

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 11, Page 6, Section 302.171, Line 114, by inserting
2 after all of said line the following:

3
4 "382.010. As used in sections 382.010 to 382.300, the following words and terms have the meanings
5 indicated unless the context clearly requires otherwise:

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

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

19 (3) "Director", the director of the department of insurance, financial institutions and professional
20 registration, his or her deputies, or the department of insurance, financial institutions and professional
21 registration, as appropriate;

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

28 (5) "Group-wide supervisor", the regulatory official authorized to engage in conducting and
29 coordinating group-wide supervisory activities who is determined or acknowledged by the director, under
30 section 382.227, to have sufficient significant contacts with the internationally active insurance group;

31 (6) "Insurance holding company system", two or more affiliated persons, one or more of which is an
32 insurer;

33 ~~[(6)]~~ (7) "Insurer", an insurance company as defined in section 375.012, including a reciprocal or
34 interinsurance exchange, and which is qualified and licensed by the department of insurance, financial
35 institutions and professional registration of Missouri to transact the business of insurance in this state; but it
36 shall not include any company organized and doing business under chapter 377, 378, or 380, agencies,
37 authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of
38 Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

39 ~~[(7)]~~ (8) "Internationally active insurance group", an insurance holding company system that
40 includes an insurer registered under sections 382.100 to 382.180, and meets the following criteria:

Action Taken _____ Date _____

1 (a) Premiums written in at least three countries;
 2 (b) The percentage of gross premiums written outside the United States is at least ten percent of the
 3 insurance holding company system's total gross written premiums; and

4 (c) Based on a three-year rolling average, the total assets of the insurance holding company system
 5 are at least fifty billion dollars, or the total gross written premiums of the insurance holding company system
 6 are at least ten billion dollars;

7 (9) "Person", an individual, corporation, limited liability company, partnership, association, joint
 8 stock company, trust, unincorporated organization, or any similar entity, or any combination of the foregoing
 9 acting in concert, but shall not include any joint venture partnership exclusively engaged in owning,
 10 managing, leasing, or developing real or tangible personal property;

11 [(8)] (10) A "securityholder" of a specified person is one who owns any security of that person,
 12 including common stock, preferred stock, debt obligations, and any other security convertible into or
 13 evidencing the right to acquire any of the foregoing;

14 [(9)] (11) A "subsidiary" of a specified person is an affiliate controlled by that person directly, or
 15 indirectly through one or more intermediaries;

16 [(10)] (12) The term "voting security" includes any security convertible into or evidencing a right to
 17 acquire a voting security.

18 382.227. 1. The director is authorized to act as the group-wide supervisor for any internationally
 19 active insurance group in accordance with the provisions of this section. However, the director may
 20 otherwise acknowledge another regulatory official as the group-wide supervisor if the internationally active
 21 insurance group:

22 (1) Does not have substantial insurance operations in the United States;

23 (2) Has substantial insurance operations in the United States but not in this state; or

24 (3) Has substantial insurance operations in the United States and in this state but the director has
 25 determined, pursuant to the factors set forth in subsections 3 and 9 of this section, that another regulatory
 26 official is the appropriate group-wide supervisor.

27 2. An insurance holding company system that does not otherwise qualify as an internationally active
 28 insurance group may request that the director make a determination or acknowledgment as to a group-wide
 29 supervisor pursuant to this section.

30 3. In cooperation with other state, federal, and international regulatory agencies, the director shall
 31 identify a single group-wide supervisor for an internationally active insurance group. The director may
 32 determine that the director is the appropriate group-wide supervisor for an internationally active insurance
 33 group that conducts substantial insurance operations concentrated in this state. However, the director may
 34 acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for
 35 the internationally active insurance group. The director shall consider the following factors when making a
 36 determination or acknowledgment under this subsection:

37 (1) The domicile of the insurers within the internationally active insurance group that hold the largest
 38 share of the internationally active insurance group's written premiums, assets, or liabilities;

39 (2) The domicile of the top-tiered insurers in the insurance holding company system of the
 40 internationally active insurance group;

41 (3) The location of the executive offices or largest operational offices of the internationally active
 42 insurance group;

43 (4) Whether another regulatory official is acting as or is seeking to act as the group-wide supervisor
 44 under a regulatory system that the director determines to be:

45 (a) Substantially similar to the system of regulation provided under the laws of this state; or

46 (b) Otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis,
 47 and cooperation with other regulatory officials; and

48 (5) Whether another regulatory official acting or seeking to act as the group-wide supervisor
 49 provides the director with reasonably reciprocal recognition and cooperation.

4. A director identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another regulatory official to serve as the group-wide supervisor. The acknowledgment of the group-wide supervisor shall be made after consideration of the factors listed in subdivisions (1) to (5) of subsection 3 of this section, and shall be made in cooperation with and subject to the acknowledgment of other regulatory officials involved with supervision of members of the internationally active insurance group, and in consultation with the internationally active insurance group.

5. Notwithstanding any other provision of the law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance group, the director shall acknowledge that regulatory official as the group-wide supervisor, subject to subsection 6 of this section. In the event of a material change in the internationally active insurance group that results in either the internationally active insurance group's insurers domiciled in this state holding the largest share of the internationally active insurance group's premiums, assets, or liabilities, or this state being the domicile of the top-tiered insurers in the insurance holding company system of the internationally active insurance group, the director shall make a determination or acknowledgment as to the appropriate group-wide supervisor for such an internationally active insurance group under subsections 3 and 4 of this section.

6. In the event of a dispute as to the proper regulatory official to act as group-wide supervisor, a determination by the director not to acknowledge the current group-wide supervisor shall be made only after notice and a public hearing, and such determination shall be accompanied by specific findings of fact and conclusions of law including, but not limited to, application of the factors listed in subdivisions (1) to (5) of subsection 3 of this section.

7. Under section 382.220, the director is authorized to collect from any insurer registered under sections 382.100 to 382.180 all information necessary to determine whether the director may act as the group-wide supervisor of an internationally active insurance group or if the director may acknowledge another regulatory official to act as the group-wide supervisor. Prior to issuing a determination that an internationally active insurance group is subject to group-wide supervision by the director, the director shall notify the insurer registered under sections 382.100 to 382.180 and the ultimate controlling person within the internationally active insurance group. The internationally active insurance group shall have not less than thirty days to provide the director with additional information pertinent to the pending determination. The director shall publish on the department's website the identity of internationally active insurance groups that the director has determined are subject to group-wide supervision by the director.

8. If the director is the group-wide supervisor for an internationally active insurance group, the director is authorized to engage in any of the following group-wide supervisory activities:

(1) Assess the enterprise risks within the internationally active insurance group to ensure that:

(a) The material financial condition and liquidity risks to the members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(b) Reasonable and effective mitigation measures are in place;

(2) Request, from any member of an internationally active insurance group subject to the director's supervision, information necessary and appropriate to assess enterprise risk including, but not limited to, information about the members of the internationally active insurance group regarding:

(a) Governance, risk assessment, and management;

(b) Capital adequacy; and

(c) Material intercompany transactions;

(3) Coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of such internationally active insurance group that are engaged in the business of insurance;

(4) Communicate with other state, federal, and international regulatory agencies for members within the internationally active insurance group and share relevant information subject to the confidentiality provisions of section 382.230, through supervisory colleges as set forth in section 382.226 or otherwise;

(5) Enter into agreements with or obtain documentation from any insurer registered under sections 382.100 to 382.180, any member of the internationally active insurance group, and any other state, federal, and international regulatory agencies for members of the internationally active insurance group, providing the basis for or otherwise clarifying the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials. Such agreements or documentation shall not serve as evidence in any proceeding that any insurer or person within an insurance holding company system not domiciled or incorporated in this state is doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) Other group-wide supervision activities, consistent with the authorities and purposes enumerated in this subsection, as considered necessary by the director.

9. If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the director is authorized to reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, provided that:

(1) The director's cooperation is in compliance with the laws of this state; and

(2) The regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups where applicable. Where such recognition and cooperation are not reasonably reciprocal, the director is authorized to refuse recognition and cooperation.

10. The director is authorized to enter into agreements with, or obtain documentation from, any insurer registered under sections 382.100 to 382.180, any affiliate of the insurer, and other state, federal, and international regulatory agencies, regarding members of the internationally active insurance group, which provides the basis for or otherwise clarifies a regulatory official's role as group-wide supervisor.

11. The director may promulgate regulations necessary for the administration of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2019, shall be invalid and void.

12. An insurer registered under sections 382.100 to 382.180 and subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagements of attorneys, actuaries, and any other professionals and all reasonable travel expenses.

382.230. 1. All information, documents and copies thereof in the possession or control of the director that are obtained by or disclosed to the director or any other person in the course of an examination or investigation made under section 382.220 and all information reported or provided to the director under subdivisions (13) and (14) of subsection 1 of section 382.050 [and] , sections 382.100 to 382.210, and section 382.227 shall be given confidential treatment and privileges; shall not be subject to the provisions of chapter 610; shall not be subject to subpoena; shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to the chief insurance regulatory official of other states; and shall not be subject to discovery or admissible as evidence in any private civil action. However, the director is authorized to use the documents, materials, or other information in furtherance of any regulatory or legal action brought as a part of the director's official duties. The director shall not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby,

1 notice and opportunity to be heard, determines that the interests of policyholders, shareholders or the public
2 will be served by the publication thereof, in which event the director may publish all or any part thereof in
3 such manner as he or she may deem appropriate.

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

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

9 (1) May share documents, materials, or other information including the confidential and privileged
10 documents, materials, or other information subject to subsection 1 of this section with other state, federal, and
11 international financial regulatory agencies, with the National Association of Insurance Commissioners and its
12 affiliates and subsidiaries, and with state, federal, and international law enforcement authorities including
13 members of any supervisory college described in section 382.225; provided that the recipient agrees in
14 writing to maintain the confidentiality and privileged status of such documents, materials, or other
15 information, and has verified in writing the legal authority to maintain confidentiality;

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

20 (3) May receive documents, materials, or other information including otherwise confidential and
21 privileged documents, materials, or information from the National Association of Insurance Commissioners
22 and its affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign or
23 domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or other
24 information received with notice or the understanding that it is confidential or privileged under the laws of
25 the jurisdiction that is the source of the document, material, or other information; and

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

29 (a) Specify procedures and protocols regarding the confidentiality and security of information shared
30 with the National Association of Insurance Commissioners and its affiliates and subsidiaries under sections
31 382.010 to 382.300 including procedures and protocols for sharing by the National Association of Insurance
32 Commissioners with other state, federal, and international regulators;

33 (b) Specify that ownership of information shared with the National Association of Insurance
34 Commissioners and its affiliates and subsidiaries under sections 382.010 to 382.300 remains with the director
35 and that the National Association of Insurance Commissioners' use of such information is subject to the
36 direction of the director;

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

41 (d) Require the National Association of Insurance Commissioners and its affiliates and subsidiaries
42 to consent to intervention by an insurer in any judicial or administrative action in which the National
43 Association of Insurance Commissioners and its affiliates and subsidiaries may be required to disclose
44 confidential information about the insurer shared with the National Association of Insurance Commissioners
45 and its affiliates and subsidiaries under sections 382.010 to 382.300.

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

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

4 6. Documents, materials, or other information in the possession or control of the National
5 Association of Insurance Commissioners under sections 382.010 to 382.300 shall be confidential by law and
6 privileged, shall not be subject to disclosure under chapter 610, shall not be subject to subpoena, and shall not
7 be subject to discovery or admissible in evidence in any private civil action."; and

8 Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.