

FIRST REGULAR SESSION

# HOUSE BILL NO. 655

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE KNIGHT.

1532H.011

DANA RADEMAN MILLER, Chief Clerk

## AN ACT

To amend chapter 379, RSMo, by adding thereto eleven new sections relating to lender-placed insurance, with penalty provisions.

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

Section A. Chapter 379, RSMo, is amended by adding thereto eleven new sections, to  
2 be known as sections 379.1850, 379.1851, 379.1853, 379.1855, 379.1857, 379.1859,  
3 379.1861, 379.1863, 379.1865, 379.1867, and 379.1869, to read as follows:

**379.1850. 1. Sections 379.1850 to 379.1869 shall apply to insurers and insurance  
2 producers engaged in any transaction involving lender-placed insurance, as defined in  
3 section 379.1851.**

**4 2. All lender-placed insurance written in connection with mortgaged real  
5 property, including manufactured homes and modular units, as defined in section  
6 700.010, is subject to the provisions of sections 379.1850 to 379.1869, except:**

**7 (1) Transactions involving extensions of credit primarily for business,  
8 commercial, or agricultural purposes;**

**9 (2) Insurance offered by the lender or servicer and elected by the mortgagor at  
10 the mortgagor's option;**

**11 (3) Insurance purchased by a lender or servicer on real estate owned property;  
12 and**

**13 (4) Insurance for which no specific charge is made to the mortgagor or the  
14 mortgagor's account.**

**379.1851. As used in sections 379.1850 to 379.1869, the following terms shall  
2 mean:**

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

- 3           (1) "Affiliate", a person who directly, or indirectly through one or more  
4 intermediaries, controls, is controlled by, or is under common control with, the person  
5 specified;
- 6           (2) "Individual lender-placed insurance", coverage for individual real property  
7 evidenced by a certificate of coverage under a master lender-placed insurance policy or  
8 a lender-placed insurance policy for individual real property;
- 9           (3) "Insurance producer", a person or entity, or its affiliates, required to be  
10 licensed under the laws of this state to sell, solicit, or negotiate insurance;
- 11           (4) "Insurer", an insurance company, association, or exchange, or its affiliates,  
12 authorized to issue lender-placed insurance in this state;
- 13           (5) "Investor", a person or entity, or its affiliates, holding a beneficial interest in  
14 loans secured by real property;
- 15           (6) "Lapse", the moment in time in which a mortgagor has failed to secure or  
16 maintain valid or sufficient insurance upon mortgaged real property as required by a  
17 mortgage agreement;
- 18           (7) "Lender", a person or entity, or its affiliates, making loans secured by an  
19 interest in real property;
- 20           (8) "Lender-placed insurance", insurance obtained by a lender or servicer when  
21 a mortgagor does not maintain valid or sufficient insurance upon mortgaged real  
22 property as required by the terms of the mortgage agreement. Such term shall include  
23 insurance purchased unilaterally by the lender or servicer, who is the named insured,  
24 subsequent to the date of the credit transaction, providing coverage against loss,  
25 expense, or damage to collateralized property as a result of fire, theft, collision, or other  
26 risks of loss that would either impair a lender, servicer, or investor's interest or  
27 adversely affect the value of collateral covered by limited dual interest insurance. Such  
28 term is limited to insurance purchased according to the terms of a mortgage agreement  
29 as a result of the mortgagor's failure to provide evidence of required insurance;
- 30           (9) "Loss ratio", the ratio of incurred losses to earned premium;
- 31           (10) "Master lender-placed insurance policy", a group policy issued to a lender  
32 or servicer providing coverage for all loans in the lender's or servicer's loan portfolio as  
33 needed;
- 34           (11) "Mortgage agreement", the written document that sets forth an obligation  
35 or liability of any kind secured by a lien on real property and due from, owing, or  
36 incurred by a mortgagor to a lender on account of a mortgage loan, including a security  
37 agreement, deed of trust, or any other document of similar effect, and any other  
38 documents incorporated by reference;

39           (12) "Mortgage loan", a loan, advance, guarantee, or other extension of credit  
40 from a lender to a mortgagor;

41           (13) "Mortgage transaction", a transaction by the terms of which the repayment  
42 of money loaned or payment of real property sold is to be made at a future date or dates;

43           (14) "Mortgagee", the person who holds mortgaged real property as security for  
44 repayment of a mortgage agreement;

45           (15) "Mortgagor", the person who is obligated on a mortgage loan pursuant to a  
46 mortgage agreement;

47           (16) "Person", an individual or entity;

48           (17) "Real estate owned property", property owned or held by a lender or  
49 servicer following foreclosure under the related mortgage agreement or the acceptance  
50 of a deed in lieu of foreclosure;

51           (18) "Replacement cost value", the estimated cost to replace covered property at  
52 the time of the loss or damage without deduction for depreciation. Replacement cost  
53 value is not market value, but it is instead the cost to replace covered property to its pre-  
54 loss condition, as best determined under section 379.1855;

55           (19) "Servicer", a person or entity, or its affiliates, contractually obligated to  
56 service one or more mortgage loans for a lender or investor. Such term shall include  
57 entities involved in subservicing arrangements.

          379.1853. 1. Lender-placed insurance shall become effective no earlier than the  
2 date of lapse of insurance upon mortgaged real property subject to the terms of a  
3 mortgage agreement or any other state or federal law requiring the same.

4           2. Individual lender-placed insurance shall terminate on the earliest of the  
5 following dates:

6           (1) The date insurance that is acceptable under the mortgage agreement  
7 becomes effective, subject to the mortgagor providing sufficient evidence of such  
8 acceptable insurance;

9           (2) The date the applicable real property no longer serves as collateral for a  
10 mortgage loan pursuant to a mortgage agreement;

11           (3) Such other date as specified by the individual policy or certificate of  
12 insurance;

13           (4) Such other date as specified by the lender or servicer; or

14           (5) The termination date of the policy.

15           3. An insurance charge shall not be made to a mortgagor for lender-placed  
16 insurance for a term longer than the scheduled term of the lender-placed insurance, nor  
17 shall an insurance charge be made to the mortgagor for lender-placed insurance before  
18 the effective date of the lender-placed insurance.

379.1855. 1. Any lender-placed insurance coverage, and subsequent calculation of premium, shall be based upon the replacement cost value of the property. Replacement cost value of the property shall be determined as follows:

(1) The dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee ("last known coverage amount" or "LKCA"), if known to the lender or servicer;

(2) The insurer shall inquire of the insured at least once as to the LKCA, and if it is not able to obtain the LKCA from the insured or in another manner, the replacement cost value may be determined as set forth in subdivision (3) or (4) of this subsection;

(3) If the LKCA is unknown and cannot be obtained from the insured or in another manner, the replacement cost of the property serving as collateral as calculated by the insurer, unless the use of replacement cost for this purpose is prohibited by other law;

(4) If the LKCA is unknown and cannot be obtained from the insured or in another manner, and the replacement cost is not available or its use is prohibited, the unpaid principal balance of the mortgage loan.

2. In the event of a covered loss, any replacement cost coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.

3. No insurer shall write lender-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the department of commerce and insurance as of the effective date of the policy.

379.1857. 1. No insurer or insurance producer shall issue lender-placed insurance on mortgaged property if the insurer or insurance producer, or an affiliate of the insurer or insurance producer, owns, performs the servicing for, or owns the servicing right to the mortgaged property.

2. No insurer or insurance producer shall compensate a lender, insurer, investor, or servicer, including through the payment of commissions, for lender-placed insurance policies issued by the insurer.

3. No insurer or insurance producer shall share lender-placed insurance premium or risk with the lender, investor, or servicer that obtained the lender-placed insurance.

4. No insurer or insurance producer shall offer contingent commissions, profit sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with lender-placed insurance.

14           **5. No insurer shall provide free or below-cost outsourced services to lenders,**  
15 **investors, or servicers, and no insurer shall outsource its own functions to lenders,**  
16 **insurance producers, investors, or servicers on an above-cost basis.**

17           **6. No insurer or insurance producer shall make any payments, including, but not**  
18 **limited to, the payment of expenses to a lender, insurer, investor, or servicer, for the**  
19 **purpose of securing lender-placed insurance business or related outsourced services.**

**379.1859. Nothing in sections 379.1850 to 379.1869 shall be construed to allow an**  
2 **insurance producer or an insurer solely underwriting lender-placed insurance to**  
3 **circumvent the requirements set forth within those sections. Any part of any**  
4 **requirements, limitations, or exclusions provided in sections 379.1850 to 379.1869 shall**  
5 **apply in any part to any insurer or insurance producer involved in lender-placed**  
6 **insurance.**

**379.1861. Lender-placed insurance shall be set forth in an individual policy or**  
2 **certificate of insurance. A copy of the individual policy, certificate of insurance, or**  
3 **other evidence of insurance coverage shall be mailed, first-class mailed, delivered in**  
4 **person to the last known address of the mortgagor, or delivered in accordance with**  
5 **sections 432.200 to 432.295. In addition to any information otherwise required by law,**  
6 **the individual policy or certificate of insurance coverage shall include the following**  
7 **information:**

- 8           **(1) The address and identification of the insured property;**
- 9           **(2) The coverage amount, or amounts if multiple coverages are provided;**
- 10          **(3) The effective date of the coverage;**
- 11          **(4) The term of coverage;**
- 12          **(5) The premium charge for the coverage;**
- 13          **(6) Contact information for filing a claim; and**
- 14          **(7) A complete description of the coverage provided.**

**379.1863. 1. All policy forms and certificates of insurance to be delivered or**  
2 **issued for delivery in this state, and the schedules of premium rates pertaining thereto,**  
3 **shall be filed with the department of commerce and insurance.**

4           **2. The department of commerce and insurance shall review the rates to**  
5 **determine whether the rates are excessive, inadequate, or unfairly discriminatory. This**  
6 **analysis shall include a determination as to whether expenses included by the insurer in**  
7 **the rate are appropriate.**

8           **3. All insurers shall refile lender-placed insurance rates at least once every four**  
9 **years.**

10           **4. All insurers writing lender-placed insurance shall have separate rates for**  
11 **lender-placed insurance and voluntary insurance obtained by a mortgage servicer on**  
12 **real estate owned property.**

13           **5. Upon the introduction of a new lender-placed insurance program, the insurer**  
14 **shall reference its experience in existing programs in the associated filings. Nothing in**  
15 **sections 379.1850 to 379.1869 shall limit an insurer's discretion, as actuarially**  
16 **appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria,**  
17 **or other unique or different characteristics. Moreover, an insurer may, where**  
18 **actuarially acceptable, rely upon models or, in the case of flood filings where applicable**  
19 **experience is not credible, on Federal Emergency Management Agency National Flood**  
20 **Insurance Program data.**

21           **6. (1) No later than April first of each year, each insurer with at least one**  
22 **hundred thousand dollars in direct written premium for lender-placed insurance in this**  
23 **state during the prior calendar year shall report to the department of commerce and**  
24 **insurance the following information for the prior calendar year:**

25           **(a) Actual loss ratio;**

26           **(b) Earned premium;**

27           **(c) Any aggregate schedule rating debit or credit to earned premium;**

28           **(d) Itemized expenses;**

29           **(e) Paid losses; and**

30           **(f) Loss reserves, including case reserves and reserves for incurred but not**  
31 **reported losses.**

32           **(2) The report under subdivision (1) of this subsection shall be separately**  
33 **produced for each lender-placed program and presented on both an individual-**  
34 **jurisdiction and countrywide basis.**

35           **7. If an insurer experiences an annual loss ratio of less than thirty-five percent in**  
36 **any lender-placed program for two consecutive years, it shall submit a rate filing, either**  
37 **adjusting its rates or supporting their continuance, to the department of commerce and**  
38 **insurance no more than ninety days after the submission of the data required in**  
39 **subsection 6 of this section. This subsection shall not apply with regard to lender-placed**  
40 **flood insurance.**

41           **8. Except as otherwise specifically set forth in this section, rates and forms shall**  
42 **be filed as required under the insurance laws of this state.**

**379.1865. 1. (1) The director of the department of commerce and insurance**  
2 **shall have authority to enforce the provisions of sections 379.1850 to 379.1869 as**  
3 **specified in chapter 374.**

4           **(2) A final order of the director enforcing sections 379.1850 to 379.1869 shall be**  
5 **subject to judicial review in accordance with the provisions of chapter 536 in the circuit**  
6 **court of Cole County.**

7           **(3) No order of the director enforcing sections 379.1850 to 379.1869 or order of a**  
8 **court to enforce the same shall in any way relieve or absolve any person affected by such**  
9 **order from any liability under any other laws of this state.**

10           **2. Nothing in sections 379.1850 to 379.1869 shall be construed to create or imply**  
11 **a private cause of action for violations of sections 379.1850 to 379.1869.**

12           **3. Nothing in sections 379.1850 to 379.1869 shall be construed to extinguish any**  
13 **mortgagor rights otherwise available under state, federal, or common law.**

**379.1867. An insurer that violates an order of the director while the order is in**  
2 **effect may, after notice and hearing and upon order of the director, be subject at the**  
3 **discretion of the director to either or both of the following:**

4           **(1) Payment of a monetary penalty of not more than one thousand dollars per**  
5 **violation, not to exceed an aggregate penalty of one hundred thousand dollars, unless**  
6 **the violation was committed flagrantly in a conscious disregard of sections 379.1850 to**  
7 **379.1869, in which case the penalty shall not be more than twenty-five thousand dollars**  
8 **for each violation, not to exceed an aggregate penalty of two hundred fifty thousand**  
9 **dollars; or**

10           **(2) Suspension or revocation of the insurer's license.**

**379.1869. The department of commerce and insurance may promulgate rules as**  
2 **necessary for the implementation of sections 379.1850 to 379.1869. Any rule or portion**  
3 **of a rule, as that term is defined in section 536.010, that is created under the authority**  
4 **delegated in this section shall become effective only if it complies with and is subject to**  
5 **all of the provisions of chapter 536 and, if applicable, section 536.028. This section and**  
6 **chapter 536 are nonseverable and if any of the powers vested with the general assembly**  
7 **pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul**  
8 **a rule are subsequently held unconstitutional, then the grant of rulemaking authority**  
9 **and any rule proposed or adopted after August 28, 2023, shall be invalid and void.**

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