

FIRST REGULAR SESSION

HOUSE BILL NO. 632

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHULL (16).

1464H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 382.010 and 382.230, RSMo, and to enact in lieu thereof three new sections relating to insurance holding companies.

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

Section A. Sections 382.010 and 382.230, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 382.010, 382.227, and 382.230, to read as follows:

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

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

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

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

16 support such determination, that control exists in fact, notwithstanding the absence of a
17 presumption to that effect;

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

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

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

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

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

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

43 (a) **Premiums written in at least three countries;**

44 (b) **The percentage of gross premiums written outside the United States is at least**
45 **ten percent of the insurance holding company system's total gross written premiums; and**

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

49 (9) "Person", an individual, corporation, limited liability company, partnership,
50 association, joint stock company, trust, unincorporated organization, or any similar entity, or any
51 combination of the foregoing acting in concert, but shall not include any joint venture partnership

52 exclusively engaged in owning, managing, leasing, or developing real or tangible personal
53 property;

54 ~~[(8)]~~ (10) A "securityholder" of a specified person is one who owns any security of that
55 person, including common stock, preferred stock, debt obligations, and any other security
56 convertible into or evidencing the right to acquire any of the foregoing;

57 ~~[(9)]~~ (11) A "subsidiary" of a specified person is an affiliate controlled by that person
58 directly, or indirectly through one or more intermediaries;

59 ~~[(10)]~~ (12) The term "voting security" includes any security convertible into or
60 evidencing a right to acquire a voting security.

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

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

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

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

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

14 **3. In cooperation with other state, federal, and international regulatory agencies,**
15 **the director shall identify a single group-wide supervisor for an internationally active**
16 **insurance group. The director may determine that the director is the appropriate group-**
17 **wide supervisor for an internationally active insurance group that conducts substantial**
18 **insurance operations concentrated in this state. However, the director may acknowledge**
19 **that a regulatory official from another jurisdiction is the appropriate group-wide**
20 **supervisor for the internationally active insurance group. The director shall consider the**
21 **following factors when making a determination or acknowledgment under this subsection:**

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

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

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

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

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

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

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

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

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

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

61 7. Under section 382.220, the director is authorized to collect from any insurer
62 registered under sections 382.100 to 382.180 all information necessary to determine

63 whether the director may act as the group-wide supervisor of an internationally active
64 insurance group or if the director may acknowledge another regulatory official to act as
65 the group-wide supervisor. Prior to issuing a determination that an internationally active
66 insurance group is subject to group-wide supervision by the director, the director shall
67 notify the insurer registered under sections 382.100 to 382.180 and the ultimate controlling
68 person within the internationally active insurance group. The internationally active
69 insurance group shall have not less than thirty days to provide the director with additional
70 information pertinent to the pending determination. The director shall publish on the
71 department's website the identity of internationally active insurance groups that the
72 director has determined are subject to group-wide supervision by the director.

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

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

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

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

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

86 (a) Governance, risk assessment, and management;

87 (b) Capital adequacy; and

88 (c) Material intercompany transactions;

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

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

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

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

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

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

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

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

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

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

 382.230. 1. All information, documents and copies thereof in the possession or control
2 of the director that are obtained by or disclosed to the director or any other person in the course
3 of an examination or investigation made under section 382.220 and all information reported **or**
4 **provided to the director** under subdivisions (13) and (14) of subsection 1 of section 382.050
5 ~~[and]~~ , sections 382.100 to 382.210, **and section 382.227** shall be given confidential treatment
6 and privileges; shall not be subject to the provisions of chapter 610; shall not be subject to
7 subpoena; shall not be made public by the director, the National Association of Insurance
8 Commissioners, or any other person, except to the chief insurance regulatory official of other
9 states; and shall not be subject to discovery or admissible as evidence in any private civil action.
10 However, the director is authorized to use the documents, materials, or other information in
11 furtherance of any regulatory or legal action brought as a part of the director's official duties.
12 The director shall not otherwise make the documents, materials, or other information public
13 without the prior written consent of the insurer to which it pertains unless the director, after
14 giving the insurer and its affiliates who would be affected thereby, notice and opportunity to be
15 heard, determines that the interests of policyholders, shareholders or the public will be served
16 by the publication thereof, in which event the director may publish all or any part thereof in such
17 manner as he or she may deem appropriate.

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

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

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

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

37 (3) May receive documents, materials, or other information including otherwise
38 confidential and privileged documents, materials, or information from the National Association
39 of Insurance Commissioners and its affiliates and subsidiaries and from regulatory and law
40 enforcement officials of other foreign or domestic jurisdictions, and shall maintain as
41 confidential or privileged any documents, materials, or other information received with notice
42 or the understanding that it is confidential or privileged under the laws of the jurisdiction that is
43 the source of the document, material, or other information; and

44 (4) Shall enter into a written agreement with the National Association of Insurance
45 Commissioners governing sharing and use of information provided under sections 382.010 to
46 382.300 consistent with this subsection that shall:

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

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

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

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

66 4. The sharing of information by the director under sections 382.010 to 382.300 shall not
67 constitute a delegation of regulatory or rulemaking authority, and the director is solely

68 responsible for the administration, execution, and enforcement of the provisions of sections
69 382.010 to 382.300.

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

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

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