

CONFERENCE COMMITTEE SUBSTITUTE

FOR

SENATE SUBSTITUTE

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HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 577

1 AN ACT

2 To repeal sections 143.441, 147.010, 148.370, 303.024,
3 374.456, 375.020, 375.1025, 375.1028, 375.1030,
4 375.1032, 375.1035, 375.1037, 375.1040, 375.1042,
5 375.1045, 375.1047, 375.1050, 375.1052, 375.1057,
6 379.1300, 379.1302, 379.1310, 379.1326, 379.1332,
7 379.1373, 379.1388, 379.1412, 382.400, 382.402,
8 382.405, 382.407, 382.409, 384.025, 384.031, 384.043,
9 384.051, 384.057, and 384.062, RSMo, and to enact in
10 lieu thereof forty-nine new sections relating to the
11 regulation of insurance, with penalty provisions.

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

14 Section A. Sections 143.441, 147.010, 148.370, 303.024,
15 374.456, 375.020, 375.1025, 375.1028, 375.1030, 375.1032,
16 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047,
17 375.1050, 375.1052, 375.1057, 379.1300, 379.1302, 379.1310,
18 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 382.400,
19 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043,
20 384.051, 384.057, and 384.062, RSMo, are repealed and forty-nine
21 new sections enacted in lieu thereof, to be known as sections

1 143.441, 147.010, 148.370, 208.192, 303.024, 374.350, 374.351,
2 374.352, 374.776, 375.020, 375.1025, 375.1028, 375.1030,
3 375.1032, 375.1035, 375.1037, 375.1038, 375.1040, 375.1042,
4 375.1045, 375.1047, 375.1050, 375.1052, 375.1053, 375.1054,
5 375.1056, 375.1057, 376.391, 376.502, 376.1232, 379.1300,
6 379.1302, 379.1310, 379.1326, 379.1332, 379.1339, 379.1373,
7 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409,
8 384.025, 384.043, 384.051, 384.057, and 384.062, to read as
9 follows:

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

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

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

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

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

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

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

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

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

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

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

26 147.010. 1. For the transitional year defined in
27 subsection 4 of this section and each taxable year beginning on
28 or after January 1, 1980, but before January 1, 2000, every

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

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

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

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

18 3. A corporation's "taxable year" for purposes of sections
19 147.010 to 147.120 shall be its taxable year as provided in
20 section 143.271, RSMo.

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

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

franchise tax payable, if a corporation's taxable year is changed as provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations prescribed by the director of revenue.

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

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

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

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

1 canceled or returned premiums actually paid during the year in
2 this state, and that life insurance companies shall be credited
3 with dividends actually declared to policyholders in this state
4 but held by the company and applied to the reduction of premiums
5 payable by the policyholder.

6 208.192. 1. By August 28, 2010, the director of the MO
7 HealthNet division shall implement a program under which the
8 director shall make available through its Internet web site
9 nonaggregated information on individuals collected under the
10 federal Medicaid Statistical Information System described in the
11 Social Security Act, Section 1903(r)(1)(F), insofar as such
12 information has been de-identified in accordance with regulations
13 promulgated under the Health Insurance Portability and
14 Accountability Act of 1996, as amended. In implementing such
15 program, the director shall ensure that:

16 (1) The information made so available is in a format that
17 is easily accessible, useable, and understandable to the public,
18 including individuals interested in improving the quality of care
19 provided to individuals eligible for programs and services under
20 the MO HealthNet program, researchers, health care providers, and
21 individuals interested in reducing the prevalence of waste and
22 fraud under the program;

23 (2) The information made so available is as current as
24 deemed practical by the director and shall be updated at least
25 once per calendar quarter;

26 (3) To the extent feasible, all health care providers, as
27 such term is defined in subdivision (20) of section 376.1350,
28 RSMo, included in such information are identifiable by name to

1 individuals who access the information through such program; and

2 (4) The director periodically solicits comments from a
3 sampling of individuals who access the information through such
4 program on how to best improve the utility of the program.

5 2. For purposes of implementing the program under this
6 section and ensuring the information made available through such
7 program is periodically updated, the director may select and
8 enter into a contract with a public or private entity meeting
9 such criteria and qualifications as the director determines
10 appropriate.

11 3. By August 28, 2011, and annually thereafter, the
12 director shall submit to the general assembly and the MO
13 HealthNet oversight committee, a report on the progress of the
14 program under subsection 1 of this section, including the extent
15 to which information made available through the program is
16 accessed and the extent to which comments received under
17 subdivision (4) of subsection 1 of this section were used during
18 the year involved to improve the utility of the program.

19 4. By August 28, 2011, the director shall submit to the
20 general assembly and the MO HealthNet oversight committee a
21 report on the feasibility, potential costs, and potential
22 benefits of making publicly available through an Internet-based
23 program de-identified payment and patient encounter information
24 for items and services furnished under Title XXI of the Social
25 Security Act which would not otherwise be included in the
26 information collected under the federal Medicaid Statistical
27 Information System described in Section 1903(r)(1)(F) of such act
28 and made available under Section 1942 of such act, as added by

1 Section 5008.

2 5. Pursuant to section 23.253, RSMo, of the Missouri sunset
3 act:

4 (1) The provisions of the new program authorized under this
5 section shall automatically sunset six years after the effective
6 date of this section unless reauthorized by an act of the general
7 assembly; and

8 (2) If such program is reauthorized, the program authorized
9 under this section shall automatically sunset twelve years after
10 the effective date of the reauthorization of this section; and

11 (3) This section shall terminate on September first of the
12 calendar year immediately following the calendar year in which
13 the program authorized under this section is sunset.

14 303.024. 1. Each insurer issuing motor vehicle liability
15 policies in this state, or an agent of the insurer, shall furnish
16 an insurance identification card to the named insured for each
17 motor vehicle insured by a motor vehicle liability policy that
18 complies with the requirements of sections 303.010 to 303.050,
19 303.060, 303.140, 303.220, 303.290, 303.330 and 303.370.

20 2. The insurance identification card shall include all of
21 the following information:

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

23 (2) The name of the named insured;

24 (3) The policy number;

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

27 (5) A description of the insured motor vehicle, including
28 year and make or at least five digits of the vehicle

1 identification number or the word "Fleet" if the insurance policy
2 covers five or more motor vehicles; and

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

6 3. A new insurance identification card shall be issued when
7 the insured motor vehicle is changed, when an additional motor
8 vehicle is insured, and when a new policy number is assigned. A
9 replacement insurance identification card shall be issued at the
10 request of the insured in the event of loss of the original
11 insurance identification card.

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

16 (1) Name of the self-insurer;

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

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

21 5. An insurance identification card shall be carried in the
22 insured motor vehicle at all times. The operator of an insured
23 motor vehicle shall exhibit the insurance identification card on
24 the demand of any peace officer, commercial vehicle enforcement
25 officer or commercial vehicle inspector who lawfully stops such
26 operator or investigates an accident while that officer or
27 inspector is engaged in the performance of the officer's or
28 inspector's duties. If the operator fails to exhibit an

1 insurance identification card, the officer or inspector shall
2 issue a citation to the operator for a violation of section
3 303.025. A motor vehicle liability insurance policy, a motor
4 vehicle liability insurance binder, or receipt which contains the
5 policy information required in subsection 2 of this section,
6 shall be satisfactory evidence of insurance in lieu of an
7 insurance identification card.

8 6. Any person who knowingly or intentionally produces,
9 manufactures, sells, or otherwise distributes a fraudulent
10 document intended to serve as an insurance identification card is
11 guilty of a class D felony. Any person who knowingly or
12 intentionally possesses a fraudulent document intended to serve
13 as an insurance identification card is guilty of a class B
14 misdemeanor.

15 374.350. Sections 374.350 to 374.352 may be cited as the
16 "Interstate Insurance Product Regulation Compact".

17 374.351. The Interstate Insurance Product Regulation
18 Compact is intended to help States join together to establish an
19 interstate compact to regulate designated insurance products.
20 Pursuant to terms and conditions of this Act, the State of
21 Missouri seeks to join with other States and establish the
22 Interstate Insurance Product Regulation Compact, and thus become
23 a member of the Interstate Insurance Product Regulation
24 Commission. The Director of the Department of Insurance,
25 Financial Institutions and Professional Registration is hereby
26 designated to serve as the representative of this State to the
27 Commission.

28 374.352. The State of Missouri ratifies, approves, and

1 adopts the following interstate compact:

2 ARTICLE I. PURPOSES

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

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

8 2. To develop uniform standards for insurance products
9 covered under the Compact;

10 3. To establish a central clearinghouse to receive and
11 provide prompt review of insurance products covered under the
12 Compact and, in certain cases, advertisements related thereto,
13 submitted by insurers authorized to do business in one or more
14 Compacting States;

15 4. To give appropriate regulatory approval to those product
16 filings and advertisements satisfying the applicable uniform
17 standard;

18 5. To improve coordination of regulatory resources and
19 expertise between state insurance departments regarding the
20 setting of uniform standards and review of insurance products
21 covered under the Compact;

22 6. To create the Interstate Insurance Product Regulation
23 Commission; and

24 7. To perform these and such other related functions as may
25 be consistent with the state regulation of the business of
26 insurance.

27 ARTICLE II. DEFINITIONS

28 For purposes of this Compact:

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

6 2. "Bylaws" mean those bylaws established by the Commission
7 for its governance, or for directing or controlling the
8 Commission's actions or conduct.

9 3. "Compacting State" means any State which has enacted
10 this Compact legislation and which has not withdrawn pursuant to
11 Article XIV, Section 1, or been terminated pursuant to Article
12 XIV, Section 2.

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

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

18 6. "Domiciliary State" means the state in which an Insurer
19 is incorporated or organized; or, in the case of an alien
20 Insurer, its state of entry.

21 7. "Insurer" means any entity licensed by a State to issue
22 contracts of insurance for any of the lines of insurance covered
23 by this Act.

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

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

28 10. "Operating Procedures" mean procedures promulgated by

1 the Commission implementing a Rule, Uniform Standard or a
2 provision of this Compact.

3 11. "Product" means the form of a policy or contract,
4 including any application, endorsement, or related form which is
5 attached to and made a part of the policy or contract, and any
6 evidence of coverage or certificate, for an individual or group
7 annuity, life insurance, disability income or long-term care
8 insurance product that an Insurer is authorized to issue.

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

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

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

20 15. "Uniform Standard" means a standard adopted by the
21 Commission for a Product line, pursuant to Article VII of this
22 Compact, and shall include all of the Product requirements in
23 aggregate; provided, that each Uniform Standard shall be
24 construed, whether express or implied, to prohibit the use of any
25 inconsistent, misleading or ambiguous provisions in a Product and
26 the form of the Product made available to the public shall not be
27 unfair, inequitable or against public policy as determined by the
28 Commission.

1 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

2 1. The Compacting States hereby create and establish a
3 joint public agency known as the "Interstate Insurance Product
4 Regulation Commission." Pursuant to Article IV, the Commission
5 will have the power to develop Uniform Standards for Product
6 lines, receive and provide prompt review of Products filed
7 therewith, and give approval to those Product filings satisfying
8 applicable Uniform Standards; provided, it is not intended for
9 the Commission to be the exclusive entity for receipt and review
10 of insurance product filings. Nothing herein shall prohibit any
11 Insurer from filing its product in any State wherein the Insurer
12 is licensed to conduct the business of insurance; and any such
13 filing shall be subject to the laws of the State where filed.

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

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

18 4. Venue is proper and judicial proceedings by or against
19 the Commission shall be brought solely and exclusively in a Court
20 of competent jurisdiction where the principal office of the
21 Commission is located.

22 ARTICLE IV. POWERS OF THE COMMISSION

23 The Commission shall have the following powers:

24 1. To promulgate Rules, pursuant to Article VII of this
25 Compact, which shall have the force and effect of law and shall
26 be binding in the Compacting States to the extent and in the
27 manner provided in this Compact;

28 2. To exercise its rulemaking authority and establish

1 reasonable Uniform Standards for Products covered under the
2 Compact, and Advertisement related thereto, which shall have the
3 force and effect of law and shall be binding in the Compacting
4 States, but only for those Products filed with the Commission,
5 provided, that a Compacting State shall have the right to opt out
6 of such Uniform Standard pursuant to Article VII, to the extent
7 and in the manner provided in this Compact, and, provided
8 further, that any Uniform Standard established by the Commission
9 for long-term care insurance products may provide the same or
10 greater protections for consumers as, but shall not provide less
11 than, those protections set forth in the National Association of
12 Insurance Commissioners' Long-Term Care Insurance Model Act and
13 Long-Term Care Insurance Model Regulation, respectively, adopted
14 as of 2001. The Commission shall consider whether any subsequent
15 amendments to the NAIC Long-Term Care Insurance Model Act or
16 Long-Term Care Insurance Model Regulation adopted by the NAIC
17 require amending of the Uniform Standards established by the
18 Commission for long-term care insurance products;

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

26 4. To receive and review in an expeditious manner
27 Advertisement relating to long-term care insurance products for
28 which Uniform Standards have been adopted by the Commission, and

1 give approval to all Advertisement that satisfies the applicable
2 Uniform Standard. For any product covered under this Compact,
3 other than long-term care insurance products, the Commission
4 shall have the authority to require an insurer to submit all or
5 any part of its Advertisement with respect to that product for
6 review or approval prior to use, if the Commission determines
7 that the nature of the product is such that an Advertisement of
8 the product could have the capacity or tendency to mislead the
9 public. The actions of the Commission as provided in this
10 section shall have the force and effect of law and shall be
11 binding in the Compacting States to the extent and in the manner
12 provided in the Compact;

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

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

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

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

26 9. To establish and maintain offices;

27 10. To purchase and maintain insurance and bonds;

28 11. To borrow, accept or contract for services of

1 personnel, including, but not limited to, employees of a
2 Compacting State;

3 12. To hire employees, professionals or specialists, and
4 elect or appoint officers, and to fix their compensation, define
5 their duties and give them appropriate authority to carry out the
6 purposes of the Compact, and determine their qualifications; and
7 to establish the Commission's personnel policies and programs
8 relating to, among other things, conflicts of interest, rates of
9 compensation and qualifications of personnel;

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

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

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

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

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

26 18. To provide for dispute resolution among Compacting
27 States;

28 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 State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists.

Nothing herein shall be construed to affect the manner in which a

1 Compacting State determines the election or appointment and
2 qualification of its own Commissioner.

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

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

13 i. Establishing the fiscal year of the Commission;

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

17 iii. Providing reasonable standards and procedures: (i) for
18 the establishment and meetings of other committees, and (ii)
19 governing any general or specific delegation of any authority or
20 function of the Commission;

21 iv. Providing reasonable procedures for calling and
22 conducting meetings of the Commission that consists of a majority
23 of Commission members, ensuring reasonable advance notice of each
24 such meeting and providing for the right of citizens to attend
25 each such meeting with enumerated exceptions designed to protect
26 the public's interest, the privacy of individuals, and insurers'
27 proprietary information, including trade secrets. The Commission
28 may meet in camera only after a majority of the entire membership

1 votes to close a meeting en toto or in part. As soon as
2 practicable, the Commission must make public (i) a copy of the
3 vote to close the meeting revealing the vote of each Member with
4 no proxy votes allowed, and (ii) votes taken during such meeting;

5 v. Establishing the titles, duties and authority and
6 reasonable procedures for the election of the officers of the
7 Commission;

8 vi. Providing reasonable standards and procedures for the
9 establishment of the personnel policies and programs of the
10 Commission. Notwithstanding any civil service or other similar
11 laws of any Compacting State, the Bylaws shall exclusively govern
12 the personnel policies and programs of the Commission;

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

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

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

24 2. Management Committee, Officers and Personnel

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

27 i. One (1) member from each of the six (6) Compacting
28 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

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

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

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

15 3. Legislative and Advisory Committees

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

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

1 insurance industry representatives.

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

5 4. Corporate Records of the Commission

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

8 5. Qualified Immunity, Defense and Indemnification

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

22 b. The Commission shall defend any Member, officer,
23 executive director, employee or representative of the Commission
24 in any civil action seeking to impose liability arising out of
25 any actual or alleged act, error or omission that occurred within
26 the scope of Commission employment, duties or responsibilities,
27 or that the person against whom the claim is made had a
28 reasonable basis for believing occurred within the scope of

1 Commission employment, duties or responsibilities; provided, that
2 nothing herein shall be construed to prohibit that person from
3 retaining his or her own counsel; and provided further, that the
4 actual or alleged act, error or omission did not result from that
5 person's intentional or willful and wanton misconduct.

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

17 ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

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

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

26 3. The Commission shall meet at least once during each
27 calendar year. Additional meetings shall be held as set forth in
28 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 Procedure Act of 1981 as amended,
as may be appropriate to the operations of the Commission.
Before the Commission adopts a Uniform Standard, the Commission
shall give written notice to the relevant state legislative
committee(s) in each Compacting State responsible for insurance
issues of its intention to adopt the Uniform Standard. The
Commission in adopting a Uniform Standard shall consider fully
all submitted materials and issue a concise explanation of its
decision.

3. Effective Date and Opt Out of a Uniform Standard. A
Uniform Standard shall become effective ninety (90) days after
its promulgation by the Commission or such later date as the
Commission may determine; provided, however, that a Compacting
State may opt out of a Uniform Standard as provided in this
Article. "Opt out" shall be defined as any action by a
Compacting State to decline to adopt or participate in a

promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.

4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must

(a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State.

The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State.

The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the

time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.

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

6. Stay of Uniform Standard. If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform

1 Standard, to stay the effectiveness of the Uniform Standard in
2 that State. The Commission may grant a stay if it determines the
3 regulatory opt out is being pursued in a reasonable manner and
4 there is a likelihood of success. If a stay is granted or
5 extended by the Commission, the stay or extension thereof may
6 postpone the effective date by up to ninety (90) days, unless
7 affirmatively extended by the Commission; provided, a stay may
8 not be permitted to remain in effect for more than one (1) year
9 unless the Compacting State can show extraordinary circumstances
10 which warrant a continuance of the stay, including, but not
11 limited to, the existence of a legal challenge which prevents the
12 Compacting State from opting out. A stay may be terminated by
13 the Commission upon notice that the rulemaking process has been
14 terminated.

15 7. Not later than thirty (30) days after a Rule or
16 Operating Procedure is promulgated, any person may file a
17 petition for judicial review of the Rule or Operating Procedure;
18 provided, that the filing of such a petition shall not stay or
19 otherwise prevent the Rule or Operating Procedure from becoming
20 effective unless the court finds that the petitioner has a
21 substantial likelihood of success. The court shall give
22 deference to the actions of the Commission consistent with
23 applicable law and shall not find the Rule or Operating Procedure
24 to be unlawful if the Rule or Operating Procedure represents a
25 reasonable exercise of the Commission's authority.

26 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

27 1. The Commission shall promulgate Rules establishing
28 conditions and procedures for public inspection and copying of

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

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

22 3. The Commission shall monitor Compacting States for
23 compliance with duly adopted Bylaws, Rules, including Uniform
24 Standards, and Operating Procedures. The Commission shall notify
25 any non-complying Compacting State in writing of its
26 noncompliance with Commission Bylaws, Rules or Operating
27 Procedures. If a non-complying Compacting State fails to remedy
28 its noncompliance within the time specified in the notice of

1 noncompliance, the Compacting State shall be deemed to be in
2 default as set forth in Article XIV.

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

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

18 b. Before a Commissioner may bring an action for violation
19 of any provision, standard or requirement of the Compact relating
20 to the content of an Advertisement not approved or certified to
21 the Commission, the Commission, or an authorized Commission
22 officer or employee, must authorize the action. However,
23 authorization pursuant to this paragraph does not require notice
24 to the Insurer, opportunity for hearing or disclosure of requests
25 for authorization or records of the Commission's action on such
26 requests.

27 ARTICLE IX. DISPUTE RESOLUTION

28 The Commission shall attempt, upon the request of a Member,

1 to resolve any disputes or other issues that are subject to this
2 Compact and which may arise between two or more Compacting
3 States, or between Compacting States and Non-compacting States,
4 and the Commission shall promulgate an Operating Procedure
5 providing for resolution of such disputes.

6 ARTICLE X. PRODUCT FILING AND APPROVAL

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

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

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

1 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

2 1. Not later than thirty (30) days after the Commission has
3 given notice of a disapproved Product or Advertisement filed with
4 the Commission, the Insurer or Third Party Filer whose filing was
5 disapproved may appeal the determination to a review panel
6 appointed by the Commission. The Commission shall promulgate
7 Rules to establish procedures for appointing such review panels
8 and provide for notice and hearing. An allegation that the
9 Commission, in disapproving a Product or Advertisement filed with
10 the Commission, acted arbitrarily, capriciously, or in a manner
11 that is an abuse of discretion or otherwise not in accordance
12 with the law, is subject to judicial review in accordance with
13 Article III, Section 4.

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

20 ARTICLE XII. FINANCE

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

1 be compromised.

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

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

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

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

15 6. The Commission shall keep complete and accurate accounts
16 of all its internal receipts, including grants and donations, and
17 disbursements of all funds under its control. The internal
18 financial accounts of the Commission shall be subject to the
19 accounting procedures established under its Bylaws. The
20 financial accounts and reports including the system of internal
21 controls and procedures of the Commission shall be audited
22 annually by an independent certified public accountant. Upon the
23 determination of the Commission, but no less frequently than
24 every three (3) years, the review of the independent auditor
25 shall include a management and performance audit of the
26 Commission. The Commission shall make an Annual Report to the
27 Governor and legislature of the Compacting States, which shall
28 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

1 the amendment into law.

2 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

3 1. Withdrawal

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

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

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

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

23 e. The Withdrawing State is responsible for all
24 obligations, duties and liabilities incurred through the
25 effective date of withdrawal, including any obligations, the
26 performance of which extend beyond the effective date of
27 withdrawal, except to the extent those obligations may have been
28 released or relinquished by mutual agreement of the Commission

1 and the Withdrawing State. The Commission's approval of Products
2 and Advertisement prior to the effective date of withdrawal shall
3 continue to be effective and be given full force and effect in
4 the Withdrawing State, unless formally rescinded by the
5 Withdrawing State in the same manner as provided by the laws of
6 the Withdrawing State for the prospective disapproval of products
7 or advertisement previously approved under state law.

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

11 2. Default

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

1 terminated from the Compact and all rights, privileges and
2 benefits conferred by this Compact shall be terminated from the
3 effective date of termination.

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

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

12 3. Dissolution of Compact

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

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

21 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

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

28 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

1 1. Other Laws

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

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

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

24 2. Binding Effect of this Compact

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

28 b. All agreements between the Commission and the Compacting

1 States are binding in accordance with their terms.

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

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

17 374.776. During the legislative interim between the first
18 regular session and the second regular session of the ninety-
19 fifth general assembly, the Missouri department of insurance,
20 financial institutions and professional registration shall
21 conduct a study regarding its licensing rules and other policies
22 and procedures governing the bail bond industry within the state
23 of Missouri. The department, in its discretion, may hold public
24 hearings within the state and permit testimony and input from
25 surety insurance companies, general bail bond agents, bail bond
26 agents, legislators, law enforcement agencies, officials from the
27 department, and other interested parties. If public hearings are
28 held, the director shall provide notice to all licensees licensed

1 under sections 374.695 to 374.789 of the date, time, and location
2 of such public hearings. The department shall submit a report of
3 its findings and recommendations to the house of representatives
4 and senate insurance committees no later than January 6, 2010.

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

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

- 25 (1) American College Courses (CLU, ChFC);
- 26 (2) Life Underwriters Training Council (LUTC);
- 27 (3) Certified Insurance Counselor (CIC);
- 28 (4) Chartered Property and Casualty Underwriter (CPCU);

1 (5) Insurance Institute of America (IIA);

2 (6) Any other professional financial designation approved
3 by the director by rule;

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

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

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

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

21 5. For good cause shown, the director may grant an
22 extension of time during which the educational requirements
23 imposed by this section may be completed, but such extension of
24 time shall not exceed the period of one calendar year. The
25 director may grant an individual waiver of the mandatory
26 continuing education requirement upon a showing by the licensee
27 that it is not feasible for the licensee to satisfy the
28 requirements prior to the renewal date. Waivers may be granted

1 for reasons including, but not limited to:

2 (1) Serious physical injury or illness;

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

5 (3) Residence outside the United States; or

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

7 6. Every person subject to the provisions of this section
8 shall furnish in a form satisfactory to the director, written
9 certification as to the courses, programs or seminars of
10 instruction taken and successfully completed by such person.

11 Every provider of continuing education courses authorized in this
12 state shall, within thirty working days of a licensed producer
13 completing its approved course, provide certification to the
14 director of the completion in a format prescribed by the
15 director.

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

22 8. The provisions of this section shall not apply to a life
23 insurance producer who is limited by the terms of a written
24 agreement with the insurer to transact only specific life
25 insurance policies having an initial face amount of five thousand
26 dollars or less, or annuities having an initial face amount of
27 ten thousand dollars or less, that are designated by the
28 purchaser for the payment of funeral or burial expenses. The

1 director may require the insurer entering into the written
2 agreements with the insurance producers pursuant to this
3 subsection to certify as to the representations of the insurance
4 producers.

5 9. Rules and regulations necessary to implement and
6 administer this section shall be promulgated by the director,
7 including, but not limited to, rules and regulations regarding
8 the following:

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

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

26 10. All funds received pursuant to the provisions of this
27 section shall be transmitted by the director to the department of
28 revenue for deposit in the state treasury to the credit of the

1 insurance dedicated fund. All expenditures necessitated by this
2 section shall be paid from funds appropriated from the insurance
3 dedicated fund by the legislature.

4 375.1025. As used in sections 375.1025 to 375.1062, the
5 following terms shall mean:

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

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

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

18 (3) "AICPA", the American Institute of Certified Public
19 Accountants;

20 (4) "Audit committee", a committee (or equivalent body)
21 established by the board of directors of an entity for the
22 purpose of overseeing the accounting and financial reporting
23 processes of an insurer or group of insurers, and audits of
24 financial statements of the insurer or group of insurers. The
25 audit committee of any entity that controls a group of insurers
26 may be deemed to be the audit committee for one or more of such
27 controlled insurers solely for the purposes of sections 375.1025
28 to 375.1062 at the election of the controlling person. Such

1 election shall be exercised under subsection 5 of section
2 375.1053. If an audit committee is not designated by the
3 insurer, the insurer's entire board of directors shall constitute
4 the audit committee;

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

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

9 ~~[(3)]~~ (7) "Director", the director of the department of
10 insurance, financial institutions and professional registration;

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

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

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

24 ~~[(4)]~~ (11) "Insurer", an insurer certified to do business
25 in this state pursuant to section 375.161 or 375.831, and to
26 companies authorized to transact business in this state pursuant
27 to chapters 354, 376, 377, 378, 379 and 381, RSMo;

28 (12) "Internal control over financial reporting", a process

1 effected by an entity's board of directors, management and other
2 personnel designed to provide reasonable assurance regarding the
3 reliability of the financial statements, i.e., those items
4 specified in subsections 2 to 7 of section 375.1032 and includes
5 those policies and procedures that:

6 (a) Pertain to the maintenance of records that, in
7 reasonable detail, accurately and fairly reflect the transactions
8 and dispositions of assets;

9 (b) Provide reasonable assurance that transactions are
10 recorded as necessary to permit preparation of financial
11 statements, i.e., those items specified in subsections 2 to 7 of
12 section 375.1032, and that receipts and expenditures are being
13 made only in accordance with authorizations of management and
14 directors; and

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

20 (13) "NAIC", the National Association of Insurance
21 Commissioners;

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

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

27 (16) "Section 404 report", management's report on internal
28 control over financial reporting, as defined by the SEC and the

1 related attestation report of the independent certified public
2 accountant as described in subsection 1 of section 375.1030;

3 (17) "SOX compliant entity", an entity that either is
4 required to be or voluntarily is compliant with all of the
5 following provisions of the Sarbanes-Oxley Act of 2002, as
6 amended:

7 (a) The preapproval requirements of Section 201 (Section
8 10A(i) of the federal Securities Exchange Act of 1934);

9 (b) The audit committee independence requirements of
10 Section 301 (Section 10A(m) (3) of the federal Securities Exchange
11 Act of 1934); and

12 (c) The internal control over financial reporting
13 requirements of Section 404.

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

26 2. Foreign or alien insurers filing audited financial
27 reports in another state, pursuant to such other state's
28 requirement for filing of audited financial reports which [are]

1 have been found by the director to be substantially similar to
2 the requirements herein, are exempt from sections [375.1025 to
3 375.1062] 375.1030 to 375.1050 if:

4 (1) A copy of the audited financial report [and the
5 evaluation of accounting procedures and systems of internal
6 control report which], communication of internal control-related
7 matters noted in an audit, and the accountant's letter of
8 qualifications that are filed with such other state are filed
9 with the director in accordance with the filing dates specified
10 in sections 375.1030, 375.1047, and [375.1052] 375.1040,
11 respectively. Canadian insurers may submit accountant's reports
12 as filed with the [Canadian Dominion Department of Insurance;]
13 Office of the Superintendent of Financial Institutions, Canada;
14 and

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

18 3. Foreign or alien insurers required to file management's
19 report of internal control over financial reporting in another
20 state are exempt from filing such report in this state, provided
21 such other state has substantially similar reporting requirements
22 and such report is filed with such other state's chief insurance
23 regulatory official within the time specified.

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

28 375.1030. 1. All insurers shall have an annual audit

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

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

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

21 4. Every insurer required to file an annual audited
22 financial report under sections 375.1025 to 375.1062 shall
23 designate a group of individuals as constituting its audit
24 committee, as defined in section 375.1025. The audit committee
25 of an entity that controls an insurer may be deemed to be the
26 insurer's audit committee for purposes of sections 375.1025 to
27 375.1062 at the election of the controlling person.

28 375.1032. 1. The annual audited financial report shall

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

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

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

21 (a)] a reconciliation of differences, if any, between the
22 audited statutory financial statements and the annual statement
23 filed pursuant to section 375.041 and section 354.105, 354.435,
24 RSMo, 376.350, RSMo, 377.100, 377.380, RSMo, 378.350, RSMo,
25 379.105, RSMo, 380.051 or 380.482, RSMo, with a written
26 description of the nature of these differences[;

27 (b) A summary of ownership and relationships of the insurer
28 and all affiliated companies; and

1 (c) A narrative explanation of all significant intercompany
2 transactions and balances].

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

7 (1)], and the financial statement shall be comparative,
8 presenting the amounts as of December thirty-first of the current
9 year and the amounts as of the immediately preceding December
10 thirty-first. However, in the first year in which an insurer is
11 required to file an audited financial report, the comparative
12 data may be omitted[;

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

14 (3) Insignificant amounts may be combined].

15 375.1035. 1. Each insurer required by sections 375.1025 to
16 [375.1057] 375.1062 to file an annual audited financial report
17 shall, within sixty days after becoming subject to such
18 requirement, register with the director in writing the name and
19 address of its independent certified public accountant or
20 accounting firm [(generally referred to in sections 375.1025 to
21 375.1057 as the "accountant")] retained to conduct the annual
22 audit set forth in sections 375.1025 to [375.1057] 375.1062. Any
23 insurer not retaining an independent certified public accountant
24 on the effective date of sections 375.1025 to [375.1057] 375.1062
25 shall register the name and address of its retained independent
26 certified public accountant not less than six months before the
27 date when the first audited financial report is to be filed.

28 2. The insurer shall obtain a letter from such accountant,

1 and file a copy with the director stating that the accountant is
2 aware of the provisions of the insurance laws and the rules and
3 regulations of the department of insurance of the state of
4 domicile that relate to accounting and financial matters and
5 affirming that [he] the accountant will express his or her
6 opinion on the financial statements in [the] terms of their
7 conformity to the statutory accounting practices prescribed or
8 otherwise permitted by that department of insurance, specifying
9 such exceptions as he or she may believe appropriate.

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

1 responsible for rendering its report. The insurer shall also in
2 writing request such former accountant to furnish a letter
3 addressed to the [director] insurer stating whether the
4 accountant agrees with the statements contained in the insurer's
5 letter and, if not, stating the reasons for which he does not
6 agree, and the insurer shall furnish such responsive letter from
7 the former accountant to the director together with its own.

8 375.1037. 1. The director shall not recognize [or approve]
9 any person or firm as [an] a qualified independent certified
10 public accountant [that] if such person or firm:

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

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

17 2. Except as otherwise provided [herein, a] in sections
18 375.1025 to 375.1062, the director shall recognize an independent
19 certified public accountant [shall be recognized as independent]
20 as qualified as long as he or she conforms to the standards of
21 his or her profession, as contained in the code of professional
22 ethics of the American Institute of Certified Public Accountants
23 and rules and regulations and code of ethics and rules of
24 professional conduct of the Missouri state board of accountancy,
25 or similar code.

26 3. [No partner or other person responsible for rendering a
27 report may] The lead or coordinating audit partner or person
28 having primary responsibility for the audit shall not act in that

1 capacity for more than [seven] five consecutive years.

2 [Following any period of service] Such partner or person shall be
3 disqualified from acting in that or a similar capacity for the
4 same company or its insurance subsidiaries or affiliates for a
5 period of [two] five years. An insurer may make application to
6 the director for relief from the above rotation requirement on
7 the basis of unusual circumstances. Such application shall be
8 made at least thirty days before the end of the calendar year.

9 The insurer shall file, with its annual statement filing, the
10 approval, if any, for relief from this subsection with the states
11 that it is licensed in or doing business in and with the NAIC.

12 If the nondomestic state accepts electronic filing with the NAIC,
13 the insurer shall file the approval in an electronic format
14 acceptable to the NAIC. The director may consider the following
15 factors in determining if the relief should be granted:

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

18 (2) Premium volume of the insurer; or

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

21 4. The director shall [not] neither recognize as [capable
22 or competent,] a qualified independent certified public
23 accountant, nor [shall the director] accept any annual audited
24 financial report, prepared in whole or in part by any natural
25 person who:

26 (1) Has been convicted of fraud, bribery, a violation of
27 the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C.
28 Sections 1961 to 1968, or any dishonest conduct or practices

1 under federal law or the laws of any state;

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

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

9 5. The director [shall notify the insurer should he
10 determine that the certified public accountant is not independent
11 or is incapable or incompetent] may hold a hearing under sections
12 536.100 to 536.140, RSMo, to determine whether an independent
13 certified public accountant is qualified and, considering the
14 evidence presented, may rule that the accountant is not qualified
15 for purposes of expressing his or her opinion on the financial
16 statements in the annual audited financial report made pursuant
17 to sections 375.1025 to [375.1057. If the insurer contests such
18 determination, the director shall hold a hearing to determine
19 whether the certified public accountant is independent, capable
20 and competent, and, considering the evidence presented, may rule
21 that the accountant is not independent or is incapable or
22 incompetent for purposes of expressing his opinion on the
23 financial statements in the annual audited financial report]
24 375.1062 and require the insurer to replace the accountant with
25 another whose relationship with the insurer is [independent]
26 qualified within the meaning of[, or who is capable or competent
27 to perform the requirements of,] sections 375.1025 to [375.1057]
28 375.1062.

1 6. A qualified independent certified public accountant may
2 enter into an agreement with an insurer to have disputes relating
3 to an audit resolved by mediation or arbitration. However, in
4 the event of a delinquency proceeding commenced against the
5 insurer under sections 375.570 to 375.750, the mediation or
6 arbitration provisions shall operate at the option of the
7 statutory successor.

8 7. The director shall not recognize as a qualified
9 independent certified public accountant, nor accept an annual
10 audited financial report, prepared in whole or in part by an
11 accountant who functions in the role of management, audits his or
12 her own work, or serves in an advocacy role for the insurer.
13 Without limiting the foregoing, the director shall not recognize
14 as a qualified independent certified public accountant, nor
15 accept an annual audited financial report, prepared in whole or
16 in part by an accountant who provides to an insurer,
17 contemporaneously with the audit, the following nonaudit
18 services:

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

21 (2) Financial information systems design and
22 implementation;

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

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

27 The accountant may assist an insurer in understanding the
28 methods, assumptions, and inputs used in the determination of

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

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

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

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

(5) Internal audit outsourcing services;

(6) Management functions or human resources;

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

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

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

8. Insurers having direct written and assumed premiums of
less than one hundred million dollars in any calendar year may
request an exemption from subsection 7 of this section. The
insurer shall file with the director a written statement
discussing the reasons why the insurer should be exempt from

1 these provisions. If the director finds, upon review of this
2 statement, that compliance with this requirement would constitute
3 a financial or organizational hardship upon the insurer, an
4 exemption may be granted.

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

11 10. All auditing services and nonaudit services provided to
12 an insurer by the qualified independent certified public
13 accountant of the insurer shall be preapproved by the audit
14 committee. The preapproval requirement is waived with respect to
15 nonaudit services if the insurer is a SOX compliant entity or a
16 direct or indirect wholly owned subsidiary of a SOX compliant
17 entity or:

18 (1) The aggregate amount of all such nonaudit services
19 provided to the insurer constitutes not more than five percent of
20 the total amount of fees paid by the insurer to its qualified
21 independent certified public accountant during the fiscal year in
22 which the nonaudit services are provided;

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

25 (3) The services are promptly brought to the attention of
26 the audit committee and approved prior to the completion of the
27 audit by the audit committee or by one or more members of the
28 audit committee who are the members of the board of directors to

1 whom authority to grant such approvals has been delegated by the
2 audit committee.

3 11. The audit committee may delegate to one or more
4 designated members of the audit committee the authority to grant
5 the preapprovals required by subsection 10 of this section. The
6 decisions of any member to whom this authority is delegated shall
7 be presented to the full audit committee at each of its scheduled
8 meetings.

9 12. The director shall not recognize an independent
10 certified public accountant as qualified for a particular insurer
11 if a member of the board, president, chief executive officer,
12 controller, chief financial officer, chief accounting officer, or
13 any person serving in an equivalent position for that insurer was
14 employed by the independent certified public accountant and
15 participated in the audit of that insurer during the one-year
16 period preceding the date that the most current statutory opinion
17 is due.

18 13. Subsection 12 of this section shall only apply to
19 partners and senior managers involved in the audit. An insurer
20 may make application to the director for relief from subsection
21 12 of this section on the basis of unusual circumstances. The
22 insurer shall file, with its annual statement filing, the
23 approval for relief from subsection 12 of this section with the
24 states that it is licensed in or doing business in and the NAIC.
25 If the nondomestic state accepts electronic filing with the NAIC,
26 the insurer shall file the approval in an electronic format
27 acceptable to the NAIC.

28 375.1038. An insurer may make written application to the

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

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

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

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

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

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

22 375.1040. The accountant shall furnish the insurer in
23 connection with, and for inclusion in, the filing of the annual
24 audited financial report, a letter stating:

25 (1) **[That he]** Such accountant is independent with respect
26 to the insurer and conforms to the standards of his or her
27 profession as contained in the code of professional ethics and
28 pronouncements of the American Institute of Certified Public

1 Accountants, and the rules of professional conduct of the
2 Missouri board of accountancy, or similar code;

3 (2) The background and experience in general, and the
4 experience in audits of insurers, of the staff assigned to audit
5 the financial statements of the insurer and whether each is an
6 independent certified public accountant. Nothing within this
7 requirement shall be construed as prohibiting the accountant from
8 utilizing such staff as he or she deems appropriate where use is
9 consistent with the standards prescribed by generally accepted
10 auditing standards;

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

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

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

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

28 (7)] That the accountant is in compliance with the

1 requirements of section 375.1037.

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

25 375.1045. 1. The insurer required to furnish the annual
26 audited financial report shall require the independent certified
27 public accountant to report, in writing, within five business
28 days to the board of directors or its audit committee any

determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the director as of the balance sheet date currently under ~~[examination]~~ audit or that the insurer does not meet the minimum capital and surplus requirement of the law as of that date. An insurer who has received a report pursuant to this subsection shall forward a copy of the report to the director within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the director. If the independent certified public accountant fails to receive such evidence within the required five-business-day period, the independent certified public accountant shall furnish to the director a copy of its report within the next five business days.

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

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

375.1047. 1. In addition to the annual audited financial report, each insurer shall furnish the director with a ~~[report of~~

1 evaluation performed by the accountant, in connection with his
2 examination, of the system of internal accounting controls of the
3 insurer] written communication as to any unremediated material
4 weaknesses in its internal control over financial reporting noted
5 during the audit. Such communication shall be prepared by the
6 accountant within sixty days after the filing of the annual
7 audited financial report and shall contain a description of any
8 unremediated material weakness, as the term material weakness is
9 defined by Statement on Auditing Standard 60, Communication of
10 Internal Control Related Matters Noted in an Audit, or its
11 replacement, as of December thirty-first immediately preceding in
12 the insurer's internal control over financial reporting noted by
13 the accountant during the course of their audit of the financial
14 statements. If no unremediated material weaknesses were noted,
15 the communication shall so state.

16 2. [A report of the evaluation by the accountant of the
17 system of internal accounting controls of the insurer, including
18 any remedial action taken or proposed, shall be filed annually by
19 the insurer with the director within sixty days after the filing
20 of the annual audited financial report. This report shall follow
21 generally the form for reports on internal control structure
22 related matters noted in an audit described in Volume 1, Section
23 AU 325 of the professional standards of the American Institute of
24 Certified Public Accountants, as may be amended, or in the event
25 that such standards no longer be published, a similar standard to
26 be designated by the director by duly promulgated regulation] The
27 insurer is required to provide a description of remedial actions
28 taken or proposed to correct unremediated material weaknesses, if

1 the actions are not described in the accountant's communication.

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

16 2. Every insurer required to file an audited financial
17 report pursuant to sections 375.1025 to 375.1062 shall require
18 the accountant to make available for review by the examiners of
19 the department of insurance, financial institutions and
20 professional registration all workpapers prepared in the conduct
21 of [his examination] the accountant's audit and any
22 communications related to the audit between the accountant and
23 the insurer, at the offices of the insurer, at the department of
24 insurance, financial institutions and professional registration
25 or at any other reasonable place designated by the director. The
26 insurer shall require that the accountant retain the audit
27 workpapers and communications until the department has filed a
28 report on examination covering the period of the audit, but no

1 longer than seven years from the date of the audit report.

2 3. In the conduct of any examination or review by the
3 department examiners, it shall be agreed that photocopies of
4 pertinent audit workpapers may be made and retained by the
5 [director] department. Such reviews by the [director or his]
6 department examiners shall be considered investigations and all
7 working papers and communications obtained during the course of
8 such investigations shall be afforded the same confidentiality as
9 other examination workpapers generated by the department.

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

24 2. Domestic insurers:

25 (1) Retaining a certified public accountant on the
26 effective date of this section who qualifies as independent shall
27 comply with sections 375.1025 to 375.1062 for the year ending
28 December 31, 2009, and each year thereafter unless the director

1 permits otherwise;

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

4 shall meet the following schedule for compliance with sections
5 375.1025 to 375.1062 unless the director permits otherwise:

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

9 (a) Report of independent certified public accountant;

10 (b) Audited balance sheet;

11 (c) Notes to audited balance sheet;

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

14 (b) For the year ending December 31, [1992] 2010, and each
15 year thereafter, such insurers shall file with the director all
16 reports and communications required by sections 375.1025 to
17 375.1062.

18 3. Foreign insurers shall comply with sections 375.1025 to
19 375.1062 for the year ending December 31, 1992, and each year
20 thereafter, unless the director permits otherwise.

21 4. The requirements of subsection three of section 375.1037
22 shall be in effect for audits of the year beginning January 1,
23 2010, and thereafter.

24 5. The requirements of section 375.1053 are to be in effect
25 January 1, 2010. An insurer or group of insurers that is not
26 required to have independent audit committee members or only a
27 majority but not a supermajority of independent audit committee

1 members, because the total written and assumed premium is below
2 the threshold and subsequently becomes subject to one of the
3 independence requirements due to changes in premium shall have
4 one year following the year the threshold is exceeded, but not
5 earlier than January 1, 2010, to comply with the independence
6 requirements. Likewise, an insurer that becomes subject to one
7 of the independence requirements as a result of a business
8 combination shall have one calendar year following the date of
9 acquisition or combination to comply with the independence
10 requirements.

11 6. The requirements of sections 375.1038, 375.1054, and
12 375.1056 are effective beginning with the reporting period ending
13 December 31, 2010, and each year thereafter. An insurer or group
14 of insurers that is not required to file a report because the
15 total written premium is below the threshold and subsequently
16 becomes subject to the reporting requirements shall have two
17 years following the year the threshold is exceeded to file a
18 report. Likewise, an insurer acquired in a business combination
19 shall have two calendar years following the date of acquisition
20 or combination to comply with the reporting requirements.

21 375.1053. 1. This section shall not apply to foreign or
22 alien insurers licensed in this state or an insurer that is a SOX
23 compliant entity or a direct or indirect wholly owned subsidiary
24 of a SOX compliant entity.

25 2. The audit committee shall be directly responsible for
26 the appointment, compensation, and oversight of the work of any
27 accountant, including resolution of disagreements between
28 management and the accountant regarding financial reporting, for

1 the purpose of preparing or issuing the audited financial report
2 or related work under sections 375.1025 to 375.1062. Each
3 accountant shall report directly to the audit committee.

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

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

19 5. If a member of the audit committee ceases to be
20 independent for reasons outside the member's reasonable control,
21 that person, with notice by the responsible entity to the state,
22 may remain an audit committee member of the responsible entity
23 until the earlier of the next annual meeting of the responsible
24 entity or one year from the occurrence of the event that caused
25 the member to be no longer independent.

26 6. To exercise the election of the controlling person to
27 designate the audit committee for purposes of sections 375.1025
28 to 375.1062, the ultimate controlling person shall provide

written notice to the chief state insurance regulatory officials
of the affected insurers. Notification shall be made timely
prior to the issuance of the statutory audit report and include a
description of the basis for the election. The election can be
changed through notice to the director by the insurer, which
shall include a description of the basis for the change. The
election shall remain in effect for perpetuity, until rescinded.

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

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

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

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

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

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

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

8 (2) If the insurer wrote direct and assumed premiums of
9 three hundred million to five hundred million dollars during the
10 prior calendar year, at least a majority of the members of the
11 audit committee shall be independent; and

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

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

27 375.1054. 1. No director or officer of an insurer shall,
28 directly or indirectly:

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

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

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

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

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

1 professional or regulatory standards;

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

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

6 (4) Not to communicate matters to an insurer's audit
7 committee.

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

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

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

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

1 (1) Directly subject to Section 404;
2 (2) Part of a holding company system whose parent is
3 directly subject to Section 404;
4 (3) Not directly subject to Section 404 but is a SOX
5 compliant entity; or
6 (4) A member of a holding company system whose parent is
7 not directly subject to Section 404 but is a SOX compliant entity

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

1 statements not covered by the Section 404 report.

2 4. Management's report of internal control over financial
3 reporting shall include:

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

7 (2) A statement that management has established internal
8 control over financial reporting and an assertion, to the best of
9 management's knowledge and belief, after diligent inquiry, as to
10 whether its internal control over financial reporting is
11 effective to provide reasonable assurance regarding the
12 reliability of financial statements in accordance with statutory
13 accounting principles;

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

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

19 (5) Disclosure of any unremediated material weaknesses in
20 the internal control over financial reporting identified by
21 management as of December thirty-first immediately preceding.

22 Management is not permitted to conclude that the internal control
23 over financial reporting is effective to provide reasonable
24 assurance regarding the reliability of financial statements in
25 accordance with statutory accounting principles if there is one
26 or more unremediated material weaknesses in its internal control
27 over financial reporting;

28 (6) A statement regarding the inherent limitations of

1 internal control systems; and

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

4 5. Management shall document and make available upon
5 financial condition examination the basis upon which its
6 assertions required in subsection 4 of this section are made.
7 Management may base its assertions, in part, upon its review,
8 monitoring and testing of internal controls undertaken in the
9 normal course of its activities. Management shall have
10 discretion as to the nature of the internal control framework
11 used, and the nature and extent of documentation, in order to
12 make its assertion in a cost-effective manner and, as such, may
13 include assembly of or reference to existing documentation.
14 Management's report on internal control over financial reporting,
15 required by subsection 1 of this section, and any documentation
16 provided in support thereof during the course of a financial
17 condition examination, shall be kept confidential by the
18 department.

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

21 375.1057. 1. In the case of Canadian and British insurers,
22 the annual audited financial report shall be defined as the
23 annual statement of total business on the form filed by such
24 companies with their [domiciliary supervisory] supervision
25 authority duly audited by an independent chartered accountant.

26 2. For such Canadian and British insurers, the letter
27 required by subsection 2 of section 375.1035 shall state that the
28 accountant is aware of the requirements relating to the annual

1 audited financial report filed with the director pursuant to
2 section 375.1030 and shall affirm that the opinion expressed is
3 in conformity with such requirements.

4 376.391. A health benefit plan or health carrier, as
5 defined in section 376.1350, including but not limited to
6 preferred provider organizations, independent physicians
7 associations, third-party administrators, or any entity that
8 contracts with licensed health care providers shall not impose
9 any co-payment that exceeds fifty percent of the total cost of
10 providing any single chiropractic service to its enrollees.

11 376.502. 1. No life insurance company doing business
12 within this state shall deny or refuse to accept an application
13 for life insurance, refuse to renew, cancel, restrict, or
14 otherwise terminate a policy of life insurance, or charge a
15 different rate for the same life insurance coverage, based upon
16 the applicant's or insured's past or future lawful travel
17 destinations. Nothing in this section shall prohibit a life
18 insurance company from denying an application for life insurance,
19 or restricting or charging a different premium or rate for
20 coverage under such a policy based on a specific travel
21 destination where the denial, restriction, or rate differential
22 is based upon sound actuarial principles or is related to actual
23 or reasonably anticipated experience.

24 2. A violation of the provisions of this section shall be
25 unfair trade practice as defined by sections 375.930 to 375.948,
26 RSMo, and shall be governed by and subject to all of the
27 provisions and penalties provided by such sections.

28 3. The provisions of this section shall apply to any life

1 insurance policy issued or renewed on or after August 28, 2009.

2 376.1232. 1. Each health carrier or health benefit plan
3 that offers or issues health benefit plans which are delivered,
4 issued for delivery, continued, or renewed in this state on or
5 after January 1, 2010, shall offer coverage for prosthetic
6 devices and services, including original and replacement devices,
7 as prescribed by a physician acting within the scope of his or
8 her practice.

9 2. For the purposes of this section, "health carrier" and
10 "health benefit plan" shall have the same meaning as defined in
11 section 376.1350.

12 3. The amount of the benefit for prosthetic devices and
13 services under this section shall be no less than the annual and
14 lifetime benefit maximums applicable to the basic health care
15 services required to be provided under the health benefit plan.
16 If the health benefit plan does not include any annual or
17 lifetime maximums applicable to basic health care services, the
18 amount of the benefit for prosthetic devices and services shall
19 not be subject to an annual or lifetime maximum benefit level.
20 Any copayment, coinsurance, deductible, and maximum out-of-pocket
21 amount applied to the benefit for prosthetic devices and services
22 shall be no more than the most common amounts applied to the
23 basic health care services required to be provided under the
24 health benefit plan.

25 4. The provisions of this section shall not apply to a
26 supplemental insurance policy, including a life care contract,
27 accident-only policy, specified disease policy, hospital policy
28 providing a fixed daily benefit only, Medicare supplement policy,

1 long-term care policy, short-term major medical policies of six
2 months or less duration, or any other supplemental policy as
3 determined by the director of the department of insurance,
4 financial institutions and professional registration.

5 379.1300. As used in sections 379.1300 to 379.1350, the
6 following terms shall mean:

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

11 (2) "Alien captive insurance company", any insurance
12 company formed to write insurance business for its parents and
13 affiliates and licensed under the laws of an alien jurisdiction
14 that imposes statutory or regulatory standards in a form
15 acceptable to the director on companies transacting the business
16 of insurance in such jurisdiction;

17 (3) "Annuity", a contract issued for a valuable
18 consideration under which the obligations are assumed with
19 respect to periodic payments for a specified term or terms or
20 where the making or continuance of all or of some of such
21 payments, or the amount of any such payments, is dependent upon
22 the continuance of human life;

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

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

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

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

8 (5) "Association captive insurance company", any company
9 that insures risks of the member organizations of the association
10 and their affiliated companies; except that, association captive
11 insurance company shall not include, without limitation, any
12 reciprocal insurer that has not chosen to apply for and is not
13 licensed as a captive insurance company under section 379.1302;

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

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

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

22 (9) "Captive insurance company", any pure captive insurance
23 company, association captive insurance company, or industrial
24 insured captive insurance company formed or licensed under
25 sections 379.1300 to 379.1350. For purposes of sections 379.1300
26 to 379.1350, a branch captive insurance company shall be a pure
27 captive insurance company with respect to operations in this
28 state, unless otherwise permitted by the director;

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

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

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

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

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

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

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

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

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

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

22 (14) "Industrial insured captive insurance company", any
23 company that insures risks of the industrial insureds that
24 comprise the industrial insured group and their affiliated
25 companies;

26 (15) "Industrial insured group", any group of industrial
27 insureds that collectively:

28 (a) Own, control, or hold with power to vote all of the

1 outstanding voting securities of an industrial insured captive
2 insurance company incorporated as a stock insurer; or

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

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

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

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

14 (a) Securities of a pure captive insurance company
15 organized as a stock corporation; or

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

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

21 379.1302. 1. Any captive insurance company, when permitted
22 by its articles of association, charter, or other organizational
23 document, may apply to the director for a license to do any and
24 all insurance and annuity contracts comprised in section 376.010,
25 RSMo, and subsection 1 of section 379.010, other than workers'
26 compensation and employers' liability; provided, however, that:

27 (1) No pure captive insurance company shall insure any
28 risks other than those of its parent and affiliated companies or

1 controlled unaffiliated business;

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

5 (3) No industrial insured captive insurance company shall
6 insure any risks other than those of the industrial insureds that
7 comprise the industrial insured group and their affiliated
8 companies;

9 (4) No captive insurance company shall provide personal
10 motor vehicle or homeowner's insurance coverage or any component
11 thereof;

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

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

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

28 (8) No captive insurance company shall transact business as

1 a risk retention group under sections 375.1080 to 375.1105, RSMo.

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

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

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

9 (3) It maintains its principal place of business in this
10 state; and

11 (4) It appoints a registered agent to accept service of
12 process and to otherwise act on its behalf in this state;
13 provided that, whenever such registered agent cannot with
14 reasonable diligence be found at the registered office of the
15 captive insurance company, the secretary of state shall be an
16 agent of such captive insurance company upon whom any process,
17 notice, or demand may be served[; and

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

21 3. (1) Before receiving a license, a captive insurance
22 company shall:

23 (a) File with the director a certified copy of its
24 organizational documents, a statement under oath of its president
25 and secretary showing its financial condition, and any other
26 statements or documents required by the director; and

27 (b) Submit to the director for approval a description of
28 the coverages, deductibles, coverage limits, and rates, together

1 with such additional information as the director may reasonably
2 require. In the event of any subsequent material change in any
3 item in such description, the captive insurance company shall
4 submit to the director for approval an appropriate revision and
5 shall not offer any additional kinds of insurance until a
6 revision of such description is approved by the director. The
7 captive insurance company shall inform the director of any
8 material change in rates within thirty days of the adoption of
9 such change.

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

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

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

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

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

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

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

26 (a) Such information may be discoverable by a party in a
27 civil action or contested case to which the captive insurance
28 company that submitted such information is a party, upon a

1 showing by the party seeking to discover such information that:

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

4 b. The information sought is unavailable from other
5 nonconfidential sources; and

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

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

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

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

17 (c) The director may disclose information to the director
18 of the division of workers' compensation regarding any captive
19 insurance company issuing excess workers' compensation insurance
20 provided that the director for the division of workers'
21 compensation agrees in writing to maintain the confidentiality of
22 such information provided by the director.

23 (4) Each captive insurance company shall pay to the
24 director a nonrefundable license fee of seven thousand five
25 hundred dollars for examining, investigating, and processing its
26 application for license, and the director is authorized to retain
27 legal, financial, and examination services from outside the
28 department, the reasonable cost of which may be charged against

1 the applicant. The provisions of sections 374.160 to 374.162 and
2 sections 374.202 to 374.207, RSMo, shall apply to examinations,
3 investigations, and processing conducted under the authority of
4 this section. In addition, each captive insurance company shall
5 pay a renewal fee for each year thereafter of seven thousand five
6 hundred dollars. Each captive insurance company may deduct the
7 license and renewal fee paid from the premium taxes payable under
8 section 379.1326.

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

15 379.1310. 1. A pure captive insurance company may be
16 incorporated as a stock insurer with its capital divided into
17 shares and held by the stockholders as a nonprofit corporation
18 with one or more members, or as a manager-managed limited
19 liability company.

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

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

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

26 (3) Organized as a manager-managed limited liability
27 company; or

28 (4) Organized as a reciprocal insurer in accordance with

1 sections 379.650 to 379.790.

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

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

7 (1) Formed as a corporation, before the articles of
8 incorporation are transmitted to the secretary of state, the
9 incorporators shall petition the director to issue a certificate
10 setting forth the director's finding that the establishment and
11 maintenance of the proposed corporation will promote the general
12 good of the state. In arriving at such a finding the director
13 shall consider:

14 (a) The character, reputation, financial standing and
15 purposes of the incorporators;

16 (b) The character, reputation, financial responsibility,
17 insurance experience, and business qualifications of the officers
18 and directors; and

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

21 The articles of incorporation, such certificate, and the
22 organization fee shall be transmitted to the secretary of state,
23 who shall thereupon record both the articles of incorporation and
24 the certificate;

25 (2) Formed as a limited liability company, before the
26 articles of organization are transmitted to the secretary of
27 state, the organizers shall petition the director to issue a
28 certificate setting forth the director's finding that the

1 establishment and maintenance of the proposed company will
2 promote the general good of the state. In arriving at such a
3 finding, the director shall consider the items set forth in
4 paragraphs (a) to (c) of subdivision (1) of this subsection;

5 (3) Formed as a reciprocal insurer, the organizers shall
6 petition the director to issue a certificate setting the
7 director's finding that the establishment and maintenance of the
8 proposed association will promote the general good of the state.
9 In arriving at such a finding the director shall consider the
10 items set forth in paragraphs (a) to (c) of subdivision (1) of
11 this subsection.

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

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

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

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

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

23 7. Other than captive insurance companies formed as limited
24 liability companies under chapter 347, RSMo, or as nonprofit
25 corporations under chapter 355, RSMo, captive insurance companies
26 formed as corporations under sections 379.1300 to 379.1350 shall
27 have the privileges and be subject to chapter 351, RSMo, as well
28 as the applicable provisions contained in sections 379.1300 to

1 379.1308. In the event of conflict between the provisions of
2 such general corporation law and sections 379.1300 to 379.1350,
3 sections 379.1300 to 379.1350 shall control.

4 8. Captive insurance companies formed under sections
5 379.1300 to 379.1350:

6 (1) As limited liability companies shall have the
7 privileges and be subject to the provisions of chapter 347, RSMo,
8 as well as the applicable provisions contained in sections
9 379.1300 to 379.1350. In the event of a conflict between chapter
10 347, RSMo, and sections 379.1300 to 379.1350, sections 379.1300
11 to 379.1350 shall control; or

12 (2) As nonprofit corporations shall have the privileges and
13 be subject to the provisions of chapter 355, RSMo, as well as the
14 applicable provisions contained in sections 379.1300 to 379.1350.
15 In the event of conflict between chapter 355, RSMo, and sections
16 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall
17 control.

18 9. The provisions of section 375.355, RSMo, section
19 375.908, RSMo, sections 379.980 to 379.988, and chapter 382,
20 RSMo, pertaining to mergers, consolidations, conversions,
21 mutualizations, redomestications, and mutual holding companies
22 shall apply in determining the procedures to be followed by
23 captive insurance companies in carrying out any of the
24 transactions described therein; except that:

25 (1) The director may waive or modify the requirements for
26 public notice and hearing in accordance with rules which the
27 director may adopt addressing categories of transactions. If a
28 notice of public hearing is required, but no one requests a

1 hearing, then the director may cancel the hearing;

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

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

10 11. Captive insurance companies formed as reciprocal
11 insurers under the provisions of sections 379.1300 to 379.1350
12 shall have the privileges and be subject to the provisions of
13 sections 379.650 to 379.790 in addition to the applicable
14 provisions of sections 379.1300 to 379.1350. In the event of a
15 conflict between the provisions of sections 379.650 to 379.790
16 and the provisions of sections 379.1300 to 379.1350, the latter
17 shall control, to the extent a reciprocal insurer is made subject
18 to other provisions of chapters 374, 375, and 379 under sections
19 379.650 to 379.790, such provisions shall not be applicable to a
20 reciprocal insurer formed under sections 379.1300 to 379.1350
21 unless such provisions are expressly made applicable to captive
22 insurance companies under sections 379.1300 to 379.1350.

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

27 379.1326. 1. Each captive insurance company shall pay to
28 the director of revenue, on or before May first of each year, a

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

15 2. Each captive insurance company shall pay to the director
16 of revenue on or before May first of each year a premium tax at
17 the rate of two hundred fourteen-thousandths of one percent on
18 the first twenty million dollars of assumed reinsurance premium,
19 and one hundred forty-three-thousandths of one percent on the
20 next twenty million dollars and forty-eight-thousandths of one
21 percent on the next twenty million dollars and
22 twenty-four-thousandths of one percent of each dollar thereafter.
23 However, no reinsurance premium tax applies to premiums for risks
24 or portions of risks which are subject to taxation on a direct
25 basis under subsection 1 of this section. No reinsurance premium
26 tax shall be payable in connection with the receipt of assets in
27 exchange for the assumption of loss reserves and other
28 liabilities of another insurer under common ownership and control

1 if such transaction is part of a plan to discontinue the
2 operations of such other insurer, and if the intent of the
3 parties to such transaction is to renew or maintain such business
4 with the captive insurance company.

5 3. The annual minimum aggregate tax to be paid by a captive
6 insurance company calculated under subsections 1 and 2 of this
7 section shall be seven thousand five hundred dollars, and the
8 annual maximum aggregate tax shall be two hundred thousand
9 dollars.

10 4. Every captive insurance company shall, on or before
11 February first each year, make a return on a form provided by the
12 director, verified by the affidavit of the company's president
13 and secretary or other authorized officers, to the director
14 stating the amount of all direct premiums received and assumed
15 reinsurance premiums received, whether in cash or in notes,
16 during the year ending on December thirty-first next preceding.
17 Upon receipt of such returns, the director of the department of
18 insurance, financial institutions and professional registration
19 shall verify the same and certify the amount of tax due from the
20 various companies on the basis and at the rate provided in
21 subsections 1 to 3 of this section, and shall certify the same to
22 the director of revenue, on or before March thirty-first of each
23 year. The director of revenue shall immediately thereafter
24 notify and assess each company the amount of tax due.

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

1 6. Two or more captive insurance companies under common
2 ownership and control shall be taxed as though they were a single
3 captive insurance company.

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

6 (1) In the case of stock corporations, the direct or
7 indirect ownership of eighty percent or more of the outstanding
8 voting stock of two or more corporations by the same shareholder
9 or shareholders; and

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

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

21 9. [The state treasurer shall annually transfer the premium
22 tax revenues collected under this section to the general revenue
23 fund, except as provided in section 379.1332] Upon receiving the
24 taxes collected under this section from the director of revenue,
25 the state treasurer shall receipt ten percent thereof into the
26 insurance dedicated fund established under section 374.150, RSMo,
27 subject to a maximum of three percent of the current fiscal
28 year's appropriation from such fund, and he or she shall place

1 the remainder of such taxes collected to the general revenue fund
2 of the state.

3 _____10. The tax provided for in this section shall be
4 calculated on an annual basis, notwithstanding policies or
5 contracts of insurance or contracts of reinsurance issued on a
6 multiyear basis. In the case of multiyear policies or contracts,
7 the premium shall be prorated for purposes of determining the tax
8 under this section.

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

17 379.1332. 1. (1) The insurance dedicated fund under
18 section 374.150, RSMo, shall be adequately funded through the
19 collection of fees and taxes for the purpose of providing the
20 financial means for the director of the department of insurance,
21 financial institutions and professional registration to
22 administer sections 379.1300 to 379.1350 and for reasonable
23 expenses incurred in promoting the captive insurance industry in
24 Missouri. All fees and assessments received by the department
25 for the administration of sections 379.1300 to 379.1350 shall be
26 paid into the fund. [In addition, the transfer of twenty percent
27 of the premium tax under section 375.1014, RSMo, shall be made to
28 the insurance dedicated fund until two hundred thousand dollars

1 has been transferred. Thereafter, up to ten percent of the
2 premium tax under section 379.1326 may be transferred to the
3 insurance dedicated fund for the administration of sections
4 379.1300 to 379.1350, and up to two percent of the premium tax
5 under section 379.1326 may be transferred to the department of
6 economic development, with approval of the commissioner of
7 administration, for promotional expenses.] All fees received by
8 the department from reinsurers who assume risk solely from
9 captive insurance companies and are subject to the provisions of
10 section 375.246, RSMo, shall be deposited into the insurance
11 dedicated fund.

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

19 2. The director may anticipate receipts to the insurance
20 dedicated fund through the administration of sections 379.1300 to
21 379.1350 and issue warrants based thereon.

22 379.1339. 1. An association captive insurance company or
23 industrial insured captive insurance company formed as a stock or
24 mutual corporation may be converted to or merged with and into a
25 reciprocal insurer in accordance with a plan therefor and the
26 provisions of this section.

27 2. Any plan for such conversion or merger shall provide a
28 fair and equitable plan for purchasing, retiring, or otherwise

extinguishing the interests of the stockholders and policyholders
of a stock insurer, and the members and policyholders of a mutual
insurer, including a fair and equitable provision for the rights
and remedies of dissenting stockholders, members, or
policyholders.

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

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

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

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

(c) Provides a fair and equitable plan for the conversion
of stockholder, member, or policyholder interests into subscriber
interests in the resulting reciprocal insurer substantially
proportionate to the corresponding interests in the stock or
mutual insurer; provided, however, that this requirement shall
not preclude the resulting reciprocal insurer from applying

underwriting criteria that could affect ongoing ownership
interests; and

(d) Is approved:

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

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

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

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

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

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

4. A merger authorized under subsection 1 of this section
shall be accomplished substantially in accordance with such

procedures and plan of merger adopted by the board of directors of the captive insurance company and as authorized by the director; except that, solely for purposes of such merger:

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

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

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

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

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

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

1 surviving such merger; and

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

6 5. To the extent such effects are not inconsistent with the
7 provisions of sections 379.1300 to 379.1350, a conversion or
8 merger under this section shall have all of the following
9 effects:

10 (1) The several insurers which are parties to the agreement
11 of merger or consolidation shall be a single insurer which such
12 single insurer shall have all of the rights, privileges,
13 immunities, and powers and shall be subject to all of the duties
14 and liabilities of an insurer organized under sections 379.1300
15 to 379.1350;

16 (2) Such single insurer shall thereupon and thereafter
17 possess all the rights, privileges, immunities, powers, and
18 franchises of a public as well as of a private nature of each of
19 the insurers so merged or consolidated; and all property, real,
20 personal, and mixed, and all debts due on whatever account,
21 including subscriptions to shares of capital stock, and all other
22 choices in action and all and every other interest of or
23 belonging to or due to each of the insurers so merged or
24 consolidated shall be taken and deemed to be transferred to and
25 vested in such single insurer without further act or deed; and
26 the title to any real estate, or any interest therein, under the
27 laws of this state vested in any of such insurers shall not
28 revert or be in any way impaired by reason of such merger or

1 consolidation; and

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

15 379.1373. 1. Activities of a SPLRC must be limited to
16 those necessary to accomplish its purpose as outlined in its plan
17 of operation.

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

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

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

26 379.1388. 1. A SPLRC may recognize as an admitted asset on
27 its financial statements filed with the director:

28 (1) Permitted investments;

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

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

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

11 2. (1) The assets of a SPLRC shall be valued in the same
12 manner as the assets of a Missouri domestic life insurer[.
13 Notwithstanding the preceding, the director may by order
14 authorize a SPLRC to value one or more of its assets through an
15 alternative method]; however, letters of credit, financial
16 guarantee policies, and surety bonds issued without recourse to
17 the SPLRC, or with recourse to the SPLRC with a priority no
18 higher than afforded to class 7 claims under section 375.1218,
19 RSMo, shall be valued as follows. Letters of credit shall be
20 valued at the amount available for drawings by the SPLRC or its
21 ceding company as of the time of valuation. A financial
22 guarantee policy shall be valued at the amount available to pay
23 aggregate claims as of the time of valuation. A surety bond
24 shall be valued at the amount available to pay aggregate claims
25 as of the time of valuation.

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

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

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

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

4. A SPLRC may deduct from premium taxes payable to this state, in addition to all other credits allowed by law,

1 application fees payable under section 379.1359 and license fees
2 and renewal fees payable under section 379.1364. A deduction for
3 fees which exceeds a SPLRC's premium tax liability for the same
4 tax year shall not be refundable, but may be carried forward to
5 any subsequent tax year, not to exceed five years, until the full
6 deduction is claimed.

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

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

24 7. Upon receiving the taxes collected under this section
25 from the director of revenue, the state treasurer shall receipt
26 ninety percent thereof into the general revenue fund of the state
27 and the state treasurer shall place the remainder of such taxes
28 collected to the credit of the insurance dedicated fund

1 established under section 374.150, RSMo, subject to a maximum of
2 three percent of the current fiscal year's appropriation from
3 such fund, and he or she shall place the remainder of such taxes
4 collected to the general revenue fund of the state.

5 382.400. As used in sections 382.400 to ~~[382.410]~~ 382.409,
6 the following terms mean:

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

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

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

16 [(4)] (3) "Controlled insurer", a licensed insurer which
17 is controlled, directly or indirectly, by a ~~[broker]~~ producer;

18 [(5)] (4) "Controlling ~~[broker]~~ producer", a ~~[broker]~~
19 producer who, directly or indirectly, controls an insurer;

20 [(6)] (5) "Licensed insurer" or "insurer", any person,
21 firm, association or corporation duly licensed to transact a
22 property or casualty insurance business in this state. The
23 following are not licensed insurers for the purposes of sections
24 382.400 to 382.410:

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

1 (b) All residual market pools and joint underwriting
2 authorities or associations; and

3 (c) All captive insurers. For the purposes of sections
4 382.400 to 382.410, "captive insurers" are insurance companies
5 owned by another organization whose exclusive purpose is to
6 insure risks of the parent organization and affiliated companies
7 or, in the case of groups and associations, insurance
8 organizations owned by the insureds whose exclusive purpose is to
9 insure risks to member organizations and group members and their
10 affiliates;

11 (6) "Producer", an insurance broker or brokers or any other
12 person, firm, association, or corporation, when, for any
13 compensation, commission, or other thing of value, the person,
14 firm, association, or corporation acts or aids in any manner in
15 soliciting, negotiating, or procuring the making of an insurance
16 contract on behalf of an insured other than the person, firm,
17 association, or corporation.

18 382.402. Sections 382.400 to [382.410] 382.409 shall apply
19 to licensed insurers either domiciled in this state or domiciled
20 in a state that is not an accredited state having in effect laws
21 substantially similar to the provisions of sections 382.400 to
22 [382.410] 382.409. All provisions of this chapter, to the extent
23 they are not superseded by sections 382.400 to [382.410] 382.409,
24 shall continue to apply to all parties within holding company
25 systems subject to sections 382.400 to [382.410] 382.409.

26 382.405. 1. (1) The provisions of this section shall
27 apply if in any calendar year the aggregate amount of gross
28 written premium on business placed with a controlled insurer by

1 controlling [broker] producer is equal to or greater than five
2 percent of the admitted assets of the controlled insurer, as
3 reported in the controlled insurer's quarterly statement filed as
4 of September thirtieth of the prior year.

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

8 (a) The controlling [broker] producer:

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

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

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

24 2. A controlled insurer shall not accept business from a
25 controlling [broker] producer and a controlling [broker] producer
26 shall not place business with a controlled insurer unless there
27 is a written contract between the controlling [broker] producer
28 and the insurer specifying the responsibilities of each party,

1 which contract has been approved by the board of directors of the
2 insurer and contains the following minimum provisions:

3 (1) The controlled insurer may terminate the contract for
4 cause, upon written notice to the controlling [broker] producer.
5 The controlled insurer shall suspend the authority of the
6 controlling [broker] producer to write business during the
7 pendency of any dispute regarding the cause for the termination;

8 (2) The controlling [broker] producer shall render accounts
9 to the controlled insurer detailing all material transactions,
10 including information necessary to support all commissions,
11 charges and other fees received by, or owing to, the controlling
12 [broker] producer;

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

19 (4) All funds collected for the controlled insurer's
20 account shall be held by the controlling [broker] producer in a
21 fiduciary capacity, in one or more appropriately identified bank
22 accounts in banks that are members of the Federal Reserve System,
23 in accordance with the provisions of applicable insurance law;
24 however, funds of a controlling [broker] producer not required to
25 be licensed in this state shall be maintained in compliance with
26 the requirements of the controlling [broker's] producer's
27 domiciliary jurisdiction;

28 (5) The controlling [broker] producer shall maintain

1 separately identifiable records of business written for the
2 controlled insurer;

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

5 (7) The controlled insurer shall provide the controlling
6 [broker] producer with its underwriting standards, rules and
7 procedures, manuals setting forth the rates to be charged, and
8 the conditions for the acceptance or rejection of risks. The
9 controlling [broker] producer shall adhere to the standards,
10 rules, procedures, rates and conditions. The standards, rules,
11 procedures, rates and conditions shall be the same as those
12 applicable to comparable business placed with the controlled
13 insurer by a [broker] producer other than the controlling
14 [broker] producer;

15 (8) The rates and terms of the controlling [broker's]
16 producer's commissions, charges or other fees and the purposes
17 for those charges or fees. The rates of the commissions, charges
18 and other fees shall be no greater than those applicable to
19 comparable business placed with the controlled insurer by
20 [brokers] producers other than controlling [brokers] producers.
21 For purposes of this subdivision and subdivision (7) of this
22 subsection, examples of comparable business includes the same
23 lines of insurance, same kinds of insurance, same kinds of risks,
24 similar policy limits, and similar quality of business;

25 (9) If the contract provides that the controlling [broker]
26 producer, on insurance business placed with the insurer, is to be
27 compensated contingent upon the insurer's profits on that
28 business, then such compensation shall not be determined and paid

1 until at least five years after the premiums on liability
2 insurance are earned and at least one year after the premiums are
3 earned on any other insurance. In no event shall the commissions
4 be paid until the adequacy of the controlled insurer's reserves
5 on remaining claims has been independently verified pursuant to
6 subsection 1 of this section;

7 (10) A limit on the controlling **[broker's]** producer's
8 writings in relation to the controlled insurer's surplus and
9 total writings. The insurer may establish a different limit for
10 each line or subline of business. The controlled insurer shall
11 notify the controlling **[broker]** producer when the applicable
12 limit is approached and shall not accept business from the
13 controlling **[broker]** producer if the limit is reached. The
14 controlling **[broker]** producer shall not place business with the
15 controlled insurer if it has been notified by the controlled
16 insurer that the limit has been reached; and

17 (11) The controlling **[broker]** producer may negotiate but
18 shall not bind reinsurance on behalf of the controlled insurer,
19 except that the controlling **[broker]** producer may bind
20 facultative reinsurance contracts pursuant to obligatory
21 facultative agreements if the contract with the controlled
22 insurer contains underwriting guidelines including, but both
23 reinsurance assumed and ceded, a list of reinsurers with which
24 such automatic agreements are in effect, the coverages and
25 amounts or percentages that may be reinsured and commission
26 schedules.

27 3. Every controlled insurer shall have an audit committee
28 of the board of directors composed of independent directors. The

1 audit committee shall annually meet with management, the
2 insurer's independent certified public accountants, and an
3 independent casualty actuary or other independent loss reserve
4 specialist acceptable to the director to review the adequacy of
5 the insurer's loss reserves.

6 4. (1) In addition to any other required loss reserve
7 certification, the controlled insurer shall annually, on April
8 first of each year, file with the director an opinion of an
9 independent casualty actuary, or such other independent loss
10 reserve specialist acceptable to the director, reporting loss
11 ratios for each line of business written and attesting to the
12 adequacy of loss reserves established for losses incurred and
13 outstanding as of year-end, including incurred but not reported,
14 on business placed by the [broker] producer; and

15 (2) The controlled insurer shall annually report to the
16 director the amount of commissions paid to the [broker] producer,
17 the percentage such amount represents of the net premiums written
18 and comparable amounts and percentage paid to noncontrolling
19 [brokers] producers for placements of the same kinds of
20 insurance.

21 382.407. The [broker] producer, prior to the effective date
22 of the policy, shall deliver written notice to the prospective
23 insured disclosing the relationship between the [broker] producer
24 and the controlled insurer, except that if the business is placed
25 through a subproducer who is not a controlling [broker] producer,
26 the controlling [broker] producer shall retain in his records a
27 signed commitment from the subproducer that the subproducer is
28 aware of the relationship between the insurer and the [broker]

1 producer and that the subproducer has or will notify the insured.

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

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

16 2. If an order of liquidation or rehabilitation of the
17 controlled insurer has been entered pursuant to sections 375.1150
18 to 375.1246, RSMo, and the receiver appointed under that order
19 believes that the controlling [broker] producer or any other
20 person has not materially complied with sections 382.400 to
21 382.410, or any regulation or order promulgated hereunder, and
22 the insurer suffered any loss or damage therefrom, the receiver
23 may maintain a civil action for recovery of damages or other
24 appropriate sanctions for the benefit of the insurer.

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

28 4. Nothing contained in this section is intended to or

1 shall in any manner alter or affect the rights of policyholders,
2 claimants, creditors or other third parties.

3 384.025. 1. If at any time the director has reason to
4 believe that an eligible surplus lines insurer:

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

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

14 384.043. 1. No insurance producer shall procure any
15 contract of surplus lines insurance with any nonadmitted insurer,
16 unless he possesses a current surplus lines insurance license
17 issued by the director.

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

22 (1) Remitted the one hundred dollar initial fee to the
23 director;

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

26 (3) Passed a qualifying examination approved by the
27 director, except that all holders of a license prior to July 1,
28 1987, shall be deemed to have passed such an examination.

1 3. Each surplus lines license shall be renewed ~~[annually]~~
2 for a term of two years on the biennial anniversary date of
3 issuance and continue in effect until refused, revoked or
4 suspended by the director in accordance with section 384.065;
5 except that if the ~~[annual]~~ biennial renewal fee for the license
6 is not paid on or before the anniversary date, the license
7 terminates. The ~~[annual]~~ biennial renewal fee is ~~[fifty]~~ one
8 hundred dollars.

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

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

1 2. If any such insurance covers also a subject of insurance
2 resident, located or to be performed outside this state, for the
3 purposes of this section, a proper pro rata portion of the entire
4 premium payable for all such insurance shall be allocated as to
5 the subjects of insurance resident, located or to be performed in
6 this state.

7 3. Any insurance in a surplus lines insurer procured
8 through negotiations or an application in whole or in part
9 occurring or made within or from within this state, or for which
10 premiums in whole or in part are remitted directly or indirectly
11 from within this state, shall be deemed to be insurance procured
12 or continued or renewed in this state within the intent of
13 subsection 1 of this section.

14 4. For the general support of the government of this state
15 there is levied upon the insured or self-insurer who procures
16 insurance pursuant to subsections 1 and 3 of this section a tax
17 at the rate of five percent of the net amount of the premium in
18 respect of risks located in this state. Before April sixteenth
19 of the year next succeeding the year in which the insurance was
20 so procured, continued or renewed, the insured shall remit to the
21 [director] department of revenue the amount of the tax. The
22 [director before June first of each year shall certify and
23 transmit to the director of revenue the sums so collected]
24 department of revenue shall notify the director of the sums
25 collected from each insured or self-insurer.

26 384.057. 1. Before March second of each year, each surplus
27 lines broker shall report under oath to the director on forms
28 prescribed by him or her a statement showing, with respect to the

year ending the immediately preceding December thirty-first:

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

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

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

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

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

384.062. 1. If [the tax collectible] any tax, penalty, or interest payable by a surplus lines licensee under the provisions of sections 384.011 to 384.071 [has been collected and] is not

1 paid within the time prescribed, the same shall be recoverable in
2 a suit brought by the director against the surplus lines
3 licensee.

4 2. All taxes, penalties, and interest or delinquent taxes
5 levied pursuant to this chapter shall be paid to the [director]
6 department of revenue, who shall [obtain such taxes, penalties
7 and interest by civil action against the insured or the surplus
8 lines licensee, and the director shall remit such taxes when
9 collected to the director of revenue] notify the director of the
10 sums collected from each surplus lines licensee. All checks and
11 drafts remitted for the payment of such taxes, penalties and
12 interest shall be made payable to the director of revenue.

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

16 [374.456. 1. The director of the department of
17 insurance, financial institutions and professional
18 registration shall personally report to the appropriate
19 committees of the general assembly by March first of
20 each year on the status of all actions initiated,
21 maintained by the director, or which have been
22 concluded, during the preceding year to enforce the
23 provisions of this act. The director shall answer all
24 questions regarding such actions, or regarding other
25 matters that are related to the provisions of this act.

26 2. The report to the appropriate committees of
27 the general assembly shall cover enforcement actions
28 related to sections 354.500 to 354.636, RSMo, relating
29 to health maintenance organizations, sections 374.500
30 to 374.515 relating to utilization review agents, and
31 sections 376.1350 to 376.1399, RSMo, relating to all
32 managed care health benefit plans.]

33 [384.031. Within thirty days after the placing of
34 any surplus lines insurance, each surplus lines
35 licensee shall file with the director a written report,
36 on a form prescribed by the director, which shall be

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

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