permitted investment under subsection 2 of this section and is so  
88 qualified by the insurer; or

89           (2) Be subject to one or more mortgage, lien, or other encumbrance, and the  
90 amount of which shall, to the extent that the obligations secured by the mortgages, liens,  
91 or encumbrances are without recourse to the insurer, be deducted from the amount of the  
92 investment of the insurer in the real estate for purposes of determining compliance with  
93 subsection 4 of this section.

94

95 For purposes of this subsection, business operations shall not include that portion of real  
96 estate used for the direct provision of health care services by an accident and health insurer  
97 for its insureds. An insurer may acquire real estate used for these purposes under  
98 subsection 2 of this section.

99           4. An insurer may not acquire an investment:

100           (1) Under subsection 1 of this section if as a result of an after giving effect to the  
101 investment the aggregate amount of all investments then held by the insurer under  
102 subsection 1 of this section would not exceed:

103           (a) One percent of its admitted assets in mortgage loans covering any one secured  
104 location;

105           (b) One-fourth of one percent of its admitted assets in construction loans covering  
106 any one secured location; or

107           (c) Two percent of its admitted assets in construction loans in the aggregate;

108           (2) Under subsection 2 of this section if as a result of and after giving effect to the  
109 investment and any outstanding guarantees made by the insurer in connection with the  
110 investment the aggregate amount of investments then held by the insurer under subsection  
111 2 of this section plus the guarantees then outstanding would exceed:

112           (a) One percent of its admitted assets in one parcel or group of contiguous parcels  
113 of real estate, except that this limitation shall not apply to that portion of real estate used  
114 for the direct provision of health care services by an accident and health insurer for its  
115 insureds, such as hospitals, medical clinics, medical professional buildings, or other health  
116 facilities for the purposes of providing health services; or

117           (b) Fifteen percent of its admitted assets in the aggregate but not more than five  
118 percent of its admitted assets in real estate to be improved or developed;

119           (3) Under subsection 1 or 2 of this section if as a result of and after giving effect to  
120 the investment and any guarantees made by the insurer in connection with the investment  
121 the aggregate amount of all investments then held by the insurer under subsections 1 and

**2 of this section plus the guarantees then outstanding would exceed forty-five percent of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent of its admitted assets if:**

**(a) This increase amount is invested only in residential mortgage loans;**

**(b) The insurer has no more than ten percent of its admitted assets invested in mortgage loans other than residential mortgage loans;**

**(c) The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent at the time the mortgage loan is qualified under this increased authority and the fair market value is supported by an appraisal no more than two years old prepared by an independent appraiser;**

**(d) A single mortgage loan qualified under this increased authority does not exceed one-half of one percent of its admitted assets;**

**(e) The insurer files with the director and receives approval from the director for a plan that is designed to result in a portfolio of residential mortgage loans that is geographically diversified; and**

**(f) The insurer agrees to file annually with the director records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.**

**The limitations of section 376.297 shall not apply to an insurer's acquisition of real estate under subsection 3 of this section. An insurer shall not acquire real estate under subsection 3 of this section if as a result of and after giving effect to the acquisition the aggregate amount of real estate then held by the insurer under subsection 3 of this section would exceed ten percent of its admitted assets. With the permission of the director, additional amounts of real estate may be acquired under subsection 3 of this section.**

376.303. [In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life insurance companies of whatever kind and character, organized or doing business under this chapter, may be invested in bonds, notes, or other evidences of indebtedness, payable in United States dollars, issued, assumed or guaranteed as to principal and interest by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Asian Development Bank, or the African Development Bank, and such securities shall be eligible for deposit under section 376.170, provided, however, that the amount invested by any such life insurance company in such bonds, notes, or other evidences of indebtedness shall not in the aggregate exceed two percent of the admitted assets of such life insurance company.] **An insurer may enter into securities lending, repurchase, reverse**

11 repurchase, and dollar roll transactions with business entities subject to the following  
12 requirements:

13 (1) The insurer's board of directors shall adopt a written plan that is consistent  
14 with the requirements of the written plan under subdivision (1) of subsection 2 of section  
15 376.293 that specifies guidelines and objectives to be followed, such as:

16 (a) A description of how cash received will be invested or used for general  
17 corporate purposes of the insurer;

18 (b) Operational procedures to manage interest rate risk, counterparty default risk,  
19 the conditions under which proceeds from reverse repurchase transactions may be used  
20 in the ordinary course of business, and use of acceptable collateral in a manner that reflects  
21 the liquidity needs of the transaction; and

22 (c) The extent to which the insurer may engage in these transactions;

23 (2) The insurer shall enter into a written agreement for all transactions authorized  
24 in this section other than dollar roll transactions. The written agreement shall require that  
25 each transaction terminate no more than one year from its inception or upon the earlier  
26 demand of the insurer. The agreement shall be with the business entity counterparty and  
27 the agreement may be with an agent acting on behalf of the insurer if the agent is a  
28 qualified business entity and if the agreement:

29 (a) Requires the agent to enter into separate agreements with each counterparty  
30 that are consistent with the requirements of this section; and

31 (b) Prohibits securities lending transactions under the agreement with the agent or  
32 its affiliates;

33 (3) Cash received in a transaction under this section shall be invested in accordance  
34 with this chapter and in a manner that recognizes the liquidity needs of the transaction or  
35 used by the insurer for its general corporate purpose. So long as the transaction remains  
36 outstanding, the insurer, its agent, or custodian shall maintain as to acceptable collateral  
37 received in a transaction under this section either physically or through the book entry  
38 systems of the Federal Reserve, Depository Trust Company, Participants Trust Company,  
39 or other securities depositories approved by the director:

40 (a) Possession of the acceptable collateral;

41 (b) A perfected security interest in the acceptable collateral; or

42 (c) In the case of a jurisdiction outside of the United States, title to or rights of a  
43 secured creditor to the acceptable collateral;

44 (4) The limitations of sections 376.297 and 376.304 shall not apply to the business  
45 entity counterparty exposure created by transactions under this section. For purposes of  
46 calculations made to determine compliance with this subsection, no effect will be given to

47 the insurer's future obligation to resell securities in the case of a repurchase transaction  
48 or to repurchase securities in the case of a reverse repurchase transaction. An insurer shall  
49 not enter into a transaction under this section if as a result of and after giving effect to the  
50 transaction:

51 (a) The aggregate amount of securities then loaned, sold to, or purchased from any  
52 one business entity counterparty under this section would exceed five percent of its  
53 admitted assets. In calculating the amount sold to or repurchased from a business entity  
54 counterparty under repurchase or reverse repurchase transactions, effect may be given to  
55 netting provisions under a master written agreement; or

56 (b) The aggregate amount of all securities then loaned, sold to, or purchased from  
57 all business entities under this section would exceed forty percent of its admitted assets;

58 (5) In a dollar roll transaction, the insurer shall receive cash in an amount at least  
59 equal to the market value of the securities transferred by the insurer in the transaction as  
60 of the transaction date.

376.304. 1. Subject to the limitations of section 376.297, an insurer may acquire  
2 directly or indirectly through an investment subsidiary foreign investments or engage in  
3 investment practices with persons of or in foreign jurisdictions of substantially the same  
4 types as those that an insurer is permitted to acquire under this chapter, other than the  
5 type permitted under section 376.311 if as a result and after giving effect to the investment:

6 (1) The aggregate amount of foreign investments then held by the insurer under  
7 this subsection does not exceed twenty percent of the admitted assets; and

8 (2) The aggregate amount of foreign investments then held by the insurer under  
9 this subsection in a single foreign jurisdiction does not exceed ten percent of its admitted  
10 assets as to a foreign jurisdiction that has a sovereign debt rating of SVO "1" or three  
11 percent of its admitted assets as to any other foreign jurisdiction.

12 2. Subject to the limitations of section 376.297, an insurer may acquire investments  
13 or engage in investment practice denominated in foreign currencies whether or not they  
14 are foreign investments acquired under subsection 1 of this section or additional foreign  
15 currency exposure as a result of the termination or expiration of a hedging transaction  
16 with respect to investments denominated in a foreign currency if as a result of and after  
17 giving effect to the transaction:

18 (1) The aggregate amount of investments then held by the insurer under this  
19 subsection denominated in foreign currencies does not exceed ten percent of its admitted  
20 assets; and

21 (2) The aggregate amount of investments then held by the insurer under this  
22 subsection denominated in the foreign currency of a single foreign jurisdiction does not

23 exceed ten percent of its admitted assets as to a foreign jurisdiction that has a sovereign  
24 debt rating of SVO "1" or three percent of its admitted assets as to any other foreign  
25 jurisdiction.

26       **3. An investment shall not be considered denominated in a foreign currency if the**  
27 **acquiring insurer enters into one or more contracts in transactions permitted under section**  
28 **375.345, RSMo, in which the business entity counterparty agrees to exchange or grants to**  
29 **the insurer the option to exchange all payments made on the foreign currency denominated**  
30 **investment, or amounts equivalent to the payments that are or will be due to the insurer**  
31 **in accordance with the terms of such investment, for United States currency during the**  
32 **period the contract or contracts are in effect to insulate the insurer from loss caused by**  
33 **diminution of the value of payments owed to the insurer due to future changes in currency**  
34 **exchange rates.**

35       **4. In addition to investments permitted under subsections 1 to 3 of this section, an**  
36 **insurer that is authorized to do business in a foreign jurisdiction and that has an**  
37 **outstanding insurance, annuity, or reinsurance contract on lives or risks resident or located**  
38 **in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may**  
39 **acquire investments denominated in the currency of that jurisdiction subject to the**  
40 **limitations of section 376.297. However, investments made under this subsection in**  
41 **obligations of foreign governments, their political subdivisions, and government sponsored**  
42 **enterprises shall not be subject to the limitations of section 376.297 if those investments**  
43 **carry an SVO rating of "1" or "2". The aggregate amount of investments acquired by the**  
44 **insurer under this subsection shall not exceed the greater of:**

45       **(1) The amount the insurer is required by the law of the foreign jurisdiction to**  
46 **invest in the foreign jurisdiction; or**

47       **(2) One hundred fifteen percent of the amount of its reserves, net of reinsurance,**  
48 **and other obligations under the contracts on lives or risks resident or located in the foreign**  
49 **jurisdiction.**

50       **5. In addition to investments permitted under subsections 1 to 3 of this section, an**  
51 **insurer that is not authorized to do business in a foreign jurisdiction but which has**  
52 **outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or**  
53 **located in that foreign jurisdiction and denominated in foreign currency of that**  
54 **jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may**  
55 **acquire investments denominated in the currency of that jurisdiction, subject to the**  
56 **limitations of section 376.297. However, investments made under this subsection in**  
57 **obligations of foreign governments, their political subdivisions, and government sponsored**  
58 **enterprises shall not be subject to the limitations of section 376.297 if those investments**

59 carry an SVO rating of "1" or "2". The aggregate amount of investments acquired by the  
60 insurer under this subsection shall not exceed one hundred five percent of the amount of  
61 its reserves, net of reinsurance, and other obligations under the contracts on lives and risks  
62 resident or located in the foreign jurisdiction.

63 **6. Investments acquired under this section shall be aggregated with investments of**  
64 **the same type made under all other sections of this chapter and in a similar manner for**  
65 **purposes of determining compliance with the limitations, if any, contained in the other**  
66 **sections. Investments in obligations of foreign governments, their political subdivisions,**  
67 **and government sponsored enterprises of these persons, except for those exempted under**  
68 **subsections 4 and 5 of this section, shall be subject to the limitations of section 376.297.**

376.305. [1. In addition to the investments permitted by section 376.300, the capital,  
2 reserve and surplus of all life insurance companies of whatever kind and character organized or  
3 doing business under sections 376.010 to 376.670, may be invested in the common stock of any  
4 solvent corporation, organized under the laws of the United States, any state, territory or  
5 possession of the United States, or the District of Columbia, or of the Dominion of Canada, or  
6 any province of the Dominion of Canada, provided the corporation's net worth as shown on its  
7 balance sheet at the end of the last fiscal year preceding purchase shall have been at least ten  
8 million dollars, and that such common stocks are registered on a national securities exchange or  
9 quoted in established over-the-counter markets, or provided that such corporation is registered  
10 and operated as an open-end regulated investment company in accordance with the Investment  
11 Company Act of 1940, as amended. Common stocks meeting the preceding qualifications shall  
12 be eligible for deposit, as provided under section 376.170.

13 2. No such life insurance company shall invest in excess of ten percent of its admitted  
14 assets or an amount in excess of its combined capital and surplus, whichever is the lesser, as  
15 shown by its last annual statement preceding the date of acquisition, as filed with the director of  
16 the insurance department of the state of Missouri, in the total amount of such common stocks,  
17 nor shall such life insurance company own securities described in subdivision (7) of subsection  
18 1 of section 376.300, and subsection 1 of this section, which, in the aggregate, represent more  
19 than five percent of the total of all outstanding shares of stock of the issuing corporation, nor  
20 shall any such life insurance company own common stock described in subsection 1 issued by  
21 any one corporation which represents more than two percent of the admitted assets of such life  
22 insurance company.] **The director may promulgate rules to implement the provisions of**  
23 **sections 376.291 to 376.307. Any rule or portion of a rule, as that term is defined in section**  
24 **536.010, RSMo, that is created under the authority delegated in this section shall become**  
25 **effective only if it complies with and is subject to all of the provisions of chapter 536,**  
26 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**



27 nonseverable and if any of the powers vested with the general assembly under chapter 536,  
28 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are  
29 subsequently held unconstitutional, then the grant of rulemaking authority and any rule  
30 proposed or adopted after August 28, 2006, shall be invalid and void.

376.306. A life insurer may lend to a policyholder on the security of the cash  
2 surrender value of the policyholder's policy a sum not to exceeding the legal reserve that  
3 the insurer is required to maintain on the policy.

376.307. 1. [Notwithstanding any direct or implied prohibitions in this chapter or  
2 chapter 375, RSMo, the capital, reserve and surplus funds of all life insurance companies of  
3 whatever kind and character organized or doing business under this chapter or chapter 375,  
4 RSMo, may be invested in any investments which do not otherwise qualify under any other  
5 provision of this chapter or chapter 375, RSMo, provided, however, the investments authorized  
6 by this section are not eligible for deposit with the department of insurance and shall be subject  
7 to all the limitations set forth in subsection 2.] **Solely for the purpose of acquiring investments**  
8 **that exceed the quantitative limitations of sections 376.297 to 376.304, an insurer may**  
9 **acquire under this subsection an investment or engage in investment practices described**  
10 **in section 376.303, but an insurer shall not acquire an investment or engage in investment**  
11 **practices described in section 376.303 under this subsection if as a result of and after giving**  
12 **effect to the transaction:**

13 (1) The aggregate amount of investments then held by an insurer under this  
14 subsection would exceed three percent of its admitted assets; or

15 (2) The aggregate amount of investments as to one limitation in sections 376.297 to  
16 376.304 then held by the insurer under this subsection would exceed one percent of its  
17 admitted assets.

18 2. [No such life insurance company shall own such investments in an amount in excess  
19 of the following limitations, to be based upon its admitted assets, capital and surplus as shown  
20 in its last annual statement filed with the director of the department of insurance of the state of  
21 Missouri:

22 (1) The aggregate amount of all such investments under this section shall not exceed the  
23 lesser of:

24 (a) Eight percent of its admitted assets; or

25 (b) The amount of its capital and surplus in excess of nine hundred thousand dollars; and

26 (2) The amount of any one such investment under this section shall not exceed one  
27 percent of its admitted assets.] **In addition to the authority provided in subsection 1 of this**  
28 **section, an insurer may acquire under this subsection an investment of any kind or engage**  
29 **in investment practices described in section 376.303 that are not specifically prohibited by**

30 **this chapter without regard to the categories, conditions, standards, or other limitations**  
31 **of sections 376.297 to 376.304 if as a result of and after giving effect to the transaction the**  
32 **aggregate amount of investments then held under this subsection would not exceed the**  
33 **lesser of:**

- 34       **(1) Ten percent of its admitted assets; or**  
35       **(2) Seventy-five percent of its capital and surplus.**

36

37 **An insurer shall not acquire any investment or engage in any investment practice under**  
38 **this subsection if as a result of and after giving effect to the transaction the aggregate**  
39 **amount of all investments in any one person then held by the insurer under this subsection**  
40 **would exceed three percent of its admitted assets.**

41       3. [If, subsequent to its acquisition hereunder, any such investment shall become  
42 specifically authorized or permitted under any other section contained in chapter 375 or 376,  
43 RSMo, any such company may thereafter consider such investment as held under such other  
44 applicable section and not under this section.] **In addition to the investments acquired under**  
45 **subsections 1 and 2 of this section, an insurer may acquire under this subsection an**  
46 **investment of any kind or engage in investment practices described in section 376.303 that**  
47 **are not specifically prohibited by this chapter without regard to any limitations of sections**  
48 **376.297 to 376.304 if:**

- 49       **(1) The director grants prior approval;**  
50       **(2) The insurer demonstrates that its investments are being made in a prudent**  
51 **manner and that the additional amounts will be invested in a prudent manner; and**  
52       **(3) As a result of and after giving effect to the transaction, the aggregate amount**  
53 **of investments then held by the insurer under this subsection does not exceed the greater**  
54 **of:**

- 55       **(a) Twenty-five percent of its capital and surplus; or**  
56       **(b) One hundred percent of capital and surplus less ten percent of its admitted**  
57 **assets.**

58       **4. Under this section, an insurer shall not acquire or engage in an investment**  
59 **practice prohibited under section 376.294 or an investment that is a derivative transaction.**

      376.309. 1. As used in this section, "separate account" means an account established by  
2 an insurance company, into which any amounts paid to or held by such company under  
3 applicable contracts are credited and the assets of which, subject to the provisions of this section,  
4 may be invested in such investments as shall be authorized by a resolution adopted by such  
5 company's board of directors. The income, if any, and gains and losses, realized or unrealized,  
6 on such account shall be credited to or charged against the amounts allocated to such account

7 without regard to other income, gains or losses of the company. If and to the extent so provided  
8 under the applicable contracts, that portion of the assets of any such separate account equal to  
9 the reserves and other contract liabilities with respect to such account shall not be chargeable  
10 with liabilities arising out of any other business the company may conduct.

11 2. Any domestic life insurance company may, after adoption of a resolution by its board  
12 of directors, establish one or more separate accounts, and may allocate to such account or  
13 accounts any amounts paid to or held by it which are to be applied under the terms of an  
14 individual or group contract to provide benefits payable in fixed or in variable dollar amounts  
15 or in both.

16 3. To the extent it deems necessary to comply with any applicable federal or state act,  
17 the company may, with respect to any separate account or any portion thereof, provide for the  
18 benefit of persons having beneficial interests therein special voting and other rights and special  
19 procedures for the conduct of the business and affairs of such separate account or portion thereof,  
20 including, without limitation, special rights and procedures relating to investment policy,  
21 investment advisory services, selection of public accountants, and selection of a committee, the  
22 members of which need not be otherwise affiliated with the company, to manage the business  
23 and affairs of such separate account or portion thereof; and the corporate charter of such  
24 company shall be deemed amended to authorize the company to do so. The provisions of this  
25 section shall not affect existing laws pertaining to the voting rights of such company's  
26 policyholders.

27 4. The amounts allocated to any separate account and the accumulations thereon may be  
28 invested and reinvested without regard to any requirements or limitations prescribed by the laws  
29 of this state governing the investments of life insurance companies, and the investments in such  
30 separate account or accounts shall not be taken into account in applying the investment  
31 limitations, including but not limited to quantitative restrictions, otherwise applicable to the  
32 investments of the company, except that to the extent that the company's reserve liability with  
33 regard to benefits guaranteed as to principal amount and duration, and funds guaranteed as to  
34 principal amount or stated rate of interest, is maintained in any separate account, a portion of the  
35 assets of such separate account at least equal to such reserve liability shall be, except as the  
36 director of insurance might otherwise approve, invested in accordance with the laws of this state  
37 governing the general investment account of any company. As used herein, the expression  
38 "general investment account" shall mean all of the funds, assets and investments of the company  
39 which are not allocated in a separate account. The provisions of section 376.170 relating to  
40 deposits for registered policies shall not be applicable to funds and investments allocated to  
41 separate accounts. No investment in the separate account or in the general investment account  
42 of a life insurance company shall be transferred by sale, exchange, substitution or otherwise from

43 one account to another unless, in case of a transfer into a separate account, the transfer is made  
44 solely to establish the account or to support the operation of the contracts with respect to the  
45 separate account to which the transfer is made or unless the transfer, whether into or from a  
46 separate account, is made by a transfer of cash, or by a transfer of other assets having a readily  
47 determinable market value, provided that such transfer of other assets is approved by the director  
48 of insurance and is for assets of equivalent value. Such transfer shall be deemed approved to the  
49 extent the assets of a separate account so transferred have been paid to or are being held by the  
50 company in connection with a pension, retirement or profit-sharing plan subject to the provisions  
51 of the Internal Revenue Code, as amended, and the Employee Retirement Income Security Act  
52 of 1974, as amended. The director of insurance may withdraw such deemed approval by  
53 providing written notice to the company that its financial condition or past practices require such  
54 withdrawal. The director of insurance may approve other transfers among such accounts if the  
55 director concludes that such transfers would be equitable.

56 5. Unless otherwise approved by the director of insurance, assets allocated to a separate  
57 account shall be valued at their market value on the date of valuation, or if there is no readily  
58 available market, then as provided under the terms of the contract or the rules or other written  
59 agreement applicable to such separate account; provided, that the portion of the assets of such  
60 separate account at least equal to the company's reserve liability with regard to the guaranteed  
61 benefits and funds referred to in subsection 4 of this section, if any, shall be valued in accordance  
62 with the rules otherwise applicable to the company's assets.

63 6. The director of insurance shall have the sole and exclusive **state** authority to regulate  
64 the issuance and **authority to regulate the** sale of contracts under which amounts are to be  
65 allocated to one or more separate accounts as provided herein, and to issue such reasonable rules,  
66 regulations and licensing requirements as [he] **the director** shall deem necessary to carry out the  
67 purposes and provisions of this section; and [such contracts,] the companies [which] **that** issue  
68 [them and the agents or other persons who sell them] **such contracts** shall not be subject to  
69 [sections 409.101 to 409.419, RSMo, or amendments thereto, nor to the jurisdiction of the]  
70 **registration with the** commissioner of securities. **The director may, subject to the provisions**  
71 **of section 374.185, RSMo, consult and cooperate with the commissioner of securities in**  
72 **investigations arising from the offer and sale of contracts regulated under this section and**  
73 **may request assistance from the commissioner of securities in any proceeding arising from**  
74 **the offer and sale of any such contracts.**

75 7. No domestic life insurance company, and no other life insurance company admitted  
76 to transact business in this state, shall be authorized to deliver within this state any contract under  
77 which amounts are to be allocated to one or more separate accounts as provided herein until said  
78 company has satisfied the director of insurance that its condition or methods of operation in

79 connection with the issuance of such contracts will not render its operation hazardous to the  
80 public or its policyholders in this state. In determining the qualifications of a company  
81 requesting authority to deliver such contracts within this state, the director of insurance shall  
82 consider, among other things:

83 (1) The history and financial condition of the company;

84 (2) The character, responsibility and general fitness of the officers and directors of the  
85 company; and

86 (3) In the case of a company other than a domestic company, whether the statutes and  
87 regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders  
88 and the public which is substantially equal to that provided by this section and the rules and  
89 regulations issued thereunder.

90 8. An authorized life insurance company, whether domestic, foreign or alien, which  
91 issues contracts under which amounts are to be allocated to one or more separate accounts as  
92 provided herein, and which is a subsidiary of or affiliated through common management or  
93 ownership with another life insurance company authorized to do business in this state, may be  
94 deemed to have met the provisions of subsection 7 of this section if either it or the parent or  
95 affiliated company meets the requirements thereof.

96 9. If the contract provides for payment of benefits in variable amounts, it shall contain  
97 a statement of the essential features of the procedure to be followed by the company in  
98 determining the dollar amount of such variable benefits. Any such contract, including a group  
99 contract, and any certificate issued thereunder, shall state that such dollar amount may decrease  
100 or increase and shall contain on its first page a statement that the benefits thereunder are on a  
101 variable basis.

102 10. Except as otherwise provided in this section, all pertinent provisions of the insurance  
103 laws of this state shall apply to separate accounts and contracts relating thereto.

**376.435. 1. Beginning January 1, 2008, a health carrier providing a group benefit  
2 plan or plans to an employer who meets the requirements of subsection 3 of this section  
3 shall, upon request by the employer or employer's producer of record, provide a report of  
4 the total dollar amount paid under the plan or plans for each of the prior three years or  
5 for each year coverage was in place if less than three years at the time of the request. In  
6 the case of an employer with multiple plans, the total dollar amounts shall be aggregated  
7 into one report. The report shall be provided within thirty days of the request. The  
8 information provided to the employer or the employer's producer of record shall be  
9 furnished in a manner that does not individually identify any employee or other person  
10 covered by the health benefit plan and shall comply with all applicable federal and state  
11 privacy laws regarding the disclosure of health records.**

12           **2. For purposes of this section, the terms "health carrier" and "health benefit**  
13 **plan" shall have the same meaning as such terms are defined in section 376.1350.**

14           **3. For purposes of subsection 1 of this section, an employer is one who:**

15           **(1) Employs at least fifty-one employees either at the time of the request or at the**  
16 **start of the reporting period; and**

17           **(2) Has been insured continuously with the health carrier or a carrier affiliated**  
18 **with the health carrier for at least the preceding twenty-two months.**

19           **4. The director of the department of insurance shall not have the authority to**  
20 **change, by rule, the number of employees in subdivision (1) of subsection 3 of this section**  
21 **required for an employer or producer of record to request the information prescribed by**  
22 **this section.**

          376.620. [In all suits upon policies of insurance on life hereafter issued by any company  
2 doing business in this state, to a citizen of this state, it shall be no defense that the insured  
3 committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the  
4 cause, that the insured contemplated suicide at the time he made his application for the policy,  
5 and any stipulation in the policy to the contrary shall be void.] **1. Any life insurance or**  
6 **certificate issued or delivered in this state, may exclude or restrict liability of death as the**  
7 **result of suicide in the event the insured, while sane or insane, dies as a result of suicide**  
8 **within one year from the date of the issue of the policy or certificate.**

9           **2. Any life insurance policy or certificate which contains any exclusion or**  
10 **restriction under subsection 1 of this section shall also provide that in the event the insured**  
11 **dies as a result of suicide within one year from the date of issue of the policy that the**  
12 **insurer shall promptly refund all premiums paid for coverage on such insured.**

          376.889. [In addition to any other applicable penalties, the director may require issuers  
2 violating any provision of sections 376.850 to 376.890 or regulations promulgated pursuant to  
3 sections 376.850 to 376.890 to cease marketing any Medicare supplement policy or certificate  
4 in this state which is related directly or indirectly to a violation, or may require such issuer to  
5 take such actions as are necessary to comply with the provisions of sections 376.850 to 376.890,  
6 or both] **1. If the director determines that a person has engaged or is engaging in a violation**  
7 **of sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, or that**  
8 **a person has materially aided or is materially aiding an act, practice, omission, or course**  
9 **of business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order**  
10 **issued pursuant thereto, the director may issue such administrative orders as authorized**  
11 **under section 374.046, RSMo. A violation of any of these sections is a level two violation**  
12 **under section 374.049, RSMo.**

13           **2. If the director believes that a person has engaged or is engaging in a violation of**  
14 **sections 376.850 to 376.890 or a rule adopted or order issued pursuant thereto, or that a**  
15 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
16 **business constituting a violation of sections 376.850 to 376.890 or a rule adopted or order**  
17 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
18 **under section 374.048, RSMo. A violation of any of these sections is a level two violation**  
19 **under section 374.049, RSMo.**

          376.1012. Funds collected from the participating employers under multiple employer  
2 self-insured health plans shall be held in trust subject to the following requirements:

3           (1) A board of trustees elected by participating employers shall serve as fund managers  
4 on behalf of participants. Trustees shall be plan participants. No participating employer may  
5 be represented by more than one trustee. No trustee may represent more than one employer. A  
6 minimum of three and a maximum of seven trustees may be elected. Trustees may not receive  
7 remuneration but they may be reimbursed for actual and reasonable expenses incurred in  
8 connection with duties as trustee. A trustee may not be an agent, or broker for or an owner,  
9 officer or employee of any third-party administrator, insurance agency or insurer utilized by the  
10 plan. The trustees shall have the authority to approve applications of association members for  
11 participation in the arrangement and to contract with a licensed third-party administrator to  
12 administer the day-to-day affairs of the plan;

13           (2) Each trustee shall be bonded in an amount of not less than one hundred fifty thousand  
14 dollars by a licensed insurer;

15           (3) Investment of plan funds is subject to the same restrictions which are applicable to  
16 insurers pursuant to sections [376.300 to 376.310] **376.291 to 376.307**; provided, however, that  
17 no foreign plan shall be exempt under section 376.310 from the investment laws of this state  
18 unless such plan is subject to laws in its state of domicile which are substantially similar to  
19 sections 376.1032 to 376.1045. All investments shall be managed by a bank or other investment  
20 entity licensed to operate in Missouri;

21           (4) Trustees, on behalf of the plan, shall file an annual report with the director of the  
22 department of insurance by March first showing the condition and affairs of the plan as of the  
23 preceding thirty-first day of December. The report shall be made on forms prescribed by the  
24 director. The report shall summarize the financial condition of the fund, itemize collections from  
25 participating employers, detail all fund expenditures and provide any additional information  
26 which the director requires. More frequent reports may be required at the discretion of the  
27 director.

          376.1094. 1. **The director shall suspend or revoke** the certificate of authority of an  
2 administrator [shall be suspended or revoked] if the director finds that the administrator:

3 (1) Is in an unsound financial condition;

4 (2) Is using such methods or practices in the conduct of its business so as to render its  
5 further transaction of business in this state hazardous or injurious to insured persons or the  
6 public; or

7 (3) Has failed to satisfy any judgment rendered against it in this state within sixty days  
8 after the judgment has become final.

9 2. The director may, in his discretion, suspend or revoke the certificate of authority of  
10 an administrator if the director finds that the administrator or any of its officers, directors or any  
11 individual responsible for the conduct of its affairs as described in subdivision (3) of subsection  
12 2 of section 376.1092:

13 (1) Has violated any lawful rule or order of the director or any provision of the insurance  
14 laws of this state;

15 (2) Has refused to be examined or to produce its accounts, records and files for  
16 examination, or if any of its officers has refused to give information with respect to its affairs or  
17 has refused to perform any other legal obligation as to such examination, when required by the  
18 director;

19 (3) Has, without just cause, refused to pay proper claims or perform services arising  
20 under its contracts or has, without just cause, caused covered individuals to accept less than the  
21 amount due them or caused covered individuals to employ attorneys or bring suit against the  
22 administrator to secure full payment or settlement of such claims;

23 (4) Is affiliated with or under the same general management or interlocking directorate  
24 or ownership as another administrator or insurer which unlawfully transacts business in this state  
25 without having a certificate of authority;

26 (5) At any time fails to meet any qualification for which issuance of the certificate could  
27 have been refused had such failure then existed and been known to the department;

28 (6) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony  
29 without regard to whether adjudication was withheld;

30 (7) Is not competent, trustworthy, financially responsible or of good personal and  
31 business reputation, has had an insurance or administrator license denied for cause by any state  
32 or been subject to any form of administrative, civil or criminal action by any federal or state  
33 agency or court resulting in some form of discipline or sanction; or

34 (8) Is under suspension or revocation in another state.

35 3. The director may, in his discretion and without advance notice or hearing thereon,  
36 immediately suspend the certificate of any administrator if the director finds that one or more of  
37 the following circumstances exist:

38 (1) The administrator is insolvent or impaired;



39 (2) A proceeding for receivership, conservatorship, rehabilitation, or other delinquency  
40 proceeding regarding the administrator has been commenced in any state;

41 (3) The financial condition or business practices of the administrator otherwise poses an  
42 imminent threat to the public health, safety or welfare of the residents of this state.

43 4. [If the director finds that one or more grounds exist for the suspension or revocation  
44 of a certificate of authority issued under sections 376.1075 to 376.1095, the director may, in lieu  
45 of such suspension or revocation, bring a civil action against the administrator in a court of  
46 competent jurisdiction. The court may impose a fine upon the administrator of not more than  
47 fifty thousand dollars, such fine to be payable to the Missouri state school fund] **If the director  
48 determines that a person has engaged or is engaging in a violation of sections 376.1075 to  
49 376.1095 or a rule adopted or order issued pursuant thereto, or that a person has  
50 materially aided or is materially aiding an act, practice, omission, or course of business  
51 constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or order issued  
52 pursuant thereto, the director may issue such administrative orders as authorized under  
53 section 374.046, RSMo. A violation of any of these sections is a level three violation under  
54 section 374.049, RSMo.**

55 **5. If the director believes that a person has engaged or is engaging in a violation of  
56 sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto, or that  
57 a person has materially aided or is materially aiding an act, practice, omission, or course  
58 of business constituting a violation of sections 376.1075 to 376.1095 or a rule adopted or  
59 order issued pursuant thereto, the director may maintain a civil action for relief authorized  
60 under section 374.048, RSMo. A violation of any of these sections is a level three violation  
61 under section 374.049, RSMo.**

377.100. Every corporation doing business under sections 377.010 to 377.190 shall  
2 annually, on or before the first day of February, return to the director of the insurance  
3 department, in such manner and form as he shall prescribe, a statement of its affairs for the year  
4 ending on the preceding thirty-first day of December, and the director, in person or by deputy,  
5 shall have the power of visitation of and examination into the affairs of any such corporation,  
6 which is conferred upon him in the case of life insurance companies by the laws of this state; and  
7 all companies are hereby declared to be subject to and required to conform to the provisions of  
8 chapters 374 and 375, RSMo, and sections [376.300] **376.291** to 376.330, 376.580, 376.610 and  
9 376.620, RSMo, and governed and controlled by all the provisions in said sections contained;  
10 provided, always, that nothing herein contained shall subject any corporation doing business  
11 under sections 377.010 to 377.190 to any other provisions or requirements of the general  
12 insurance laws of this state, except as distinctly herein set forth and provided.

377.200. Any corporation, company or association issuing policies or certificates promising money or other benefits to a member or policyholder, or upon his decease to his legal representatives, or to beneficiaries designated by him, which money or benefit is derived from stipulated premiums collected in advance from its members or policyholders, and from interest and other accumulations and wherein the money or other benefits so realized is applied to or accumulated solely for the use and purposes of the corporation as herein specified, and for the necessary expenses of the corporation, and the prosecution and enlargement of its business, and which shall comply with all the provisions of sections 377.200 to 377.460, shall be deemed to be engaged in the business of life insurance upon the stipulated premium plan and shall be subject only to the provisions of sections 377.200 to 377.460, except that the provisions of chapters 374 and 375, RSMo, and sections [376.300] **376.291** to 376.330, 376.675, 376.770 to 376.795, 376.500 to 376.510, and 376.590 to 376.600, RSMo, shall be applicable. It shall be unlawful for any corporation, company or association not having complied with the provisions of sections 377.200 to 377.460 to use the term "stipulated premium" in its application or contracts, or to print or write the same in its policies or literature.

379.361. 1. [The director may, if he finds that any insurer or filing organization has violated any provision of section 379.017 and sections 379.316 to 379.361, impose a penalty of not more than five hundred dollars for each violation, but if he finds the violation to be willful, he may impose a penalty of not more than five thousand dollars for each violation. These penalties may be in addition to any other penalty provided by law.

2. The director may suspend the license of any rating organization or insurer which fails to comply with an order of the director within the time limited by such order, or any extension thereof which the director may grant. The director shall not suspend the license of any rating organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The director may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him, unless he modifies or rescinds such suspension or until the order upon which such suspension is based is modified, rescinded or reversed.

3. No penalty shall be imposed or no license shall be suspended or revoked except upon a written order of the director, stating his findings, made after a hearing held upon not less than ten days' written notice to such person or organization specifying the alleged violation] **If the director determines that any insurer or filing organization has engaged or is engaging in a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, or that a person has materially aided or is materially aiding an act, practice, omission, or course of business constituting a violation of section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant thereto, the director**

22 may issue such administrative orders as authorized under section 374.046, RSMo. A  
23 violation of any of these sections is a level two violation under section 374.049, RSMo. The  
24 practice of using a rate not in effect under section 379.321, if caused by a single act or  
25 omission by the insurer or filing organization, is a level two violation under section 374.049,  
26 RSMo. Each act as part of a rating violation does not constitute a separate violation under  
27 section 374.049, RSMo. The director of insurance may also suspend or revoke the license  
28 or certificate of authority of an insurer or filing company for any willful violation.

29       **2. If the director believes that a person has engaged or is engaging in a violation of**  
30 **section 379.017 and sections 379.316 to 379.361 or a rule adopted or order issued pursuant**  
31 **thereto, or that a person has materially aided or is materially aiding an act, practice,**  
32 **omission, or course of business constituting a violation of section 379.017 and sections**  
33 **379.316 to 379.361 or a rule adopted or order issued pursuant thereto, the director may**  
34 **maintain a civil action for relief authorized under section 374.048, RSMo. A violation of**  
35 **any of these sections is a level two violation under section 374.049, RSMo. The practice of**  
36 **using a rate not in effect under section 379.321, if caused by a single act or omission by the**  
37 **insurer or filing organization, is a level two violation under section 374.049, RSMo. Each**  
38 **act as part of a rating violation does not constitute a separate violation under section**  
39 **374.049, RSMo.**

379.510. [Any person or organization who willfully violates a final order of the director  
2 under sections 379.420 to 379.510 shall be deemed guilty of a misdemeanor and shall upon  
3 conviction thereof be punished by a fine not to exceed five hundred dollars for such violation]

4 **1. If the director determines that any person has violated a final order of the director**  
5 **under sections 379.420 to 379.510, the director may issue such administrative orders as**  
6 **authorized under section 374.046, RSMo. A violation of any of these sections is a level two**  
7 **violation under section 374.049, RSMo.**

8       **2. If the director believes that a person has violated a final order of the director**  
9 **under sections 379.420 to 379.510, the director may maintain a civil action for relief**  
10 **authorized under section 374.048, RSMo. A violation of any of these sections is a level two**  
11 **violation under section 374.049, RSMo.**

379.790. **1. It is unlawful for** any attorney [who shall] **to exchange any contracts of**  
2 **indemnity of the kind and character specified in sections 379.650 to 379.790, or directly or**  
3 **indirectly solicit or negotiate any applications for same without first complying with the**  
4 **foregoing provisions[, shall be deemed guilty of a misdemeanor, and upon conviction thereof**  
5 **shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars;**  
6 **provided] . However, [that] the director of insurance may, in his discretion and on such terms**

7 as he may prescribe, issue a permit for organization purposes, the permit to continue in force or  
8 be canceled at the pleasure of the director of insurance.

9       **2. If the director determines that a person has engaged or is engaging in a violation**  
10 **of this section or a rule adopted or order issued pursuant thereto, or that a person has**  
11 **materially aided or is materially aiding an act, practice, omission, or course of business**  
12 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
13 **the director may issue such administrative orders as authorized under section 374.046,**  
14 **RSMo. A violation of this section is a level one violation under section 374.049, RSMo.**

15       **3. If the director believes that a person has engaged or is engaging in a violation of**  
16 **this section or a rule adopted or order issued pursuant thereto, or that a person has**  
17 **materially aided or is materially aiding an act, practice, omission, or course of business**  
18 **constituting a violation of this section or a rule adopted or order issued pursuant thereto,**  
19 **the director may maintain a civil action for relief authorized under section 374.048, RSMo.**  
20 **A violation of this section is a level one violation under section 374.049, RSMo.**

**379.1300. As used in sections 379.1300 to 379.1350, the following words and**  
2 **terms have the meanings indicated unless the context clearly requires otherwise:**

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

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

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

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

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

20       **(b) Have complete voting control over an association captive insurance company**  
21 **incorporated as a mutual insurer;**

- 22           (5) "Association captive insurance company", any company that insures risks of  
23 the member organizations of the association and their affiliated companies;
- 24           (6) "Branch business", any insurance business transacted by a branch captive  
25 insurance company in this state;
- 26           (7) "Branch captive insurance company", any alien captive insurance company  
27 licensed by the director to transact the business of insurance in this state through a  
28 business unit with a principal place of business in this state;
- 29           (8) "Branch operations", any business operations of a branch captive insurance  
30 company in this state;
- 31           (9) "Captive insurance company", any pure captive insurance company,  
32 association captive insurance company, or industrial insured captive insurance company  
33 formed or licensed under sections 379.1300 to 379.1350. For purposes of sections 379.1300  
34 to 379.1350, a branch captive insurance company shall be a pure captive insurance  
35 company with respect to operations in this state, unless otherwise permitted by the  
36 director;
- 37           (10) "Controlled unaffiliated business", any company:
- 38           (a) That is not in the corporate system of a parent and affiliated companies;
- 39           (b) That has an existing contractual relationship with a parent or affiliated  
40 company; and
- 41           (c) Whose risks are managed by a pure captive insurance company in accordance  
42 with section 379.1338;
- 43           (11) "Director", the director of the department of insurance;
- 44           (12) "Excess workers' compensation insurance", in the case of an employer that has  
45 insured or self-insured its workers' compensation risks in accordance with applicable state  
46 or federal law, insurance in excess of a specified per-incident or aggregate limit established  
47 by the director;
- 48           (13) "Industrial insured", an insured:
- 49           (a) Who procures the insurance of any risk or risks by use of the services of a full-  
50 time employee acting as an insurance manager or buyer;
- 51           (b) Whose aggregate annual premiums for insurance on all risks total at least  
52 twenty-five thousand dollars; and
- 53           (c) Who has at least twenty-five full-time employees;
- 54           (14) "Industrial insured captive insurance company", any company that insures  
55 risks of the industrial insureds that comprise the industrial insured group and their  
56 affiliated companies;
- 57           (15) "Industrial insured group", any group of industrial insureds that collectively:

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

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

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

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

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

69 (a) Securities of a pure captive insurance company organized as a stock  
70 corporation; or

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

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

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

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

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

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

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

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

17 (6) Any captive insurance company may provide excess workers' compensation  
18 insurance to its parent and affiliated companies, unless prohibited by the federal law or  
19 laws of the state having jurisdiction over the transaction. Any captive insurance company,

20 unless prohibited by federal law, may reinsure workers' compensation of a qualified self-  
21 insured plan of its parent and affiliated companies;

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

25 (8) No captive insurance company shall transact business as a risk retention group  
26 under sections 375.1080 to 357.1105, RSMo.

27 2. No captive insurance company shall do any insurance business in this state  
28 unless:

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

31 (2) Its board of directors or committee of managers holds at least one meeting each  
32 year in this state;

33 (3) It maintains its principal place of business in this state;

34 (4) It appoints a registered agent to accept service of process and to otherwise act  
35 on its behalf in this state; provided that, whenever such registered agent cannot with  
36 reasonable diligence be found at the registered office of the captive insurance company, the  
37 secretary of state shall be an agent of such captive insurance company upon whom any  
38 process, notice, or demand may be served; and

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

41 3. (1) Before receiving a license, a captive insurance company shall:

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

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

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

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

56 (b) The adequacy of the expertise, experience, and character of the person or  
57 persons who will manage it:

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

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

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

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

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

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

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

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

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

76 a. Such public official shall agree in writing to maintain the confidentiality of such  
77 information; and

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

80 (4) Each captive insurance company shall pay to the director a nonrefundable fee  
81 of two hundred dollars for examining, investigating, and processing its application for  
82 license, and the director is authorized to retain legal, financial, and examination services  
83 from outside the department, the reasonable cost of which may be charged against the  
84 applicant. The provisions of sections 374.160 to 374.162 and sections 375.202 to 375.207,  
85 RSMo, shall apply to examinations, investigations, and processing conducted under the  
86 authority of this section. In addition, each captive insurance company shall pay a license  
87 fee for the year of registration and a renewal fee for each year thereafter of three hundred  
88 dollars.

89 (5) If the director is satisfied that the documents and statements that such captive  
90 insurance company has filed comply with the provisions of sections 379.1300 to 379.1350,



91 the director may grant a license authorizing it to do insurance business in this state until  
92 April first, which license may be renewed.

379.1304. No captive insurance company shall adopt a name that is the same,  
2 deceptively similar, or likely to be confused with or mistaken for any other existing  
3 business name registered in the state of Missouri.

379.1306. 1. No captive insurance company shall be issued a license unless it shall  
2 possess and thereafter maintain unimpaired paid-in capital and surplus of:

3 (1) In the case of a pure captive insurance company, not less than two hundred fifty  
4 thousand dollars;

5 (2) In the case of an association captive insurance company, not less than seven  
6 hundred fifty thousand dollars; and

7 (3) In the case of an industrial insured captive insurance company, not less than  
8 five hundred thousand dollars.

9 2. The director may prescribe additional capital and surplus based upon the type,  
10 volume, and nature of insurance business transacted.

11 3. Capital and surplus may be in the form of cash or an irrevocable letter of credit  
12 issued by a bank chartered by the state of Missouri or a member bank of the Federal  
13 Reserve System, and approved by the director.

379.1308. No captive insurance company shall pay a dividend out of, or other  
2 distribution with respect to, capital or surplus without the prior approval of the director.  
3 Approval of an ongoing plan for the payment of dividends or other distributions shall be  
4 conditioned upon the retention, at the time of each payment, of capital or surplus in excess  
5 of amounts specified by or determined in accordance with formulas approved by the  
6 director. Notwithstanding the provisions of section 355.661, RSMo, a captive insurance  
7 company organized under chapter 355, RSMo, may make such distributions as are in  
8 conformity with its purposes and approved by the director.

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

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

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

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

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

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

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

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

21           **(a) The character, reputation, financial standing and purposes of the incorporators;**

22           **(b) The character, reputation, financial responsibility, insurance experience, and**  
23 **business qualifications of the officers and directors; and**

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

25

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

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

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

37           **6. In the case of a captive insurance company:**

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

40           **(2) Formed as a limited liability company, at least one of the managers shall be a**  
41 **resident of this state.**

42           **7. Other than captive insurance companies formed as limited liability companies**  
43 **under chapter 347, RSMo, or as nonprofit corporations under chapter 355, RSMo, captive**  
44 **insurance companies formed as corporations under sections 379.1300 to 379.1350 shall**  
45 **have the privileges and be subject to chapter 351, RSMo, as well as the applicable**  
46 **provisions contained in sections 379.1300 to 379.1308. In the event of conflict between the**

47 provisions of such general corporation law and sections 379.1300 to 379.1350, sections  
48 379.1300 to 379.1350 shall control.

49 **8. Captive insurance companies formed under sections 379.1300 to 379.1350:**

50 (1) As limited liability companies shall have the privileges and be subject to the  
51 provisions of chapter 347, RSMo, as well as the applicable provisions contained in sections  
52 379.1300 to 379.1350. In the event of a conflict between chapter 347, RSMo, and sections  
53 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control; or

54 (2) As nonprofit corporations shall have the privileges and be subject to the  
55 provisions of chapter 355, RSMo, as well as the applicable provisions contained in sections  
56 379.1300 to 379.1350. In the event of conflict between chapter 355, RSMo, and sections  
57 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.

58 **9. The provisions of section 375.355, sections 379.980 to 379.988, and chapter 382,**  
59 **RSMo, pertaining to mergers, consolidations, conversions, mutualizations,**  
60 **redomestications, and mutual holding companies shall apply in determining the procedures**  
61 **to be followed by captive insurance companies in carrying out any of the transactions**  
62 **described therein; except that:**

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

67 (2) An alien insurer may be a party to a merger authorized under this subsection,  
68 if approved by the director.

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

**379.1312. 1. Captive insurance companies shall not be required to make any**  
2 **annual report except as provided in sections 379.1300 to 379.1350.**

3 **2. Prior to March first of each year, each captive insurance company shall submit**  
4 **to the director a report of its financial condition, verified by oath of two of its executive**  
5 **officers. Each captive insurance company shall report using generally accepted accounting**  
6 **principles, unless the director approves the use of statutory accounting principles, with any**  
7 **appropriate or necessary modifications or adaptations thereof required or approved or**  
8 **accepted by the director for the type of insurance and kinds of insurers to be reported**  
9 **upon, and as supplemented by additional information required by the director. Except as**  
10 **otherwise provided, each association captive insurance company shall file its report in the**

11 form required by section 375.041, RSMo. The director shall by rule propose the forms in  
12 which pure captive insurance companies and industrial insured captive insurance  
13 companies shall report. Subdivision (3) of subsection 2 of section 379.1302 shall apply to  
14 each report filed under this section.

15 3. Any pure captive insurance company or an industrial insured captive insurance  
16 company may make written application for filing the required report on a fiscal year end.  
17 If an alternative reporting date is granted:

18 (1) The annual report is due sixty days after the fiscal year end; and

19 (2) In order to provide sufficient detail to support the premium tax return, the pure  
20 captive insurance company or industrial insured captive insurance company shall file prior  
21 to March first of each year for each calendar year end, its balance sheet, income statement  
22 and statement of cash flows, verified by oath of two of its executive officers.

379.1314. 1. At least once every three years and whenever the director determines  
2 it to be prudent, the director shall personally, or by some competent person appointed by  
3 the director, visit each captive insurance company and thoroughly inspect and examine its  
4 affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether  
5 it has complied with the provisions of sections 379.1300 to 379.1350. The director may  
6 enlarge such three-year period to five years, provided the captive insurance company is  
7 subject to a comprehensive annual audit during such period of a scope satisfactory to the  
8 director by independent auditors approved by the director. The expenses and charges of  
9 the examination shall be paid to the state by the company or companies examined and the  
10 director shall issue his or her warrants for the proper charges incurred in all examinations,  
11 as provided in sections 374.160 and 374.162, RSMo.

12 2. The provisions of sections 374.202 to 374.207, RSMo, shall apply to examinations  
13 conducted under this section.

14 3. All examination reports, preliminary examination reports or results, working  
15 papers, recorded information, documents and copies thereof produced by, obtained by or  
16 disclosed to the director or any other person in the course of an examination made under  
17 this section are confidential and are not subject to subpoena and shall not be made public  
18 by the director or an employee or agent of the director without the written consent of the  
19 company, except to the extent provided in this subsection. Nothing in this subsection shall  
20 prevent the director from using such information in furtherance of the director's  
21 regulatory authority under this title. The director may, in the director's discretion, grant  
22 access to such information to public officers having jurisdiction over the regulation of  
23 insurance in any other state or country, or to law enforcement officers of this state or any  
24 other state or agency of the federal government at any time, so long as such officers

25 receiving the information agree in writing to hold it in a manner consistent with this  
26 section.

379.1316. 1. The license of a captive insurance company may be suspended or  
2 revoked by the director for any of the following reasons:

3 (1) Insolvency or impairment of capital or surplus;

4 (2) Failure to meet the requirements of section 379.1306;

5 (3) Refusal or failure to submit an annual report, as required by sections 379.1300  
6 to 379.1350, or any other report or statement required by law or by lawful order of the  
7 director;

8 (4) Failure to comply with the provisions of its own charter, bylaws, or other  
9 organizational document;

10 (5) Failure to submit to or pay the cost of examination or any legal obligation  
11 relative thereto, as required by sections 379.1300 to 379.1350;

12 (6) Use of methods that, although not otherwise specifically prohibited by law,  
13 nevertheless render its operation detrimental or its condition unsound with respect to the  
14 public or to its policyholders; or

15 (7) Failure otherwise to comply with the laws of this state.

16 2. Notwithstanding any other provision of sections 379.1300 to 379.1350, if the  
17 director finds upon examination, hearing, or other evidence that any captive insurance  
18 company has violated any provision of subsection 1 of this section, the director may  
19 suspend or revoke such company's license if the director deems it in the best interest of the  
20 public and the policyholders of such captive insurance company.

379.1318. 1. Association captive insurance companies shall comply with the  
2 investment requirements contained in chapter 375, RSMo, and sections 379.080 and  
3 379.082, as applicable. Investments of association captive insurance companies shall be  
4 valued in accordance with the valuation procedures established by the National Association  
5 of Insurance Commissioners for insurance companies, except to the extent it is inconsistent  
6 with accounting standards in use by the company and approved by the director.  
7 Notwithstanding any other provision of sections 379.1300 to 379.1350, the director may  
8 approve the use of alternative reliable methods of valuation and rating.

9 2. No pure captive insurance company or industrial insured captive insurance  
10 company shall be subject to any restrictions on allowable investments whatever, including  
11 those limitations contained in sections 379.080 and 379.082; provided, however, that the  
12 director may prohibit or limit any investment that threatens the solvency or liquidity of  
13 any such company.

14           **3. No pure captive insurance company shall make a loan to or an investment in its**  
15 **parent company or affiliates without prior written approval of the director, and any such**  
16 **loan or investment shall be evidenced by documentation approved by the director.**

**379.1320. 1. Any captive insurance company may provide reinsurance, comprised**  
2 **in section 376.010, RSMo, and subsection 1 of section 379.010, on risks ceded by any other**  
3 **insurer.**

4           **2. Any captive insurance company may take credit for the reinsurance of risks or**  
5 **portions of risks ceded to reinsurers complying with the provisions of section 375.346,**  
6 **RSMo. Prior approval of the director shall be required for ceding or taking credit for the**  
7 **reinsurance of risks or portions of risks ceded to reinsurers or under reinsurance**  
8 **agreements not complying with section 375.246, RSMo, except for business written by an**  
9 **alien captive insurance company outside of the United States.**

10          **3. In addition to reinsurers authorized under the provisions of section 375.246,**  
11 **RSMo, a captive insurance company may take credit for the reinsurance of risks or**  
12 **portions of risks ceded to a pool, exchange, or association acting as a reinsurer which has**  
13 **been authorized by the director. The director may require any other documents, financial**  
14 **information, or other evidence that such a pool, exchange, or association will be able to**  
15 **provide adequate security for its financial obligations. The director may deny**  
16 **authorization or impose any limitations on the activities of a reinsurance pool, exchange,**  
17 **or association that, in the director's judgment, are necessary and proper to provide**  
18 **adequate security for the ceding captive insurance company and for the protection and**  
19 **consequent benefit of the public at large.**

20          **4. For all purposes of sections 379.1300 to 379.1350, insurance by a captive**  
21 **insurance company of any workers' compensation qualified self-insured plan of its parent**  
22 **and affiliates shall be deemed to be reinsurance.**

**379.1322. No captive insurance company shall be required to join a rating**  
2 **organization.**

**379.1324. No captive insurance company shall be permitted to join or contribute**  
2 **financially to any plan, pool, association, or guaranty, or insolvency fund in this state, nor**  
3 **shall any such captive insurance company or any insured or affiliate thereof receive any**  
4 **benefit from any such plan, pool, association, or guaranty, or insolvency fund for claims**  
5 **arising out of the operations of such captive insurance company.**

**379.1326. 1. Each captive insurance company shall pay to the director of revenue,**  
2 **on or before May first of each year, a tax at the rate of thirty-eight-hundredths of one**  
3 **percent on the first twenty million dollars and two hundred eighty-five-thousandths of one**  
4 **percent on the next twenty million dollars and nineteen-hundredths of one percent on the**

5 next twenty million dollars and seventy-two-thousandths of one percent on each dollar  
6 thereafter on the direct premiums collected or contracted for on policies or contracts of  
7 insurance written by the captive insurance company during the year ending December  
8 thirty-first next preceding, after deducting from the direct premiums subject to the tax the  
9 amounts paid to policyholders as return premiums which shall include dividends on  
10 unabsorbed premiums or premium deposits returned or credited to policyholders;  
11 provided, however, that no tax shall be due or payable as to considerations received for  
12 annuity contracts.

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

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

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

40           **5. A captive insurance company failing to make returns as required by subsection**  
41 **4 of this section or failing to pay within the time required all taxes assessed by this section,**  
42 **shall be subject to the provisions of sections 148.375 and 148.410, RSMo.**

43           **6. Two or more captive insurance companies under common ownership and control**  
44 **shall be taxed, as though they were a single captive insurance company.**

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

46           **(1) In the case of stock corporations, the direct or indirect ownership of eighty**  
47 **percent or more of the outstanding voting stock of two or more corporations by the same**  
48 **shareholder or shareholders; and**

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

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

57           **9. The state treasurer shall annually transfer the premium tax revenues collected**  
58 **under this section to the general revenue fund, except as provided in section 379.1332.**

59           **10. The tax provided for in this section shall be calculated on an annual basis,**  
60 **notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a**  
61 **multiyear basis. In the case of multiyear policies or contracts, the premium shall be**  
62 **prorated for purposes of determining the tax under this section.**

**379.1328. The director may promulgate rules under section 374.045, RSMo, and**  
2 **from time to time amend such rules relating to captive insurance companies as are**  
3 **necessary to enable the director to carry out the provisions of sections 379.1300 to**  
4 **379.1350.**

**379.1330. No provisions of the insurance laws of this state, other than those**  
2 **contained in sections 379.1300 to 379.1350 or contained in specific references contained**  
3 **therein, shall apply to captive insurance companies.**

**379.1332. 1. (1) The insurance dedicated fund under section 374.150, RSMo, shall**  
2 **be adequately funded through the collection of fees and taxes for the purpose of providing**  
3 **the financial means for the director of insurance to administer sections 379.1300 to**  
4 **379.1350 and for reasonable expenses incurred in promoting the captive insurance industry**  
5 **in Missouri. All fees and assessments received by the department for the administration**  
6 **of sections 379.1300 to 379.1350 shall be paid into the fund. In addition, the transfer of**



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

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

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

2 379.1336. Except as otherwise provided in sections 379.1300 to 379.1350, the terms  
3 and conditions set forth in sections 375.1150 to 375.1246, RSMo, pertaining to insurance  
4 reorganizations, receiverships and injunctions shall apply in full to captive insurance  
5 companies formed or licensed under sections 379.1300 to 379.1350.

2 379.1338. The director may promulgate rules under section 374.045, RSMo,  
3 establishing standards to ensure that a parent or affiliated company is able to exercise  
4 control of the risk management function of any controlled unaffiliated business to be  
5 insured by the pure captive insurance company; provided, however, that, until such time  
6 as rules under this section are adopted, the director may approve the coverage of such risks  
7 by a pure captive insurance company.

2 379.1340. 1. A branch captive may be established in this state in accordance with  
3 the provisions of sections 379.1300 to 379.1350 to write in this state only insurance or  
4 reinsurance of the employee benefit business of its parent and affiliated companies which  
5 is subject to the provisions of the federal Employee Retirement Income Security Act of  
6 1974, as amended. In addition to the general provisions of sections 379.1300 to 379.1350,  
7 the provisions of sections 379.1340 to 379.1350 shall apply to branch captive insurance  
8 companies.

8           **2. No branch captive insurance company shall do any insurance business in this**  
9 **state unless it maintains the principal place of business for its branch operations in this**  
10 **state.**

**379.1342. In the case of a branch captive insurance company, as security for the**  
2 **payment of liabilities attributable to the branch operations, the director shall require that**  
3 **a trust fund, funded by an irrevocable letter of credit or other acceptable asset, be**  
4 **established and maintained in the United States for the benefit of United States**  
5 **policyholders and United States ceding insurers under insurance policies issued or**  
6 **reinsurance contracts issued or assumed by the branch captive insurance company through**  
7 **its branch operations. The amount of such security shall be no less than the amount set**  
8 **forth in subdivision (1) of subsection 1 of section 379.1306 and the reserves on such**  
9 **insurance policies or such reinsurance contracts, including reserves for losses, allocated**  
10 **loss adjustment expenses, incurred but not reported losses, and unearned premiums with**  
11 **regard to business written through the branch operations; provided, however, the director**  
12 **may permit a branch captive insurance company that is required to post security for loss**  
13 **reserves on branch business by its reinsurer to reduce the funds in the trust account**  
14 **required by this section by the same amount so long as the security remains posted with**  
15 **the reinsurer. If the form of security selected is a letter of credit, the letter of credit shall**  
16 **be established by or issued or confirmed by a bank chartered in this state or a member**  
17 **bank of the Federal Reserve System.**

**379.1344. In the case of a captive insurance company licensed as a branch captive,**  
2 **the alien captive insurance company shall petition the director to issue a certificate setting**  
3 **forth the director's finding that, after considering the character, reputation, financial**  
4 **responsibility, insurance experience, and business qualifications of the officers and**  
5 **directors of the alien captive insurance company, the licensing and maintenance of the**  
6 **branch operations will promote the general good of the state. The alien captive insurance**  
7 **company may register to do business in this state after the director's certificate is issued.**

**379.1346. Prior to March first of each year, or with the approval of the director**  
2 **within sixty days after its fiscal year end, a branch captive insurance company shall file**  
3 **with the director a copy of all reports and statements required to be filed under the laws**  
4 **of the jurisdiction in which the alien captive insurance company is formed, verified by oath**  
5 **of two of its executive officers. If the director is satisfied that the annual report filed by the**  
6 **alien captive insurance company in its domiciliary jurisdiction provides adequate**  
7 **information concerning the financial condition of the alien captive insurance company, the**  
8 **director may waive the requirement for completion of the captive annual statement for**  
9 **business written in the alien jurisdiction.**

379.1348. 1. The examination of a branch captive insurance company under section 379.1314 shall be of branch business and branch operations only, so long as the branch captive insurance company provides annually to the director a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurance company is formed, and demonstrates to the director's satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of such jurisdiction.

2. As a condition of licensure, the alien captive insurance company shall grant authority to the director for examination of the affairs of the alien captive insurance company in the jurisdiction in which the alien captive insurance company is formed.

379.1350. In the case of a branch captive insurance company, the tax provided for in section 379.1326 shall apply only to the branch business of such company.

380.391. [No] 1. It is unlawful for any officer, director, member, agent or employee of any company operating under the provisions of sections 380.201 to [380.591 shall,] 380.611 to directly or indirectly, use or employ, or permit others to use or employ, any of the money, funds or securities of the company for private profit or gain[, and any such use shall be deemed a felony, punishable, upon conviction, by imprisonment by the department of corrections and human resources for not less than two years nor more than five years for each offense].

2. Any person who willfully engages in any act, practice, omission, or course of business in violation of this section is guilty of a class D felony.

3. The director may refer such evidence as is available concerning violations of this section to the proper prosecuting attorney, who with or without a criminal reference, or the attorney general under section 27.030, RSMo, may institute the appropriate criminal proceedings.

4. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime in any other state statute.

380.571. 1. [The director may issue cease and desist orders whenever it appears to him upon competent and substantial evidence that any company operating under the provisions of sections 380.201 to 380.591 is acting in violation of those laws or any other applicable laws or any rule or regulation promulgated by the director pursuant thereto. Before any cease and desist order shall be issued, a copy of the proposed order together with an order to show cause why such cease and desist order should not be issued shall be served either personally or by certified mail on the company named therein.

2. Upon issuing any order to show cause, the director shall notify the company named therein that it is entitled to a public hearing before the director if a request for a hearing is made in writing to the director within fifteen days from the day of the service of the order to show

11 cause why the cease and desist order should not be issued. The cease and desist order shall be  
12 issued fifteen days after the service of the order to show cause if no request for a public hearing  
13 is made as above provided.

14 3. Upon receipt of a request for a hearing, the director shall set a time and place for the  
15 hearing which shall not be less than ten days or more than fifteen days from the receipt of the  
16 request or as otherwise agreed upon by the parties. Notice of the time and place shall be given  
17 by the director not less than five days before the hearing.

18 4. At the hearing the company may be represented by counsel and shall be entitled to be  
19 advised of the nature and source of any adverse evidence procured by the director, and shall be  
20 given the opportunity to submit any relevant written or oral evidence in its behalf to show cause  
21 why the cease and desist order should not be issued.

22 5. At the hearing the director shall have such powers as are conferred upon him by the  
23 provisions of section 374.190, RSMo.

24 6. At the conclusion of the hearing, or within ten days thereafter, the director shall issue  
25 the cease and desist order as proposed or as subsequently modified, or notify the company that  
26 no order will be issued.

27 7. The circuit court of Cole County shall have jurisdiction to review any cease and desist  
28 order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if any  
29 company against whom an order is issued fails to request judicial review, or if, after judicial  
30 review, the director's cease and desist order is upheld, the order shall become final.

31 8. If any company willfully violates any provision of any cease and desist order of the  
32 director after it becomes final, it may be penalized by the director by a fine of not more than one  
33 thousand dollars.

34 9. The director of insurance may in addition to a monetary fine, suspend or revoke the  
35 certificate of authority of any company violating a cease and desist order] **If the director**  
36 **determines that any person has engaged or is engaging in a violation of sections 380.201**  
37 **to 380.611 or a rule adopted or order issued pursuant thereto, or that a person has**  
38 **materially aided or is materially aiding an act, practice, omission, or course of business**  
39 **constituting a violation of sections 380.201 to 380.611 or a rule adopted or order issued**  
40 **pursuant thereto, the director may issue such administrative orders as authorized under**  
41 **section 374.046, RSMo. A violation of any of these sections is a level two violation under**  
42 **section 374.049, RSMo, except a violation of section 380.391 is a level four violation under**  
43 **section 374.049, RSMo. The director of insurance may also suspend or revoke the**  
44 **certificate of authority of such person for any willful violation.**

45 2. **If the director believes that a person has engaged or is engaging in a violation of**  
46 **sections 380.201 to 380.611 or a rule adopted or order issued pursuant thereto, or that a**

47 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
48 **business constituting a violation of sections 380.201 to 380.611 or a rule adopted or order**  
49 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
50 **under section 374.048, RSMo. A violation of any of these sections is a level two violation**  
51 **under section 374.049, RSMo, except a violation of section 380.391 is a level four violation**  
52 **under section 374.049, RSMo.**

381.068. In determining the financial condition of a title insurer doing business pursuant  
2 to this chapter, the general investment provisions of sections [376.300 to 376.305] **376.291 to**  
3 **376.307, RSMo, shall apply; except that, an investment in a title plant or plants in an amount**  
4 **equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate**  
5 **amount of the investment shall not exceed fifty percent of surplus to policyholders, as shown on**  
6 **the most recent annual statement of the title insurer on file with the director.**

384.071. 1. **If the director determines that a person has engaged or is engaging in**  
2 **a violation of sections 384.011 to 384.071 or a rule adopted or order issued pursuant**  
3 **thereto, or that a person has materially aided or is materially aiding an act, practice,**  
4 **omission, or course of business constituting a violation of 384.011 to 384.071 or a rule**  
5 **adopted or order issued pursuant thereto, the director may issue such administrative**  
6 **orders as authorized under section 374.046, RSMo. A violation of any of these sections is**  
7 **a level three violation under section 374.049, RSMo.**

8 **2. If the director believes that a person has engaged or is engaging in a violation of**  
9 **sections 384.011 to 384.071 or a rule adopted or order issued pursuant thereto, or that a**  
10 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
11 **business constituting a violation of sections 384.011 to 384.071 or a rule adopted or order**  
12 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
13 **under section 374.048, RSMo. A violation of any of these sections is a level three violation**  
14 **under section 374.049, RSMo.**

15 **3. Any surplus lines licensee who in this state represents or aids a nonadmitted insurer**  
16 **in violation of the provisions of sections 384.011 to 384.071 may be found guilty of a class B**  
17 **misdemeanor and subject to a fine not in excess of one thousand dollars.**

18 **[2. In addition to any other penalty provided for herein or otherwise provided by law,**  
19 **including any suspension, revocation or refusal to renew a license, any person, firm, association**  
20 **or corporation violating any provision of sections 384.011 to 384.071 shall be liable to a penalty**  
21 **not exceeding one thousand dollars for the first offense, and not exceeding two thousand dollars**  
22 **for each succeeding offense.**

23 **3.] 4. The above penalties are not exclusive remedies. [Penalties may also be assessed**  
24 **under sections 375.930 to 375.948, RSMo.]**

**385.200. As used in sections 385.200 to 385.212, the following terms mean:**

- 2       **(1) "Administrator", the person, other than a provider, who is responsible for the**  
3 **administration of the service contracts or the service contracts plan or for any filings**  
4 **required by sections 385.200 to 385.212;**
- 5       **(2) "Consumer", a natural person who buys other than for purposes of resale any**  
6 **tangible personal property that is distributed in commerce and that is normally used for**  
7 **personal, family, or household purposes and not for business or research purposes;**
- 8       **(3) "Dealers", any motor vehicle dealer or boat dealer licensed or required to be**  
9 **licensed under the provisions of sections 301.550 to 301.573, RSMo;**
- 10       **(4) "Director", the director of the department of insurance;**
- 11       **(5) "Maintenance agreement", a contract of limited duration that provides for**  
12 **scheduled maintenance only;**
- 13       **(6) "Manufacturer", any of the following:**
  - 14       **(a) A person who manufactures or produces the property and sells the property**  
15 **under the person's own name or label;**
  - 16       **(b) A subsidiary of the person who manufactures or produces the property;**
  - 17       **(c) A person who owns one hundred percent of the entity that manufactures or**  
18 **produces the property;**
  - 19       **(d) A person that does not manufacture or produce the property, but the property**  
20 **is sold under its trade name label;**
  - 21       **(e) A person who manufactures or produces the property and the property is sold**  
22 **under the trade name or label of another person;**
  - 23       **(f) A person who does not manufacture or produce the property but, under a**  
24 **written contract, licenses the use of its trade name or label to another person who sells the**  
25 **property under the licensor's trade name or label;**
- 26       **(7) "Mechanical breakdown insurance", a policy, contract, or agreement issued by**  
27 **an authorized insurer who provides for the repair, replacement, or maintenance of a motor**  
28 **vehicle or indemnification for repair, replacement, or service, for the operational or**  
29 **structural failure of a motor vehicle due to a defect in materials or workmanship or to**  
30 **normal wear and tear;**
- 31       **(8) "Motor vehicle extended service contract" or "service contract", a contract or**  
32 **agreement for a separately stated consideration or for a specific duration to perform the**  
33 **repair, replacement, or maintenance of a motor vehicle or indemnification for repair,**  
34 **replacement, or maintenance, for the operational or structural failure due to a defect in**  
35 **materials, workmanship, or normal wear and tear, with or without additional provision**  
36 **for incidental payment of indemnity under limited circumstances, including but not limited**

37 to towing, rental, and emergency road service, but does not include mechanical breakdown  
38 insurance or maintenance agreements;

39 (9) "Nonoriginal manufacturer's parts", replacement parts not made for or by the  
40 original manufacturer of the property, commonly referred to as "after market parts";

41 (10) "Person", an individual, partnership, corporation, incorporated or  
42 unincorporated association, joint stock company, reciprocal, syndicate, or any similar  
43 entity or combination of entities acting in concert;

44 (11) "Premium", the consideration paid to an insurer for a reimbursement  
45 insurance policy;

46 (12) "Provider", a person who is contractually obligated to the service contract  
47 holder under the terms of a motor vehicle extended service contract;

48 (13) "Provider fee", the consideration paid for a motor vehicle extended service  
49 contract by a service contract holder;

50 (14) "Reimbursement insurance policy", a policy of insurance issued to a provider  
51 and under which the insurer agrees, for the benefit of the motor vehicle extended service  
52 contract holders, to discharge all of the obligations and liabilities of the provider under the  
53 terms of the motor vehicle extended service contracts in the event of nonperformance by  
54 the provider. All obligations and liabilities include, but are not limited to, failure of the  
55 provider to perform under the motor vehicle extended service contract and the return of  
56 the unearned provider fee in the event of the provider's unwillingness or inability to  
57 reimburse the unearned provider fee in the event of termination of a motor vehicle  
58 extended service contract;

59 (15) "Service contract holder" or "contract holder", a person who is the purchaser  
60 or holder of a motor vehicle extended service contract;

61 (16) "Warranty", a warranty made solely by the manufacturer, importer, or seller  
62 of property or services without charge, that is not negotiated or separated from the sale of  
63 the product and is incidental to the sale of the product, that guarantees indemnity for  
64 defective parts, mechanical or electrical breakdown, labor, or other remedial measures,  
65 such as repair or replacement of the property or repetition of services.

385.201. 1. Motor vehicle extended service contracts shall not be issued, sold, or  
2 offered for sale in this state unless the provider or its designee has:

3 (1) Provided a receipt for the purchase of the motor vehicle extended service  
4 contract to the contract holder at the date of purchase;

5 (2) Provided a copy of the motor vehicle extended service contract to the service  
6 contract holder within a reasonable period of time from the date of purchase; and

7 (3) Complied with the provisions of sections 385.200 to 385.212.

8           **2. All providers of motor vehicle extended service contracts sold in this state shall**  
9 **file a registration with the director on a form, at a fee and at a frequency prescribed by the**  
10 **director.**

11           **3. In order to assure the faithful performance of a provider's obligations to its**  
12 **contract holders, each provider who is contractually obligated to provide service under a**  
13 **motor vehicle extended service contract shall:**

14           **(1) Insure all motor vehicle extended service contracts under a reimbursement**  
15 **insurance policy issued by an insurer authorized to transact insurance in this state; or**

16           **(2) (a) Maintain a funded reserve account for its obligation under its contracts**  
17 **issued and outstanding in this state. The reserves shall not be less than forty percent of**  
18 **gross consideration received, less claims paid, on the sale of the motor vehicle extended**  
19 **service contract for all in-force contracts. The reserve account shall be subject to**  
20 **examination and review by the director; and**

21           **(b) Place in trust with the director a financial security deposit, having a value of not**  
22 **less than five percent of the gross consideration received, less claims paid, on the sale of the**  
23 **motor vehicle extended service contract for all motor vehicle extended service contracts**  
24 **issued and in force, but not less than twenty-five thousand dollars, consisting of one of the**  
25 **following:**

26           **a. A surety bond issued by an authorized surety;**

27           **b. Securities of the type eligible for deposit by authorized insurers in this state;**

28           **c. Cash;**

29           **d. A letter of credit issued by a qualified financial institution; or**

30           **e. Another form of security prescribed by regulations issued by the director; or**

31           **(3) (a) Maintain a net worth of one hundred million dollars; and**

32           **(b) Upon request, provide the director with a copy of the provider's or, if the**  
33 **provider's financial statements are consolidated with those of its parent company, the**  
34 **provider's parent company's most recent Form 10-K filed with the Securities and**  
35 **Exchange Commission (SEC) within the last calendar year, or if the company does not file**  
36 **with the SEC, a copy of the company's audited financial statements, which shows a net**  
37 **worth of the provider or its parent company of at least one hundred million dollars. If the**  
38 **provider's parent company's Form 10-K or audited financial statements are filed to meet**  
39 **the provider's financial stability requirement, then the parent company shall agree to**  
40 **guarantee the obligations of the obligor relating to motor vehicle extended service contracts**  
41 **sold by the provider in this state.**



42           **4. Provider fees collected on motor vehicle extended service contracts shall not be**  
43 **subject to premium taxes. Premiums for reimbursement insurance policies shall be subject**  
44 **to applicable premium taxes.**

45           **5. Except for the registration requirement in subsection 2 of this section, persons**  
46 **marketing, selling, or offering to sell motor vehicle extended service contracts for providers**  
47 **that comply with sections 379.1050 to 379.1070 are exempt from this state's licensing**  
48 **requirements.**

49           **6. Providers complying with the provisions of sections 385.200 to 385.212 are not**  
50 **required to comply with other provisions of chapter 374 or 375, or any other provisions**  
51 **governing insurance companies, except as specifically provided.**

**385.203. Reimbursement insurance policies insuring motor vehicle extended service**  
2 **contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon**  
3 **failure of the provider to perform under the contract, such as failure to return the**  
4 **unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider**  
5 **any sums the provider is legally obligated to pay or shall provide the service for which the**  
6 **provider is legally obligated to perform according to the provider's contractual obligations**  
7 **under the motor vehicle extended service contracts issued or sold by the provider.**

**385.204. 1. No administrator or provider shall use a dealer as a fronting company,**  
2 **and no dealer shall act as a fronting company. For purposes of this subsection, "fronting**  
3 **company" means a dealer that authorizes a third-party administrator or provider to use**  
4 **its name or business to evade or circumvent the provisions of subsection 1 of this section.**

5           **2. Motor vehicle extended service contracts issued, sold, or offered for sale in this**  
6 **state shall be written in clear, understandable language, and the entire contract shall be**  
7 **printed or typed in easy-to-read type and conspicuously disclose the requirements in this**  
8 **section, as applicable.**

9           **3. Motor vehicle extended service contracts insured under a reimbursement**  
10 **insurance policy under subsection 3 of section 385.201 shall contain a statement in**  
11 **substantially the following form: "Obligations of the provider under this service contract**  
12 **are guaranteed under a service contract reimbursement insurance policy. If the provider**  
13 **fails to pay or provide service on a claim within sixty days after proof of loss has been filed,**  
14 **the contract holder is entitled to make a claim directly against the insurance company."**  
15 **A claim against the provider also shall include a claim for return of the unearned provider**  
16 **fee. The motor vehicle extended service contract also shall state conspicuously the name**  
17 **and address of the insurer.**

18           **4. Motor vehicle extended service contracts not insured under a reimbursement**  
19 **insurance policy pursuant to subsection 3 of section 385.201 shall contain a statement in**

20 substantially the following form: "Obligations of the provider under this service contract  
21 are backed only by the full faith and credit of the provider (issuer) and are not guaranteed  
22 under a service contract reimbursement insurance policy." A claim against the provider  
23 also shall include a claim for return of the unearned provider fee. The motor vehicle  
24 extended service contract also shall state conspicuously the name and address of the  
25 provider.

26 5. Motor vehicle extended service contracts shall identify any administrator, the  
27 provider obligated to perform the service under the contract, the motor vehicle extended  
28 service contract seller, and the service contract holder to the extent that the name and  
29 address of the service contract holder has been furnished by the service contract holder.

30 6. Motor vehicle extended service contracts shall state conspicuously the total  
31 purchase price and the terms under which the motor vehicle extended service contract is  
32 sold. The purchase price is not required to be preprinted on the motor vehicle extended  
33 service contract and may be negotiated at the time of sale with the service contract holder.

34 7. If prior approval of repair work is required, the motor vehicle extended service  
35 contracts shall state conspicuously the procedure for obtaining prior approval and for  
36 making a claim, including a toll-free telephone number for claim service and a procedure  
37 for obtaining emergency repairs performed outside of normal business hours.

38 8. Motor vehicle extended service contracts shall state conspicuously the existence  
39 of any deductible amount.

40 9. Motor vehicle extended service contracts shall specify the merchandise and  
41 services to be provided and any limitations, exceptions, and exclusions.

42 10. Motor vehicle extended service contracts shall state the conditions upon which  
43 the use of non-original manufacturer's parts, or substitute service, may be allowed.  
44 Conditions stated shall comply with applicable state and federal laws.

45 11. Motor vehicle extended service contracts shall state any terms, restrictions, or  
46 conditions governing the transferability of the motor vehicle extended service contract.

47 12. Motor vehicle extended service contracts shall state the terms, restrictions, or  
48 conditions governing termination of the service contract by the service contract holder.  
49 The provider of the motor vehicle extended service contract shall mail a written notice to  
50 the contract holder within fifteen days of the date of termination.

51 13. Motor vehicle extended service contracts shall require every provider to permit  
52 the service contract holder to return the contract within at least twenty business days of  
53 mailing date of the motor vehicle extended service contract or within at least ten days if the  
54 service contract is delivered at the time of sale or within a longer time period permitted  
55 under the contract. If no claim has been made under the contract, the contract is void and

56 the provider shall refund to the contract holder the full purchase price of the contract. A  
57 ten percent penalty per month shall be added to a refund that is not paid within thirty days  
58 of return of the contract to the provider. The applicable free-look time periods on service  
59 contracts shall apply only to the original service contract purchaser.

60 14. Motor vehicle extended service contracts shall set forth all of the obligations and  
61 duties of the service contract holder, such as the duty to protect against any further  
62 damage and the requirement for certain service and maintenance.

63 15. Motor vehicle extended service contracts shall state clearly whether or not the  
64 service contract provides for or excludes consequential damages or preexisting conditions.

65 16. An administrator or provider may include other products or services,  
66 separately or as a part of an extended service contract, as agreed upon by the consumer.

385.205. 1. A provider shall not use in its name the words insurance, casualty,  
2 guaranty, surety, mutual, or any other words descriptive of the insurance, casualty,  
3 guaranty, or surety business, nor shall such provider use a name deceptively similar to the  
4 name or description of any insurance or surety corporation, or any other provider. This  
5 section shall not apply to a company that was using any of the prohibited language in its  
6 name prior to August 28, 2004. However, a company using the prohibited language in its  
7 name shall disclose conspicuously in its motor vehicle extended service contract the  
8 following statement: "This agreement is not an insurance contract."

9 2. A provider or its representative shall not in its motor vehicle extended service  
10 contracts or literature make, permit, or cause to be made any false or misleading  
11 statement, or deliberately omit any material statement that would be considered misleading  
12 if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle  
13 extended service contract.

14 3. A person, such as a bank, savings and loan association, lending institution,  
15 manufacturer or seller of any product, shall not require the purchase of a service contract  
16 as a condition of a loan or a condition for the sale of any property.

385.207. 1. An administrator, provider, or other intermediary shall keep accurate  
2 accounts, books, and records concerning transactions regulated by sections 385.200 to  
3 385.212.

4 2. An administrator's, provider's, or other intermediary's accounts, books, and  
5 records shall include:

6 (1) Copies of each type of motor vehicle extended service contract issued;

7 (2) The name and address of each service holder to the extent that the name and  
8 address have been furnished by the service contract holder;

9           (3) A list of the provider locations where motor vehicle extended service contracts  
10 are marketed, sold, or offered for sale; and

11           (4) Claims files that shall contain at least the dates, amounts, and description of all  
12 receipts, claims, and expenditures related to the motor vehicle extended service contracts.

13           3. Except as provided in this section, an administrator shall retain all records  
14 pertaining to each motor vehicle extended service contract holder for at least three years  
15 after the specified period of coverage has expired.

16           4. An administrator, provider, or other intermediary may keep all records required  
17 under sections 385.200 to 385.212 on a computer disk or other similar technology. If an  
18 administrator, provider, or other intermediary maintains records in other than hard copy,  
19 records shall be accessible from a computer terminal available to the director and be  
20 capable of duplication to legible hard copy.

21           5. An administrator, provider, or other intermediary discontinuing business in this  
22 state shall maintain its records until it furnishes the director satisfactory proof that it has  
23 discharged all obligations to contract holders in this state.

24           6. An administrator, provider, or other intermediary shall make all accounts,  
25 books, and records concerning transactions regulated pursuant to sections 385.200 to  
26 385.212 or other pertinent laws available to the director upon request.

          385.208. As applicable, an insurer that issued a reimbursement insurance policy  
2 shall not terminate the policy until a notice of termination, in a form and time frame  
3 prescribed by the director, has been mailed or delivered to the director. The termination  
4 of a reimbursement insurance policy shall not reduce the issuer's responsibility for motor  
5 vehicle extended service contracts issued by providers prior to the date of the termination.

          385.209. 1. Providers are considered to be the agent of the insurer that issued the  
2 reimbursement insurance policy. In cases where a provider is acting as an administrator  
3 and enlists other providers, the provider acting as the administrator shall notify the insurer  
4 of the existence and identities of the other providers.

5           2. The provisions of sections 385.200 to 385.212 shall not prevent or limit the right  
6 of an insurer that issued a reimbursement insurance policy to seek indemnification or  
7 subrogation against a provider if the insurer pays or is obligated to pay the service contract  
8 holder sums that the provider was obligated to pay under the provisions of the motor  
9 vehicle extended service contract or under a contractual agreement.

          385.210. 1. The director may conduct investigations or examinations of providers,  
2 administrators, insurers, or other persons to enforce the provisions of sections 385.200 to  
3 385.212 and protect service contract holders in this state.

4           **2. If the director determines that a person has engaged or is engaging in a violation**  
5 **of sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, or that**  
6 **a person has materially aided or is materially aiding an act, practice, omission or course**  
7 **of business constituting a violation of sections 385.200 to 385.212 or a rule adopted or order**  
8 **issued pursuant thereto, the director may issue such administrative orders as authorized**  
9 **under section 374.046, RSMo. A violation of this section is a level two violation under**  
10 **section 374.049, RSMo.**

11           **3. If the director believes that a person has engaged or is engaging in a violation of**  
12 **sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, or that a**  
13 **person has materially aided or is materially aiding an act, practice, omission or course of**  
14 **business constituting a violation of sections 385.200 to 385.212 or a rule adopted or order**  
15 **issued pursuant thereto, the director may maintain a civil action for relief authorized**  
16 **under section 374.048, RSMo. A violation of this section is a level two violation under**  
17 **section 374.049, RSMo.**

18           **4. The enforcement authority of the director under this section is cumulative to any**  
19 **other statutory authority of the director.**

**385.211. The director may promulgate rules to effectuate sections 385.200 to**  
2 **385.212. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,**  
3 **that is created under the authority delegated in this section shall become effective only if**  
4 **it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**  
5 **applicable, section 536.028, RSMo. Sections 385.200 to 385.212 and chapter 536, RSMo,**  
6 **are nonseverable and if any of the powers vested with the general assembly pursuant to**  
7 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**  
8 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**  
9 **rule proposed or adopted after August 28, 2006, shall be invalid and void.**

**385.212. 1. The provisions of sections 385.200 to 385.212 shall not apply to:**

- 2           **(1) Warranties;**  
3           **(2) Maintenance agreements;**  
4           **(3) Commercial transactions; and**  
5           **(4) Service contracts sold or offered for sale to persons other than consumers.**

6           **2. Manufacturer's contracts on the manufacturer's products need only comply with**  
7 **the provisions of sections 385.204, 385.205, and 385.210.**

**385.300. 1. As used in sections 385.300 to 385.312, the terms "consumer",**  
2 **"director", "maintenance agreement", "manufacturer", "nonoriginal manufacturer's**  
3 **parts", "person", "premium", and "warranty" shall have the same meaning as provided**  
4 **in section 385.200.**

5           **2. As used in sections 385.300 to 385.312, the following terms mean:**

6           **(1) "Administrator", the person who is responsible for the handling and**  
7 **adjudication of claims under the product service agreements;**

8           **(2) "Contract holder", a person who is the purchaser or holder of a service**  
9 **contract;**

10           **(3) "Property", all forms of property;**

11           **(4) "Provider", a person who issues, makes, or directly underwrites a service**  
12 **contract, or is contractually obligated to the service contract holder under the terms of the**  
13 **service contract;**

14           **(5) "Provider fee", the consideration paid for a service contract, if any, by a service**  
15 **contract holder;**

16           **(6) "Reimbursement insurance policy", a policy of insurance issued to a provider**  
17 **to either provide reimbursement to the provider under the terms of the insured service**  
18 **contract issued or sold by the provider, or alternatively, in the event of nonperformance**  
19 **by the provider, to pay to service contract holders on behalf of the provider all covered**  
20 **contractual obligations incurred by the provider under the terms of the insured service**  
21 **contract issued or sold by the provider; and**

22           **(7) "Service contract", a contract for a specific duration and consideration to**  
23 **perform the repair, replacement, or maintenance of property or indemnification for repair,**  
24 **replacement, or maintenance, for the operational or structural failure of any residential**  
25 **or other property due to a defect in materials, workmanship, or normal wear and tear,**  
26 **with or without additional provision for incidental payment of indemnity under limited**  
27 **circumstances, including, but not limited to, unavailability of parts, obsolescence, food**  
28 **spoilage, rental, and shipping. Service contracts may provide for the repair, replacement**  
29 **or maintenance of property for damage resulting from power surges or accidental damage.**  
30 **Service contract providers and administrators are not deemed to be engaged in the**  
31 **business of insurance in this state.**

**385.301. 1. It is unlawful for any person to issue, sell or offer for sale in this state**  
2 **any service contract, unless each provider has registered with the director on a form**  
3 **prescribed by the director. Each provider shall pay to the director a fee established by the**  
4 **director by rule, but not to exceed three hundred dollars annually.**

5           **2. A provider may, but is not required to, appoint an administrator or other**  
6 **designee to be responsible for any or all of the administration of service contracts and**  
7 **compliance with sections 385.300 to 385.312.**

8           **3. A provider or its designee shall provide a copy of the service contract to the**  
9 **service contract holder within a reasonable period of time following the date of purchase.**

10           **4. In order to assure the faithful performance of a provider's obligations to its**  
11 **contract holders, each provider who contractually is obligated to provide service under a**  
12 **service contract shall comply with one of the following subdivisions:**

13           **(1) (a) Maintain a funded reserve account for its obligations under its contracts**  
14 **issues and outstanding in this state. The reserve shall not be less than forty percent of**  
15 **gross consideration received, less claims paid, on the sale of the service contract for all in-**  
16 **force contracts. The reserve account shall be subject to examination and review by the**  
17 **director; and**

18           **(b) Place in trust with the director a financial security deposit, having a value of not**  
19 **less than five percent of the gross consideration received, less claims paid, on the sale of the**  
20 **service contract for all service contracts issued and in force, but not less than twenty-five**  
21 **thousand dollars, consisting of one of the following:**

22           **a. A surety bond issued by an authorized surety;**  
23           **b. Securities of the type eligible for deposit by authorized insurers in this state;**  
24           **c. Cash;**  
25           **d. A letter of credit issued by a qualified financial institution; or**  
26           **e. Another form of security prescribed by regulations issued by the director; or**

27           **(2) (a) Maintain a net worth of one hundred million dollars; and**

28           **(b) Provide the director with a copy of the provider's or, if the provider's financial**  
29 **statements are consolidated with those of its parent company, the provider's parent**  
30 **company's most recent Form 10-K filed or Form 20-F with the Securities and Exchange**  
31 **Commission (SEC) within the last calendar year, or if the company does not file with the**  
32 **SEC, a copy of the company's audited financial statements, which shows a net worth of the**  
33 **provider or its parent company of at least one hundred million dollars. If the provider's**  
34 **parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet**  
35 **the provider's financial stability requirement, then the parent company shall agree to**  
36 **guarantee the obligations of the obligor relating to service contracts sold by the provider**  
37 **in this state; or**

38           **(3) Obtain a reimbursement insurance policy that demonstrates to the satisfaction**  
39 **of the director that one hundred percent of its service contract obligations to contract**  
40 **holders is covered by such policy and satisfies the requirements of this section. For the**  
41 **purposes of this subsection, the reimbursement insurance policy shall contain the following**  
42 **provisions:**

43           **(a) In the event that the provider is unable to fulfill its obligation under contracts**  
44 **issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the**

45 insurer will pay losses and unearned fees under such plans directly to the contract holder  
46 making a claim under the contract;

47 (b) The insurer issuing the contractual liability policy shall assume full  
48 responsibility for the administration of claims in the event of the inability of the provider  
49 to do so; and

50 (c) The policy may be canceled or not renewed by either the insurer or the provider  
51 not less than sixty days after written notice thereof has been given to the director and  
52 provider by the insurer;

53 (4) The reimbursement insurance referenced in subdivision (3) above shall be  
54 obtained from an insurer that is authorized, registered or otherwise permitted to transact  
55 insurance in this state or a surplus lines insurer authorized pursuant to the laws of this  
56 state and which insurer meets one of the following requirements:

57 (a) Maintain, at the time the policy is filed with the director and continuously  
58 thereafter:

59 a. Surplus as to policyholders and paid-in capital of at least fifteen million dollars;  
60 and

61 b. Annually file copies of the insurer's financial statements, its National Association  
62 of Insurance Commissioners annual statement, and the actuarial certification if required  
63 and filed in the insurer's state of domicile; or

64 (b) Maintain, at the time the policy is filed with the director and continuously  
65 thereafter:

66 a. Surplus as to policyholders and paid-in capital of less than fifteen million dollars  
67 but at least equal to ten million dollars;

68 b. Demonstrate to the satisfaction of the director that the insurer maintains a ratio  
69 of net written premiums, wherever written, to surplus as to policyholders and paid-in  
70 capital of not greater than three to one; and

71 c. Annually file copies of the insurer's financial statements, its National Association  
72 of Insurance Commissioners annual statement, and the actuarial certification if required  
73 and filed in the insurer's state of domicile.

74 5. Provider fees collected on service agreements shall not be subject to premium  
75 taxes. Premiums for reimbursement insurance policies shall be subject to applicable taxes.

76 6. Except for compliance with the provider's registration requirement in subsection  
77 1 of this section, a person marketing, selling, or offering to sell service contracts for a  
78 provider that is registered under this section is exempt from licensing as a producer under  
79 the insurance laws of this state.



2       **385.302. Reimbursement insurance policies insuring service contracts issued, sold**  
3       **or offered for sale in this state shall state that, upon failure of the provider to perform**  
4       **under the contract, including the failure to return the unearned provider fee, the insurer**  
5       **that issued the policy shall pay or perform according to the provider's contractual**  
6       **obligations under the service contracts insured by the insurer.**

2       **385.303. 1. Service contracts marketed, issued, sold, or offered for sale in this state**  
3       **shall be written in clear, conspicuous, and understandable language, and the entire**  
4       **contract shall be printed or typed in easy-to-read, type and conspicuously disclose the**  
5       **requirements in this section, as applicable.**

6       **2. Service contracts insured under a reimbursement insurance policy under**  
7       **subdivision (3) of subsection 4 of section 385.301 shall contain a statement in substantially**  
8       **the following form: "Obligations of the provider under this service contract are**  
9       **guaranteed under a reimbursement insurance policy. If the provider fails to pay or**  
10       **provide service on a claim within sixty days after proof of loss has been filed, the contract**  
11       **holder is entitled to make a claim directly against the insurance company." A claim**  
12       **against the provider may also include a claim for return of the unearned provider fee. The**  
13       **service contract also shall state the name and address of the insurer.**

14       **3. Service contracts not insured under a reimbursement insurance policy under**  
15       **subdivision (3) of subsection 4 of section 385.301 shall contain a statement in substantially**  
16       **the following form: "Obligations of the provider under this service contract are backed**  
17       **only by the full faith and credit of the provider (issuer) and are not guaranteed under a**  
18       **reimbursement insurance policy." A claim against the provider shall also include a claim**  
19       **for return of the unearned provider fee. The service contract shall also state the name and**  
20       **address of the provider.**

21       **4. Service contracts shall identify any administrator, the provider obligated to**  
22       **perform under the contract, and the service contract seller, if different than the provider**  
23       **or administrator. The identities of such parties are not required to be preprinted on the**  
24       **service contract and may be added to the service contract prior to delivery to the contract**  
25       **holder.**

26       **5. Service contracts shall state the total purchase price and the terms under which**  
27       **the service contract is sold. The purchase price is not required to be pre-printed on the**  
28       **service contract and may be negotiated at the time of sale with the service contract holder.**

29       **6. If prior approval of repair work is required, the service contracts shall state the**  
30       **procedure for obtaining prior approval and for making a claim, including a toll-free**  
31       **telephone number for claim service and a procedure for obtaining emergency repairs**  
      **performed outside of normal business hours.**

- 32           **7. Service contracts shall state the existence of any deductible amount.**
- 33           **8. Service contracts shall specify the merchandise and services to be provided and**  
34 **any limitations, exceptions, or exclusions.**
- 35           **9. Service contracts shall state the conditions upon which the use of non-original**  
36 **manufacturers' parts, refurbished merchandise, or substitute service, may be allowed.**  
37 **Conditions stated shall comply with applicable state and federal laws.**
- 38           **10. Service contracts shall state any terms, restrictions, or conditions governing the**  
39 **transferability of the service contract.**
- 40           **11. Service contracts shall state any terms, restrictions, or conditions governing**  
41 **termination of the service agreement by the service contract holder and provider.**
- 42           **12. Service contracts for which the service contract holder pays a separate,**  
43 **identified consideration shall require every provider to permit the service contract holder**  
44 **to return the contract within at least twenty days of the date of mailing of the service**  
45 **contract or within at least ten days if the service contract is delivered at the time of sale or**  
46 **within a longer time period permitted under the contract. If no claim has been made under**  
47 **the contract, the contract is void and the provider shall refund to the contract holder the**  
48 **full purchase price of the contract. A ten percent penalty per month shall be added to a**  
49 **refund that is not paid within forty-five days of return of the contract to the provider. The**  
50 **applicable free-look time periods on service contracts shall apply only to the original**  
51 **service contract purchaser, and only if no claim has been made prior to its return to the**  
52 **provider.**
- 53           **13. Service contracts shall set forth all of the obligations and duties of the service**  
54 **contract holder, such as the duty to protect against any further damage and the**  
55 **requirement for certain service and maintenance.**
- 56           **14. Service contracts shall state clearly whether or not the service contract provides**  
57 **for or excludes consequential damages, preexisting conditions, or events covered under the**  
58 **original manufacturer's warranty.**
- 59           **15. Service contracts shall state any limitations on the number or value of repairs,**  
60 **replacements, or monetary settlements, as applicable, that will be provided during the term**  
61 **of coverage.**

**385.304. 1. It is unlawful for any provider to use in its name the words insurance,**  
2 **casualty, guaranty, surety, mutual, or any other words descriptive of the insurance,**  
3 **casualty, guaranty, or surety business, or any name deceptively similar to the name or**  
4 **description of any insurance or surety corporation, or other provider.**

5           **2. This section shall not apply to a company that was using any of the prohibited**  
6 **language in its name prior to August 28, 2006. However, a company using the prohibited**

7 language in its name shall disclose in its service contracts a statement in substantially the  
8 following: "This contract is not an insurance contract.".

9       3. It is unlawful for a provider or its representative in its service contracts or  
10 literature to make, permit, or cause to be made any false or misleading statement, or  
11 deliberately omit any material statement that would be considered misleading if omitted,  
12 in connection with the sale, offer to sell or advertisement of a product service contract.

13       4. It is unlawful for a person, such as a bank, savings and loan association, or  
14 lending institution, to require the purchase of a service contract as a condition of a loan or  
15 other financing transaction.

16       5. It is unlawful for a person, such as a manufacturer or retailer, to require the  
17 purchase of a service contract as a condition to the sale of goods or services, unless  
18 consideration for the service contract is paid directly by such person and a service contract  
19 is furnished without separate consideration to all similarly situated purchasers of the  
20 related goods or services.

      385.305. 1. A provider or administrator shall keep accurate accounts, books, and  
2 records concerning transactions regulated under sections 385.300 to 385.312. However,  
3 only one set of such accounts, books, and records is required to be maintained and may be  
4 maintained by third parties provided the provisions of this section are met.

5       2. An administrator's or provider's accounts, books, and records shall include:

6       (1) Copies of each type of service contract issued;

7       (2) The name and address of each service contract holder to the extent that the  
8 name and address have been furnished by the service contract holder;

9       (3) A list of the provider locations where service contracts are marketed, sold, or  
10 offered for sale; and

11       (4) Claims files that shall contain at least the dates, amounts, and description of all  
12 receipts, claims, and expenditures related to the service contracts.

13       3. Except as provided in subsection 5 of this section, an administrator or provider  
14 shall retain or arrange for the retention of all records pertaining to each service contract  
15 holder for at least three years after the specified period of coverage had expired.

16       4. An administrator or provider may keep all records required under sections  
17 385.300 to 385.312 on a computer disk or other similar technology. If an administrator or  
18 provider maintains records in other than hard copy, records shall be accessible from a  
19 computer terminal available to the director and be capable of duplication to legible hard  
20 copy.

21           **5. An administrator or provider discontinuing business in this state shall maintain**  
22 **or arrange for the maintenance of its records until it furnishes the director satisfactory**  
23 **proof that it has discharged all obligations to contract holders in this state.**

24           **6. An administrator or provider shall make all accounts, books, and records**  
25 **concerning transactions regulated under sections 385.300 to 385.312 or other pertinent**  
26 **laws available to the director upon request.**

**385.306. As applicable, an insurer that issued a reimbursement insurance policy**  
2 **shall not terminate or non-renew the policy until a notice of termination has been mailed**  
3 **or delivered to the director. The termination or non-renewal of a reimbursement**  
4 **insurance policy shall not reduce the issuer's responsibility for service contracts issued by**  
5 **providers prior to the date of the termination.**

**385.307. 1. Providers are considered to be the agent of the insurer which issued the**  
2 **reimbursement insurance policy for purposes of obligating the insurer to contract holders**  
3 **under service contracts associated with the insurer's reimbursement policy, and the**  
4 **payment of premium by the provider is not a condition to the insurer's obligations for**  
5 **otherwise validly issued service contracts.**

6           **2. Sections 385.300 to 385.312 shall not prevent or limit the right of an insurer**  
7 **which issued a reimbursement insurance policy to seek indemnification or subrogation**  
8 **against a provider if the issuer pays or is obligated to pay the service contract holder sums**  
9 **that the provider was obligated to pay pursuant to the provisions of the product service**  
10 **contract.**

**385.310. 1. The director may conduct investigations or examinations of providers,**  
2 **administrators, insurers, or other persons to enforce the provisions of sections 385.300 to**  
3 **385.312 and protect service contract holders in this state.**

4           **2. If the director determines that a person has engaged or is engaging in a violation**  
5 **of sections 385.300 to 385.312 or a rule adopted or order issued pursuant thereto, or that**  
6 **a person has materially aided or is materially aiding an act, practice, omission, or course**  
7 **of business constituting a violation of sections 385.300 to 385.312 or a rule adopted or order**  
8 **issued pursuant thereto, the director may issue such administrative orders as authorized**  
9 **under section 374.046, RSMo. A violation of this section is a level two violation under**  
10 **section 374.049, RSMo.**

11           **3. If the director believes that a person has engaged or is engaging in a violation of**  
12 **sections 385.300 to 385.312 or a rule adopted or order issued pursuant thereto, or that a**  
13 **person has materially aided or is materially aiding an act, practice, omission, or course of**  
14 **business constituting a violation of sections 385.300 to 385.312 or a rule adopted or order**  
15 **issued pursuant thereto, the director may maintain a civil action for relief authorized**

16 under section 374.048, RSMo. A violation of this section is a level two violation under  
17 section 374.049, RSMo.

18 4. The enforcement authority of the director under this section is cumulative to any  
19 other statutory authority of the director.

385.311. The director may promulgate rules to effectuate sections 385.300 to  
2 385.312. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo,  
3 that is created under the authority delegated in this section shall become effective only if  
4 it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if  
5 applicable, section 536.028, RSMo. Sections 385.300 to 385.312 and chapter 536, RSMo,  
6 are nonseverable and if any of the powers vested with the general assembly pursuant to  
7 chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule  
8 are subsequently held unconstitutional, then the grant of rulemaking authority and any  
9 rule proposed or adopted after August 28, 2006, shall be invalid and void.

385.312. 1. Sections 385.300 to 385.312 shall not apply to:

- 2 (1) Warranties;
- 3 (2) Maintenance agreements;
- 4 (3) Warranties, service contracts, or maintenance agreements offered by public  
5 utilities on their transmission devices to the extent they are regulated under the laws of this  
6 state;
- 7 (4) Service contracts sold or offered for sale to persons other than consumers;
- 8 (5) Service contracts sold or offered to nonresidents of this state regardless of  
9 whether the entity selling or offering such contracts is located or doing business in this  
10 state;
- 11 (6) Motor vehicle extended service contracts, as defined in section 385.200; and
- 12 (7) Agreements or warranties which provide for the service, repair, replacement,  
13 or maintenance of the systems, appliances, and structural components of residential or  
14 commercial real property.

15 2. Manufacturer's service contracts on the manufacturer's products need only  
16 comply with the provisions of sections 385.301, 385.304, 385.307, and 385.310.

407.015. 1. In pertinent cases, the courts shall be guided by the policies of the  
2 Federal Trade Commission and interpretations given by the Federal Trade Commission  
3 and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C.  
4 Section 45(a)(1), as amended.

5 2. This section shall not apply to actions or transactions otherwise permitted or  
6 approved by the Federal Trade Commission or any other regulatory body or officer acting  
7 under statutory authority of this state or the United States.

[374.261. As used in sections 374.261 to 374.269, the following words mean:

- (1) "Director", the director of the department of insurance;
- (2) "Examiners", nonsalaried employees of the department of insurance conducting an examination pursuant to section 374.190;
- (3) "Sick leave", those days of leave taken during the conduct of an examination during which an examiner is prevented from conducting an examination due to illness or injury.]

[374.263. There is hereby created in the state treasury a fund to be known as the "Insurance Examiner's Sick Leave Fund", hereinafter referred to as the "fund". The fund shall be used to pay the daily wages of department of insurance examiners who are temporarily unable to continue an examination of an insurance company or companies pursuant to section 374.190, because of illness or injury suffered or sustained by the examiner during the course of the examination which the examiner is conducting.]

[374.265. 1. There shall be an amount assessed against those domestic insurers which are subject to premium tax and are engaged in the business of insurance within this state, which amount shall be no less than one hundred and fifty nor greater than five hundred dollars.

2. The initial assessment shall be made within one month of September 28, 1981, in the total amount of thirty-six thousand dollars. Thereafter, assessments shall be made annually, or as needed whenever the balance in the fund becomes less than ten thousand dollars. The amount of such subsequent assessments shall be that amount necessary to return the balance in the fund to thirty-six thousand dollars.]

[374.267. 1. The director of the department of insurance, his agents or appointees shall be empowered to make assessments pursuant to section 374.265, and to administer the fund.

2. The director, his agents or appointees shall compensate an examiner out of the fund only after the examiner has satisfied the director, his agents or appointees that:

(1) The examiner was employed by the department of insurance to conduct an examination of an insurance company or companies pursuant to section 374.190 at the time of the illness or injury for which daily wages are claimed; and

(2) The examiner was prevented from conducting the examination due to illness or injury.

3. The amount paid by the director, his agents or appointees to an examiner from the fund shall not exceed the amount of the examiner's daily wages times the number of days during which the examiner was prevented from

16 conducting an examination as result of illness or injury, but in no event shall any  
17 examiner be paid for more than one and one-fourth days times the number of  
18 months for which he has been employed by the department of insurance as an  
19 examiner, nor shall an examiner be paid for or receive credit for sick leave after  
20 August 13, 1988, for or on the basis of any month, months or portion thereof  
21 before August 13, 1988.]

22

2 [375.787. Whenever the director believes, from evidence satisfactory to  
3 him, that any insurance company is violating or about to violate the provisions  
4 of section 375.786, the director may cause a complaint to be filed in the circuit  
5 court of Cole County, Missouri, to enjoin and restrain such insurance company  
6 from continuing such violation or engaging therein or doing any act in  
7 furtherance thereof. The court shall have jurisdiction of the proceeding and shall  
8 have the power to make and enter an order or judgment awarding such  
9 preliminary or final injunctive relief as in its judgment is proper.]

2 [375.1012. 1. If, after such hearing, the director determines that the  
3 insurer charged had engaged in an improper claims practice prohibited by  
4 sections 375.1000 to 375.1018, he shall reduce his findings to writing and shall  
5 issue and cause to be served upon the person charged with the violation a copy  
6 of such findings and an order requiring such person to cease and desist from  
7 engaging in such improper claims practice, and thereafter the director may, at his  
8 discretion order one or more of the following:

9 (1) Payment of a monetary penalty of not more than one thousand dollars  
10 for each violation but not to exceed an aggregate penalty of one hundred  
11 thousand dollars in any twelve-month period unless the violation was committed  
12 flagrantly and in conscious disregard of sections 375.1000 to 375.1018, in which  
13 case the penalty shall be not more than twenty-five thousand dollars for each  
14 violation but not to exceed an aggregate penalty of two hundred fifty thousand  
15 dollars in any twelve-month period;

16 (2) Suspension or revocation of the insurer's license if such insurer knew  
17 or reasonably should have known it was in violation of sections 375.1000 to  
18 375.1018.

19 2. Until the expiration of the time allowed under section 375.1016 for  
20 filing a petition for judicial review, if no such petition has been duly filed within  
21 such time, or if a petition for review has been filed within such time, then until  
22 the transcript of the record in the proceeding has been filed in the circuit court of  
23 Cole County, the director may at any time, upon such notice and in such manner  
24 as he shall deem proper, modify or set aside in whole or in part any order issued  
25 by him under this section.

26 3. After the expiration of the time allowed for filing such a petition for  
27 review, if no such petition has been duly filed within such time, the director may  
at any time, after notice and opportunity for hearing, reopen and alter, modify or

28 set aside, in whole or in part, any order issued by him under this section,  
29 whenever in his opinion conditions of fact or of law have so changed as to require  
30 such action or if the public interest shall so require.

31 4. Nothing contained in sections 375.1000 to 375.1018 shall be construed  
32 to prohibit the director and the person from agreeing to a voluntary forfeiture  
33 with or without proceedings being instituted.]  
34

[376.320. All bonds or other evidences of debt having a fixed term and  
2 rate held by any life insurance company, assessment life association or fraternal  
3 beneficiary association authorized to do business in this state may, if amply  
4 secured and not in default as to principal and interest, be valued as follows: If  
5 purchased at par, at the par value; if purchased above or below par, on the basis  
6 of the purchase price adjusted so as to bring the value to par at maturity and so  
7 as to yield in the meantime the effective rate of interest at which the purchase was  
8 made; provided, that the purchase price shall in no case be taken at a higher  
9 figure than the actual market value at the time of purchase; and provided further,  
10 that the director of insurance shall have full discretion in determining the method  
11 of calculating values according to the foregoing rule.]  
12

[376.672. The director of the department of insurance shall establish by  
2 regulation the terms and conditions of policy loan interest rate provisions for all  
3 policies issued or delivered by a life insurance company in this state after August  
4 13, 1982. Such regulations shall include provisions for an adjustable maximum  
5 interest rate based on the monthly average of the Moody's Corporate Bond Yield  
6 Average--Monthly Average Corporates, as published by Moody's Investors  
7 Service, Inc., the frequency at which the rate is to be determined and appropriate  
8 notifications to policyholders. No other provision of law shall apply to policy  
9 loan interest rates unless made specifically applicable to such rates. This section  
10 shall also apply to loan interest rate provisions for certificates issued or delivered  
11 by fraternal benefit societies in this state, and for purposes of this section the  
12 word "policy" includes such certificates.]  
13

[407.1200. As used in sections 407.1200 to 407.1227, the following  
2 terms shall mean:

3 (1) "Administrator", the person who is responsible for the administration  
4 of the service contracts or the service contracts plan and who is responsible for  
5 any filings required by sections 407.1200 to 407.1227;

6 (2) "Consumer", a natural person who buys other than for purposes of  
7 resale any motor vehicle that is distributed in commerce and that is normally used  
8 for personal, family, or household purposes and not for business or research  
9 purposes;

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



- 11 (4) "Maintenance agreement", a contract of limited duration that provides  
12 for scheduled maintenance only;
- 13 (5) "Manufacturer", a person that:
- 14 (a) Manufactures or produces the property and sells the property under  
15 its own name or label;
- 16 (b) Is a wholly owned subsidiary of the person who manufactures or  
17 produces the property;
- 18 (c) Is a corporation which owns one hundred percent of the person who  
19 manufactures or produces the property;
- 20 (d) Does not manufacture or produce the property, but the property is  
21 sold under its trade name label;
- 22 (e) Manufactures or produces the property and the property is sold under  
23 the trade name or label of another person; or
- 24 (f) Does not manufacture or produce the property but, pursuant to a  
25 written contract, licenses the use of its trade name or label to another person that  
26 sells the property under the licensor's trade name or label;
- 27 (6) "Mechanical breakdown insurance", a policy, contract, or agreement  
28 issued by an authorized insurer that provides for the repair, replacement, or  
29 maintenance of a motor vehicle or indemnification for repair, replacement, or  
30 service, for the operational or structural failure of a motor vehicle due to a defect  
31 in materials or workmanship or to normal wear and tear;
- 32 (7) "Motor vehicle extended service contract" or "service contract", a  
33 contract or agreement for a separately stated consideration or for a specific  
34 duration to perform the repair, replacement, or maintenance of a motor vehicle  
35 or indemnification for repair, replacement, or maintenance, for the operational or  
36 structural failure due to a defect in materials, workmanship, or normal wear and  
37 tear, with or without additional provision for incidental payment of indemnity  
38 under limited circumstances, including, but not limited to, towing, rental, and  
39 emergency road service, but does not include mechanical breakdown insurance  
40 or maintenance agreements;
- 41 (8) "Nonoriginal manufacturer's parts", replacement parts not made for  
42 or by the original manufacturer of the property, commonly referred to as "after  
43 market parts";
- 44 (9) "Person", an individual, partnership, corporation, incorporated or  
45 unincorporated association, joint stock company, reciprocal, syndicate, or any  
46 similar entity or combination of entities acting in concert;
- 47 (10) "Premium", the consideration paid to an insurer for a reimbursement  
48 insurance policy;
- 49 (11) "Provider", a person who administers, issues, makes, provides, sells,  
50 or offers to sell a motor vehicle extended service contract, or who is contractually  
51 obligated to provide service under a motor vehicle extended service contract such  
52 as sellers, administrators, and other intermediaries;

(12) "Provider fee", the consideration paid for a service contract in excess of the premium;

(13) "Reimbursement insurance policy", a policy of insurance issued to a provider and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of nonperformance by the provider. All obligations and liabilities include, but are not limited to, failure of the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract;

(14) "Service contract holder" or "contract holder", a person who is the purchaser or holder of a service contract;

(15) "Warranty", a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.]

[407.1203. 1. Service contracts shall not be issued, sold, or offered for sale in this state unless the administrator or its designee has:

(1) Provided a receipt for the purchase of the service contract to the contract holder at the date of purchase;

(2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) Complied with the provisions of sections 407.1200 to 407.1227.

2. All administrators of service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director.

3. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or

(2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in

force, but not less than twenty-five thousand dollars, consisting of one of the following:

- a. A surety bond issued by an authorized surety;
- b. Securities of the type eligible for deposit by authorized insurers in this state;
- c. Cash;
- d. A letter of credit issued by a qualified financial institution; or
- e. Another form of security prescribed by regulations issued by the director; or

(3) (a) Maintain a net worth of one hundred million dollars; and  
(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state.

4. Provider fees collected on service contracts shall not be subject to premium taxes. Premiums for reimbursement insurance policies shall be subject to applicable premium taxes.

5. Except for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell service contracts for providers that comply with sections 407.1200 to 407.1227 are exempt from this state's licensing requirements.

6. Providers complying with the provisions of sections 407.1200 to 407.1227 are not required to comply with other provisions of chapter 374 or 375, or any other provisions governing insurance companies, except as specifically provided.]

[407.1206. Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.]

2 [407.1209. 1. Service contracts issued, sold, or offered for sale in this  
3 state shall be written in clear, understandable language and the entire contract  
4 shall be printed or typed in easy to read ten-point type or larger and  
5 conspicuously disclose the requirements in this section, as applicable.

6 2. Service contracts insured under a reimbursement insurance policy  
7 pursuant to subsection 3 of section 407.1203 shall contain a statement in  
8 substantially the following form: "Obligations of the provider under this service  
9 contract are guaranteed under a service contract reimbursement insurance policy.  
10 If the provider fails to pay or provide service on a claim within sixty days after  
11 proof of loss has been filed, the contract holder is entitled to make a claim  
12 directly against the insurance company.". A claim against the provider shall also  
13 include a claim for return of the unearned provider fee. The service contract shall  
14 also conspicuously state the name and address of the insurer.

15 3. Service contracts not insured under a reimbursement insurance policy  
16 pursuant to subsection 3 of section 407.1203 shall contain a statement in  
17 substantially the following form: "Obligations of the provider under this service  
18 contract are backed only by the full faith and credit of the provider (issuer) and  
19 are not guaranteed under a service contract reimbursement insurance policy."  
20 A claim against the provider shall also include a claim for return of the unearned  
21 provider fee. The service contract shall also conspicuously state the name and  
22 address of the provider.

23 4. Service contracts shall identify any administrator, the provider  
24 obligated to perform the service under the contract, the service contract seller,  
25 and the service contract holder to the extent that the name and address of the  
26 service contract holder has been furnished by the service contract holder.

27 5. Service contracts shall conspicuously state the total purchase price and  
28 the terms under which the service contract is sold. The purchase price is not  
29 required to be preprinted on the service contract and may be negotiated at the  
30 time of sale with the service contract holder.

31 6. If prior approval of repair work is required, the service contracts shall  
32 conspicuously state the procedure for obtaining prior approval and for making a  
33 claim, including a toll-free telephone number for claim service and a procedure  
34 for obtaining emergency repairs performed outside of normal business hours.

35 7. Service contracts shall conspicuously state the existence of any  
36 deductible amount.

37 8. Service contracts shall specify the merchandise and services to be  
38 provided and any limitations, exceptions, and exclusions.

39 9. Service contracts shall state the conditions upon which the use of  
40 nonoriginal manufacturer's parts, or substitute service, may be allowed.  
41 Conditions stated shall comply with applicable state and federal laws.

42 10. Service contracts shall state any terms, restrictions, or conditions  
governing the transferability of the service contract.

11. Service contracts shall state the terms, restrictions, or conditions governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

12. Service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of the date of mailing of the service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall only apply to the original service contract purchaser.

13. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

14. Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.]

[407.1212. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2004. However, a company using the prohibited language in its name shall conspicuously disclose in its service contract the following statement: "This agreement is not an insurance contract."

2. A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a service contract.

3. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.]

[407.1215. 1. An administrator, provider, or other intermediary shall keep accurate accounts, books, and records concerning transactions regulated by sections 407.1200 to 407.1227.

4                   2. An administrator's, provider's, or other intermediary's accounts, books,  
5 and records shall include:

- 6                   (1) Copies of each type of service contract issued;  
7                   (2) The name and address of each service contract holder to the extent  
8 that the name and address have been furnished by the service contract holder;  
9                   (3) A list of the provider locations where service contracts are marketed,  
10 sold, or offered for sale; and  
11                   (4) Claims files which shall contain at least the dates, amounts, and  
12 description of all receipts, claims, and expenditures related to the service  
13 contracts.

14                   3. Except as provided in this section, an administrator shall retain all  
15 records pertaining to each service contract holder for at least three years after the  
16 specified period of coverage has expired.

17                   4. An administrator, provider, or other intermediary may keep all records  
18 required pursuant to sections 407.1200 to 407.1227 on a computer disk or other  
19 similar technology. If an administrator, provider, or other intermediary maintains  
20 records in other than hard copy, records shall be accessible from a computer  
21 terminal available to the director and be capable of duplication to legible hard  
22 copy.

23                   5. An administrator, provider, or other intermediary discontinuing  
24 business in this state shall maintain its records until it furnishes the director  
25 satisfactory proof that it has discharged all obligations to contract holders in this  
26 state.

27                   6. An administrator, provider, or other intermediary shall make all  
28 accounts, books, and records concerning transactions regulated pursuant to  
29 sections 407.1200 to 407.1227 or other pertinent laws available to the director  
30 upon request.]  
31

2                   [407.1218. As applicable, an insurer that issued a reimbursement  
3 insurance policy shall not terminate the policy until a notice of termination, in a  
4 form and time frame prescribed by the director, has been mailed or delivered to  
5 the director. The termination of a reimbursement insurance policy shall not  
6 reduce the issuer's responsibility for service contracts issued by providers prior  
7 to the date of the termination.]

2                   [407.1221. 1. Providers are considered to be the agent of the insurer that  
3 issued the reimbursement insurance policy. In cases where a provider is acting  
4 as an administrator and enlists other providers, the provider acting as the  
5 administrator shall notify the insurer of the existence and identities of the other  
6 providers.

7                   2. The provisions of sections 407.1200 to 407.1227 shall not prevent or  
8 limit the right of an insurer which issued a reimbursement insurance policy to  
seek indemnification or subrogation against a provider if the insurer pays or is

9 obligated to pay the service contract holder sums that the provider was obligated  
10 to pay pursuant to the provisions of the service contract or under a contractual  
11 agreement.]  
12

2 [407.1224. 1. The director may conduct investigations or examinations  
3 of providers, administrators, insurers, or other persons to enforce the provisions  
4 of sections 407.1200 to 407.1227 and protect service contract holders in this  
5 state.

6 2. The director may take action that is necessary or appropriate to enforce  
7 the provisions of sections 407.1200 to 407.1227 and the director's regulations and  
8 orders, and to protect service contract holders in this state.

9 3. The director may order a service contract provider to cease and desist  
10 from committing violations of sections 407.1200 to 407.1227 or the director's  
11 regulations or orders, may issue an order prohibiting a service contract provider  
12 from selling or offering for sale service contracts, or may issue an order imposing  
13 a civil penalty, or any combination of these, if the provider has violated the  
14 provisions of sections 407.1200 to 407.1227 or the director's regulations or  
15 orders.

16 4. A person aggrieved by an order pursuant to this section may request  
17 a hearing before the director. The hearing request shall be filed with the director  
18 within twenty days of the date the director's order is effective.

19 5. Pending the hearing and the decision by the director, the director shall  
20 suspend the effective date of the order. At the hearing, the burden shall be on the  
21 director to show why the order issued pursuant to this section is justified. Such  
22 hearing shall be held in accordance with the provisions of chapter 536, RSMo.

23 6. The director may bring an action in the circuit court of Cole County  
24 for an injunction or other appropriate relief to enjoin threatened or existing  
25 violations of sections 407.1200 to 407.1227 or of the director's orders or  
26 regulations. An action filed pursuant to this section may also seek restitution on  
27 behalf of persons aggrieved by a violation of sections 407.1200 to 407.1227 or  
28 orders or regulations of the director.

29 7. A person in violation of sections 407.1200 to 407.1227 or orders or  
30 regulations of the director may be assessed a civil penalty not to exceed one  
31 thousand dollars per violation.

32 8. The authority of the director pursuant to this section is in addition to  
33 other authority of the director.]

2 [407.1225. The director may promulgate rules to effectuate sections  
3 407.1200 to 407.1227. Any rule or portion of a rule, as that term is defined in  
4 section 536.010, RSMo, that is created under the authority delegated in this  
5 section shall become effective only if it complies with and is subject to all of the  
6 provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo.  
This section and chapter 536, RSMo, are nonseverable and if any of the powers

7 vested with the general assembly pursuant to chapter 536, RSMo, to review, to  
8 delay the effective date, or to disapprove and annul a rule are subsequently held  
9 unconstitutional, then the grant of rulemaking authority and any rule proposed or  
10 adopted after August 28, 2004, shall be invalid and void.]

11

2 [407.1227. 1. The provisions of sections 407.1200 to 407.1224 shall not  
3 apply to:

- 4 (1) Warranties;
- 5 (2) Maintenance agreements;
- 6 (3) Commercial transactions; and
- 7 (4) Service contracts sold or offered for sale to persons other than  
8 consumers.

9 2. Manufacturer's contracts on the manufacturer's products need only  
comply with the provisions of sections 407.1209, 407.1212, and 407.1224.]

✓