

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 3314
103RD GENERAL ASSEMBLY

7088H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal sections 374.205, 375.772, 375.773, 375.775, 375.777, 376.060, 376.100, 379.035, 379.060, 379.520, 379.590, 382.230, and 383.155, RSMo, and to enact in lieu thereof thirteen new sections relating to insurance regulation.

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

Section A. Sections 374.205, 375.772, 375.773, 375.775, 375.777, 376.060, 376.100, 379.035, 379.060, 379.520, 379.590, 382.230, and 383.155, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 374.205, 375.772, 375.773, 375.775, 375.777, 376.060, 376.100, 379.035, 379.060, 379.520, 379.590, 382.230, and 383.155, to read as follows:

374.205. 1. (1) The director or any of the director's examiners may conduct an examination pursuant to sections 374.202 to 374.207 of any company as often as the director in his or her sole discretion deems appropriate, but shall, at a minimum, conduct a financial examination of every insurer licensed in this state at least once every five years. In scheduling and determining the nature, scope and frequency of examinations, the director may consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, consumer complaints, and other criteria as set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners and in effect when the director exercises discretion pursuant to this section.

(2) For purposes of completing an examination of any company pursuant to sections 374.202 to 374.207, the director may examine or investigate any person, or the business of any person, insofar as such examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the company.

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.

15 (3) In lieu of a financial examination pursuant to section 374.207 of any foreign or
16 alien insurer licensed in this state, the director may accept a financial examination report on
17 the company as prepared by the insurance department or other appropriate agency for the
18 company's state of domicile or port-of-entry state until January 1, 1994. After January 1,
19 1994, such reports may only be accepted if such insurance department or other appropriate
20 agency was at the time of the examination accredited pursuant to the National Association of
21 Insurance Commissioners' Financial Regulation Standards and Accreditation Program or the
22 examination is performed under the supervision of an accredited insurance department or
23 other appropriate agency or with the participation of one or more examiners who are
24 employed by such an accredited state insurance department or other appropriate agency and
25 who, after a review of the examination workpapers and report, state under oath that the
26 examination was performed in a manner consistent with the standards and procedures
27 required by their insurance department or other appropriate agency.

28 2. (1) Upon determining that an examination should be conducted, the director or the
29 director's designee shall issue an examination warrant appointing one or more examiners to
30 perform the examination and instructing them as to the scope of the examination. In
31 conducting the examination, the examiner shall observe those guidelines and procedures set
32 forth in the Examiners' Handbook adopted by the National Association of Insurance
33 Commissioners. The director may also employ such other guidelines or procedures as the
34 director may deem appropriate.

35 (2) Every company or person from whom information is sought, its officers, directors
36 and agents shall provide to the examiners appointed pursuant to subdivision (1) of this
37 subsection timely, convenient and free access at all reasonable hours at its offices to all books,
38 records, accounts, papers, documents and any or all computer or other recordings relating to
39 the property, assets, business and affairs of the company being examined. The company or
40 person being examined shall provide within ten calendar days any record requested by an
41 examiner during a market conduct examination, unless such company or person demonstrates
42 to the satisfaction of the director that the requested record cannot be provided within ten
43 calendar days of the request. All policy records for each policy issued shall be maintained for
44 the duration of the current policy term plus two calendar years and all claim files shall be
45 maintained for the calendar year in which the claim is closed plus three calendar years. The
46 officers, directors, employees and agents of the company or person shall facilitate the
47 examination and aid in the examination so far as it is in their power to do so. The refusal of
48 any company, by its officers, directors, employees or agents, to submit to examination or to
49 comply with any reasonable written request of the examiners shall be grounds for suspension
50 or refusal of, or nonrenewal of, any license or authority held by the company to engage in an
51 insurance or other business subject to the director's jurisdiction. Any such proceeding for

52 suspension, revocation or refusal of any license or authority shall be conducted pursuant to
53 section 374.046.

54 (3) The director or any of the director's examiners may issue subpoenas to administer
55 oaths and to examine under oath any person as to any matter pertinent to the examination.
56 Upon the failure or refusal of any person to obey a subpoena, the director may petition a court
57 of competent jurisdiction, and upon proper showing, the court may enter an order compelling
58 the witness to appear and testify or produce documentary evidence. Failure to obey the court
59 order shall be punishable as contempt of court. Such subpoenas may also be enforced
60 pursuant to the provisions of sections 375.881 and 375.1162.

61 (4) When making an examination pursuant to sections 374.202 to 374.207, the
62 director may retain attorneys, appraisers, independent actuaries, independent certified public
63 accountants or other professionals and specialists as examiners, the cost of which shall be
64 borne directly by the company which is the subject of the examination.

65 (5) The provisions of sections 374.202 to 374.207 shall not be construed to limit the
66 director's authority to terminate or suspend any examination in order to pursue other legal or
67 regulatory action pursuant to the insurance laws of this state. Findings of fact and
68 conclusions made pursuant to any examination shall be prima facie evidence in any legal or
69 regulatory action.

70 (6) Nothing contained in sections 374.202 to 374.207 shall be construed to limit the
71 director's authority to use and, if appropriate, to make public any final or preliminary
72 examination report, any examiner or company workpapers or other documents, or any other
73 information discovered or developed during the course of any examination in the furtherance
74 of any legal or regulatory action which the director may, in his or her sole discretion, deem
75 appropriate.

76 3. (1) All examination reports shall be comprised of only facts appearing upon the
77 books, records, or other documents of the company, its agents or other persons examined, or
78 as ascertained from the testimony of its officers or agents or other persons examined
79 concerning its affairs, and such conclusions and recommendations as the examiners find
80 reasonably warranted from the facts.

81 (2) No later than sixty days following completion of the examination, the examiner in
82 charge shall file with the department a verified written report of examination under oath.
83 Upon receipt of the verified report, the department shall transmit the report to the company
84 examined, together with a notice which shall afford the company examined a reasonable
85 opportunity of not more than thirty days to make a written submission or rebuttal with respect
86 to any matters contained in the examination report.

87 (3) Within thirty days of the end of the period allowed for the receipt of written
88 submissions or rebuttals, the director shall fully consider and review the report, together with

89 any written submissions or rebuttals and any relevant portions of the examiner's workpapers
90 and either initiate legal action or enter an order:

91 (a) Adopting the examination report as filed or with modification or corrections. If
92 the examination report reveals that the company is operating in violation of any law,
93 regulation or prior order of the director, the director may order the company to take any action
94 the director considers necessary and appropriate to cure such violation;

95 (b) Rejecting the examination report with directions to the examiners to reopen the
96 examination for purposes of obtaining additional data, documentation or information, and
97 refiling pursuant to subsection 1 of this section;

98 (c) Calling for an investigatory hearing with no less than twenty days' notice to the
99 company for purposes of obtaining additional documentation, data, information and
100 testimony; or

101 (d) Calling for such regulatory action as the director deems appropriate, provided that
102 this order shall be a confidential internal order directing the department to take certain action.

103 (4) All orders entered pursuant to paragraph (a) of subdivision (3) of this subsection
104 shall be accompanied by findings and conclusions resulting from the director's consideration
105 and review of the examination report, relevant examiner workpapers and any written
106 submissions or rebuttals. Any such order shall be considered a final administrative decision
107 and may be appealed pursuant to section 536.150 and shall be served upon the company by
108 certified mail, together with a copy of the adopted examination report. Within thirty days of
109 the issuance of the adopted report, the company shall file affidavits executed by each of its
110 directors stating under oath that they have received a copy of the adopted report and related
111 orders. In lieu of the preceding affidavit requirement, in the case of an adopted market
112 conduct report, rather than an adopted financial examination report, the company may file an
113 affidavit executed by its general counsel or chief legal officer stating under oath that the
114 general counsel or chief legal officer has received a copy of the adopted market conduct
115 report and related orders. Any hearing conducted pursuant to paragraph (c) of subdivision (3)
116 of this subsection by the director or authorized representative shall be conducted as a
117 nonadversarial confidential investigatory proceeding as necessary for the resolution of any
118 inconsistencies, discrepancies or disputed issues apparent upon the face of the filed
119 examination report or raised by or as a result of the director's review of relevant workpapers
120 or by the written submission or rebuttal of the company. Within twenty days of the
121 conclusion of any such hearing, the director shall enter an order pursuant to paragraph (a) of
122 subdivision (3) of this subsection. In conducting a hearing pursuant to paragraph (c) of
123 subdivision (3) of this subsection:

124 (a) The director shall not appoint an examiner as an authorized representative to
125 conduct the hearing. The hearing shall proceed expeditiously with discovery by the company

126 limited to the examiner's workpapers which tend to substantiate any assertions set forth in any
127 written submission or rebuttal. The director or his or her representative may issue subpoenas
128 for the attendance of any witnesses or the production of any documents deemed relevant to
129 the investigation whether under the control of the department, the company or other persons.
130 The documents produced shall be included in the record, and testimony taken by the director
131 or his or her representative shall be under oath and preserved for the record. The provisions
132 of this section shall not require the department to disclose any information or records which
133 would indicate or show the existence of any investigation or activity of a criminal justice
134 agency; and

135 (b) The hearing shall proceed with the director or his or her representative posing
136 questions to the persons subpoenaed. Thereafter, the company and the department may
137 present testimony relevant to the investigation. Cross-examination shall be conducted only
138 by the director or the director's representative. The company and the department shall be
139 permitted to make closing statements and may be represented by counsel of their choice.

140 (5) Upon the adoption of the examination report pursuant to paragraph (a) of
141 subdivision (3) of this subsection, the director shall continue to hold the content of the
142 examination report as private and confidential information for a period of ten days except to
143 the extent provided in this subdivision. Thereafter, the director may open the report for public
144 inspection so long as no court of competent jurisdiction has stayed its publication. Nothing
145 contained in the insurance laws of this state shall prevent or be construed as prohibiting the
146 director from disclosing the content of an examination report, preliminary examination report
147 or results, or any matter relating thereto, to the insurance department of this or any other state
148 or country, or to law enforcement officials of this or any other state or agency of the federal
149 government at any time, so long as such agency or office receiving the report or matters
150 relating thereto agrees in writing to hold it confidential and in a manner consistent with this
151 section. In the event the director determines that legal or regulatory action is appropriate as a
152 result of any examination, he or she may initiate any proceedings or actions as provided by
153 law.

154 4. All working papers, recorded information, documents and copies thereof produced
155 by, obtained by or disclosed to the director or any person in the course of an examination
156 made pursuant to this section shall be given confidential treatment and are not subject to
157 subpoena and may not be made public by the director or any other person, except to the extent
158 provided in subdivision (5) of subsection 3 of this section. Access may also be granted to the
159 National Association of Insurance Commissioners. Such parties shall agree in writing prior to
160 receiving the information to provide to it the same confidential treatment as required by this
161 section, unless the prior written consent of the company to which it pertains has been
162 obtained.

163 **5. Notwithstanding any other law to the contrary, the director may share**
164 **documents, materials, or other information, including confidential and privileged**
165 **documents, materials, or information under this section, with the Missouri property and**
166 **casualty insurance guaranty association or the Missouri life and health insurance**
167 **guaranty association regarding any member insurer, as such term is defined under**
168 **sections 375.772 and 376.718, if the director determines that the member insurer may be**
169 **subject to a future delinquency proceeding under sections 375.1150 to 375.1246 of the**
170 **Insurers Supervision, Rehabilitation and Liquidation Act. The director may disclose**
171 **the information described in this subsection so long as the parties agree in writing to**
172 **hold that information confidential in a manner consistent with sections 375.1150 to**
173 **375.1246 and use that information to prepare for a future delinquency proceeding of a**
174 **member insurer. Access to the information disclosed by the director to the guaranty**
175 **association shall be limited to the guaranty association's staff and legal counsel. The**
176 **board of directors of the guaranty association may have access to the information**
177 **disclosed by the director to the guaranty association once the member insurer is subject**
178 **to a delinquency proceeding under sections 375.1150 to 375.1246 subject to any terms**
179 **and conditions established by the director. The director may also disclose the**
180 **information described in this subsection to associations in other states, and with any**
181 **organization of one or more state associations having similar purposes, so long as the**
182 **recipient of such information agrees in writing to hold the information confidential, in a**
183 **manner consistent with sections 375.1150 to 375.1246, and uses that information to**
184 **prepare for a possible delinquency proceeding of the member insurer. Access to the**
185 **information disclosed by the director under this subsection shall be limited to the**
186 **association's staff and legal counsel. The board of directors of the association may have**
187 **access to the information disclosed by the director to the association once the member**
188 **insurer is subject to a delinquency proceeding under sections 375.1150 to 375.1246**
189 **subject to any terms and conditions established by the director. If the director**
190 **determines that a delinquency proceeding is likely, he or she may cooperate with the**
191 **association and with any organization of one or more state associations having similar**
192 **purposes to provide for an orderly transition to liquidation in order to minimize any**
193 **delay in the handling and payment of claims.**

 375.772. 1. There is created a nonprofit unincorporated legal entity to be known as
2 the "Missouri Property and Casualty Insurance Guaranty Association", hereinafter referred to
3 as "association". All member insurers shall be and remain members of the association as a
4 condition of their authority to transact insurance in this state. The association shall perform
5 its functions under a plan of operation and through a board of directors established by section
6 375.776.

7 2. As used in sections 375.771 to 375.779, the following terms mean:

8 (1) "Account", any one of the four accounts established by section 375.773;

9 (2) "Affiliate", a person who directly or indirectly through one or more intermediaries
10 controls, is controlled by, or is under common control with another person;

11 (3) "Affiliate of an insolvent insurer", a person who directly or indirectly through one
12 or more intermediaries controls, is controlled by, or is under common control with an
13 insolvent insurer on December thirty-first of the year immediately preceding the date the
14 insurer becomes an insolvent insurer;

15 (4) "Association", the Missouri property and casualty insurance guaranty association;

16 (5) "Claimant", any insured making a first-party claim or any person instituting a
17 liability claim, provided that no person who is an affiliate of the insolvent insurer may be a
18 claimant;

19 (6) "Control", the possession, direct or indirect, of the power to direct or cause the
20 direction of the management and policies of a person, whether through the ownership of
21 voting securities, by contract other than a commercial contract for goods or nonmanagement
22 services, or otherwise, unless the power is the result of an official position with the corporate
23 office held by the person. Control shall be presumed to exist if any person, directly or
24 indirectly, owns, controls, holds the power to vote, or holds proxies representing ten percent
25 or more of the voting securities of any other person. Such presumption may be rebutted by a
26 showing that control does not exist in fact;

27 (7) "Covered claim", an unpaid claim including those for unearned premiums,
28 presented by a claimant within the time specified in accordance with subsection 1 and
29 subdivision (2) of subsection 2 of section 375.775, and is for a loss arising out of and is within
30 the coverage of an insurance policy to which sections 375.771 to 375.779 apply made by a
31 person insured under such policy or by a person suffering injury or for which a person insured
32 under such policy is legally liable, if:

33 (a) The policy is issued by a member insurer ~~[and such member insurer]~~ **that**
34 becomes an insolvent insurer after August 28, 2004; ~~and]~~

35 (b) The claimant or insured is a resident of this state at the time of the insured event,
36 or the claim is a first-party claim by an insured for damage to property and the property from
37 which the claim arises is permanently located in this state or in the case of an unearned
38 premium, the policyholder is a resident of this state at the time the policy is issued. The
39 residency of the claimant, insured, or policyholder, other than an individual, is the state in
40 which its principal place of business is located at the time of the insured event;

41 (c) **The claim obligation arose under an insurance policy issued by a member**
42 **insurer, which claim obligation is allocated, transferred, merged into, novated, assumed**
43 **by, or otherwise made the sole responsibility of a member or nonmember insurer, if:**

44 **a. The original member insurer has no remaining obligations on the policy after**
45 **the transfer;**

46 **b. A final order of liquidation with a finding of insolvency has been entered**
47 **against the insurer that assumed the member's coverage obligations by a court of**
48 **competent jurisdiction in the insurer's state of domicile;**

49 **c. The claim would have been a covered claim if the claim had remained the**
50 **responsibility of the original member insurer and the order of liquidation had been**
51 **entered against the original member insurer, with the same claim submission date and**
52 **liquidation date; and**

53 **d. The member's coverage obligations were assumed by a nonmember insurer**
54 **and the transaction received prior regulatory or judicial approval; and**

55 **(d) "Covered claim" shall not include:**

56 a. Any amount awarded as punitive or exemplary damages, or which is a fine or
57 penalty;

58 b. Any amount sought as a return of premium under any retrospective rating plan; or

59 c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association,
60 health maintenance organization, hospital plan corporation, health services corporation, or
61 self-insurer as subrogation recoveries, reinsurance recoveries, contribution, indemnity, or
62 otherwise. To the extent of any amount due any reinsurer, insurer, insurance pool, or
63 underwriting association, health maintenance organization, hospital plan corporation, health
64 services corporation, or self-insurer as subrogation recoveries or otherwise there shall be no
65 right of recovery by any person against a tort-feasor insured of an insolvent insurer, except
66 that such limitation shall not apply with respect to those amounts that exceed the limits of the
67 policy issued such tort-feasor by the insolvent insurer;

68 d. A claim by or against an insured of an insolvent insurer, if such insured has a net
69 worth of more than twenty-five million dollars on the later of the end of the insured's most
70 recent fiscal year or the December thirty-first of the year next preceding the date the insurer
71 becomes an insolvent insurer; provided that an insured's net worth on such date shall be
72 deemed to include the aggregate net worth of the insured and all of its affiliates as calculated
73 on a consolidated basis;

74 e. Any first-party claim by an insured which is an affiliate of the insolvent insurer;

75 f. Supplementary payment obligations incurred prior to the final order of liquidation,
76 including but not limited to adjustment fees and expenses, fees for medical cost containment
77 services, including but not limited to medical case management fees, attorney's fees and
78 expenses, court costs, penalties, and bond premiums;

79 g. Any claims for interest;

80 h. Any amount that constitutes a portion of a covered claim that is within an insured's
81 deductible or self-insured retention;

82 i. Any fee or other amount sought by or on behalf of an attorney or other provider of
83 goods or services retained by an insured or claimant in connection with the assertion or
84 prosecuting of any claim, covered or otherwise, against the association;

85 j. Any amount that constitutes a claim under a policy, except in the case of a claim for
86 benefits under workers' compensation coverage, issued by an insolvent insurer with a
87 deductible or self-insured retention of three hundred thousand dollars or more. However,
88 such a claim shall be considered a covered claim, if, as of the deadline set forth for the filing
89 of claims against the insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C.
90 Section 701, et seq.;

91 k. Any amount to the extent that it is covered by any insurance that is available to the
92 claimant or the insured, whether such other insurance is primary, pro rata, or excess. In all
93 such instances, the association's obligations to the insured or claimant shall not be deemed to
94 be other insurance;

95 **(8) "Cybersecurity insurance", includes first-party and third-party coverage in**
96 **a policy or endorsement written on a direct, or admitted basis, for losses and loss**
97 **mitigation arising out of or relating to data privacy breaches, unauthorized information**
98 **network security intrusions, computer viruses, ransomware, cyber extortion, identity**
99 **theft, and similar exposures;**

100 **(9) "Insolvent insurer", an insurer licensed to transact insurance in this state, either at**
101 **the time the policy was issued or when the insured event occurred, and against whom a final**
102 **order of liquidation with a finding of insolvency has been entered by a court of competent**
103 **jurisdiction in the insurer's state of domicile or of this state under the provisions of sections**
104 **375.950 to 375.990 or sections 375.1150 to 375.1246, and which such order of liquidation has**
105 **not been stayed or been the subject of a writ of supersedeas or other comparable order;**

106 ~~(9)~~ **(10) "Insured", any named insured, additional insured, vendor, lessor, or any**
107 **other party identified as an insured under the policy;**

108 ~~(10)~~ **(11) "Member insurer", any person who writes any kind of insurance to which**
109 **sections 375.771 to 375.779 apply, including the exchange of reciprocal or interinsurance**
110 **contracts, and possesses a certificate of authority to transact the business of insurance in this**
111 **state issued by the director of the department of commerce and insurance. Whether or not**
112 **approved by the director of the department of commerce and insurance for the placing of lines**
113 **of insurance by producers so authorized under the provisions of chapter 384, an insurance**
114 **company not licensed to do business in this state shall not be a member insurer. Missouri**
115 **mutual and extended Missouri mutual insurance companies doing business under chapter 380**

116 shall be considered member insurers for the purposes of sections 375.771 to 375.779, and a
117 special account shall be established applicable only to such companies;

118 ~~[(11)]~~ **(12)** "Net direct written premiums", direct gross premiums written in this state
119 on insurance policies to which sections 375.771 to 375.779 apply, less return premiums
120 thereon and dividends paid or credited to policyholders on such direct business. "Net direct
121 written premiums" does not include premiums on contracts between insurers or reinsurers;

122 ~~[(12)]~~ **(13)** "Net worth", the total assets of a person less the total liabilities against
123 those assets. Where the person is one who prepares an annual report to shareholders such
124 report for the fiscal year immediately preceding the date of insolvency of the insurance carrier
125 shall be used to determine net worth. If the person is one who does not prepare such an
126 annual report, but does prepare an annual financial report for management which reflects net
127 worth, then such report for the fiscal year immediately preceding the date of insolvency of the
128 insurance carrier shall be used to determine net worth;

129 ~~[(13)]~~ **(14)** "Ocean marine insurance" includes marine insurance that insures against
130 maritime perils or risks and other related perils or risks which are usually insured against by
131 traditional marine insurance, such as hull and machinery, marine builders' risks, and marine
132 protection and indemnity. Such perils and risks insured against include, without limitation,
133 loss, damage, or expense or legal liability of the insured arising out of an incident related to
134 ownership, operation, chartering, maintenance, use, repair, or construction of any vessel,
135 craft, or instrumentality in use in ocean or inland waters for commercial purposes, including
136 liability of the insured for personal injury, illness, or death for loss or damage to the property
137 of the insured or another person;

138 ~~[(14)]~~ **(15)** "Person", any individual, corporation, partnership, association or
139 voluntary organization, municipality, or political subdivision;

140 ~~[(15)]~~ **(16)** "Political subdivision", the same meaning as such term is defined in
141 section 70.210;

142 ~~[(16)]~~ **(17)** "Self-insurer", a person that covers its liability through a qualified
143 individual or group self-insurance program or any other formal program created for the
144 specific purpose of covering liabilities typically covered by insurance. Self-insurer does not
145 include the Missouri private sector individual self-insurers guaranty corporation created
146 pursuant to ~~[section]~~ **sections 287.860**~~[-et-seq]~~ **to 287.886.**

375.773. 1. For purposes of administration and assessment, the association shall be
2 divided into four separate accounts:

3 (1) The workers' compensation insurance account;

4 (2) The automobile insurance account;

5 (3) The Missouri mutual and extended Missouri mutual insurance company account;

6 and

7 (4) The account for all other insurance to which sections 375.771 to 375.779 apply.
8 2. Sections 375.771 to 375.779 shall apply to all kinds of direct insurance, but shall
9 not be applicable to the following:

10 (1) Life, annuity, accident, and health or disability insurance;

11 (2) Mortgage guaranty, financial guaranty, or other forms of insurance offering
12 protection against investment risk;

13 (3) Fidelity or surety bonds, or any other bonding obligations;

14 (4) Credit insurance, vendors' single-interest insurance, or collateral protection
15 insurance, or any similar insurance protecting the interest of a creditor arising out of a
16 creditor-debtor transaction;

17 (5) Insurance of warranties or service contracts, including insurance that provides for
18 the repair, replacement, or service of goods or property, or indemnification for repair,
19 replacement, or service for the operational or structural failure of the goods or property due to
20 a defect in material, workmanship, or normal wear and tear, or provides reimbursement for
21 the liability incurred by the issuers of agreements or service contracts that provide such
22 benefits **but excluding coverage that may be included in a cybersecurity insurance**
23 **policy**;

24 (6) Title insurance;

25 (7) Ocean marine insurance;

26 (8) Any transaction or combination of transactions between a person, including
27 affiliates of such person, and an insurer, including affiliates of such insurer, which involves
28 the transfer of investment or credit risk unaccompanied by the transfer of insurance risk;

29 (9) That portion of any insurance provided or guaranteed by any government; or

30 (10) Insurance written by a company formed and operating under sections 383.010 to
31 383.040.

375.775. 1. The association shall be obligated to the extent of the covered claims
2 existing prior to the date of a final order of liquidation or a judicial determination by a court
3 of competent jurisdiction in the insurer's domiciliary state that an insolvent insurer exists and
4 arising within thirty days from the date or at the time of the first such order or determination,
5 or before the policy expiration date if less than thirty days after such date, or before or at the
6 time the insured replaces the policy or causes its cancellation, if he does so within thirty days
7 of such date. Such obligation shall be satisfied by paying to the claimant an amount as
8 follows:

9 (1) The full amount of a covered claim for benefits under workers' compensation
10 insurance coverage;

11 (2) An amount not exceeding twenty-five thousand dollars per policy for a covered
12 claim for the return of unearned premium;

13 (3) An amount not exceeding three hundred thousand dollars per claim for all other
14 covered claims.

15 2. **In no event shall the association be obligated to pay an amount in excess of**
16 **three hundred thousand dollars for all first-party and third-party claims under a policy**
17 **or endorsement that provides, or is deemed to provide, cybersecurity insurance**
18 **coverage that arises out of or is related to a single insured event, regardless of the**
19 **number of claims made or the number of claimants. The association may at its sole**
20 **discretion, and without any ongoing duty to do so, pay any cybersecurity insurance**
21 **obligations covered under a policy or endorsement of an insolvent company, for a high**
22 **net worth insured or third-party claimant. In such case, the association shall recover**
23 **from the high net worth insured or third-party claimant all amounts paid on their**
24 **behalf, all allocated claim-adjusted expenses related to such claims, the association's**
25 **attorney's fees, and all court costs in any action necessary to collect the full**
26 **reimbursement amount due to the association under this section.**

27 3. In no event shall the association be obligated to an insured or claimant in an
28 amount in excess of the face amount or the limits of the policy from which a claim arises or
29 be obligated for the payment of unearned premium in excess of the amount of twenty-five
30 thousand dollars, or to an insured or claimant on any covered claim until it receives
31 confirmation from the receiver or liquidator of an insolvent insurer that the claim is within the
32 coverage of an applicable policy of the insolvent insurer, except that within the sole discretion
33 of the association, if the association deems it has sufficient evidence from other sources,
34 including any claim forms which may be propounded by the association, that the claim is
35 within the coverage of an applicable policy of the insolvent insurer, it shall proceed to process
36 the claim, pursuant to its statutory obligations, without such confirmation by the receiver or
37 liquidator:

38 (1) All covered claims shall be filed with the association on the claim information
39 form required by this subdivision no later than the final date first set by the court for the filing
40 of claims against the liquidator or receiver of an insolvent insurer, except that if the time first
41 set by the court for filing claims is one year or less from the date of insolvency, and an
42 extension of the time to file claims is granted by the court, claims may be filed with the
43 association no later than the new date set by the court or within one year of the date of
44 insolvency, whichever first occurs. In no event shall the association be obligated on a claim
45 filed after such date or on one not filed on the required form. A claim information form shall
46 consist of a statement verified under oath by the claimant which includes all of the following:

47 (a) The particulars of the claim;

48 (b) A statement that the sum claimed is justly owing and that there is no setoff,
49 counterclaim, or defense to said claim;

50 (c) The name and address of the claimant and the attorney who represents the
51 claimant, if any; and

52 (d) If the claimant is an insured, that the insured's net worth did not exceed twenty-
53 five million dollars on the date the insurer became an insolvent insurer.

54

55 The association may require that a prescribed form be used and may require that other
56 information and documents be included. A covered claim shall not include any claim not
57 described in a timely filed claim information form even though the existence of the claim was
58 not known to the claimant at the time a claim information form was filed;

59 (2) In the case of claims arising from a member insurer subject to a final order of
60 liquidation issued on or after September 1, 2000, the provisions of subdivision (1) of **this**
61 subsection [~~2 of this section~~] shall not apply and in lieu thereof, such claims shall be governed
62 by this subdivision. All covered claims shall be filed with the association, liquidator or
63 receiver. Notwithstanding any other provisions of sections 375.771 to 375.779, a covered
64 claim shall not include a claim filed after the earlier of eighteen months after the date of the
65 order of liquidation, or the final date set by the court for the filing of claims against the
66 liquidator or receiver of an insolvent insurer. The association may require that other
67 information and documents be included in confirming the existence of a covered claim or in
68 determining eligibility of any claimant. Such information may include, but is not limited to:

69 (a) The particulars of the claim;

70 (b) A statement that the sum claimed is justly owing and that there is no setoff,
71 counterclaim, or defense to said claim;

72 (c) The name and address of the claimant and the attorney who represents the
73 claimant, if any; and

74 (d) A verification under oath of such requested information.

75

76 In no event shall the association be obligated on a claim filed with the association, liquidator
77 or receiver for protection afforded under the insured's policy for incurred but not reported
78 losses. A covered claim shall not include any claim that is not filed prior to the final date for
79 filing claims, even though the existence of the claims was not known to the claimant prior to
80 such final date.

81 ~~[3-]~~ 4. In the case of claims arising from bodily injury, sickness or disease, the amount
82 of any such award shall not exceed the claimant's reasonable expenses incurred for necessary
83 medical, surgical, X-ray, dental services and comparable services for individuals who, in the
84 exercise of their constitutional rights, rely on spiritual means alone for healing in accordance
85 with the tenets and practices of a recognized church or religious denomination by a duly
86 accredited practitioner thereof, including prosthetic devices and necessary ambulance,

87 hospital, professional nursing, and any amounts lost or to be lost by reason of claimant's
88 inability to work and earn wages or salary or their equivalent, except that the association shall
89 pay the full amount of any covered claim arising out of a workers' compensation policy. Such
90 award may also include payments in fact made to others, not members of claimant's
91 household, which were reasonably incurred to obtain from such other persons ordinary and
92 necessary services for the production of income in lieu of those services the claimant would
93 have performed for himself had he not been injured. Verdicts as respect only those civil
94 actions as may be brought to recover damages as provided in this section shall specifically set
95 out the sums applicable to each item in this section for which an award may be made.

96 ~~[4-]~~ 5. In the case of claims arising from a member insurer subject to a final order of
97 liquidation dated on or after August 31, 2004, the provisions of subsection ~~[3]~~ 4 of this
98 section shall not apply.

99 ~~[5-]~~ 6. Notwithstanding any other provision of sections 375.771 to 375.779, except in
100 the case of a claim for benefits under workers' compensation coverage, any obligation of the
101 association to or on behalf of the insured and its affiliates on covered claims shall cease when
102 ten million dollars has been paid in the aggregate by the association and any one or more
103 associations similar to the association in any other state or states to or on behalf of such
104 insured, its affiliates, and additional insureds on covered claims or allowed claims arising
105 under the policy or policies of any one insolvent insurer.

106 ~~[6-]~~ 7. If the association determines that there may be more than one claimant having
107 a covered claim or allowed claim against the association, or any associations similar to the
108 association in other states, under the policy or policies of any one solvent insurer, the
109 association may establish a plan to allocate amounts payable by the association in such
110 manner as the association in its discretion deems equitable.

111 ~~[7-]~~ 8. The association shall be deemed the insurer only to the extent of its obligations
112 on the covered claims and to such extent, subject to the limitations provided in sections
113 375.771 to 375.779, shall have all rights, duties, and obligations of the insolvent insurer as if
114 the insurer had not become insolvent, including but not limited to the right to pursue and
115 retain salvage and subrogation recoverable on paid covered claim obligations. The
116 association shall not be deemed the insolvent insurer for any purpose relating to the issue of
117 whether the association is amenable to the personal jurisdiction of the courts of any states.
118 However, any obligation to defend an insured shall cease upon:

119 (1) The association's payment by settlement releasing the insured or on a judgment of
120 an amount equal to the lesser of the association's covered claim obligation limit or the
121 applicable policy limit; or

122 (2) The association's tender of such amount.

123 ~~[8-]~~ **9.** The association shall allocate claims paid and expenses incurred among the
124 four accounts separately, and assess member insurers separately for each account amounts
125 necessary to pay the obligations of the association under subsection 1 of this section to an
126 insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of
127 examinations under subdivision (3) of subsection ~~[9]~~ **10** of this section, and other expenses
128 authorized by sections 375.771 to 375.779. The assessments of each member insurer shall be
129 in the proportion that the net direct written premiums of the member insurer for the preceding
130 calendar year on the kinds of insurance in the account bears to the net direct written premiums
131 of all member insurers for the preceding calendar year of the kinds of insurance in the
132 account. Each member insurer's assessment may be rounded to the nearest ten dollars. Each
133 member insurer shall be notified of the assessment not later than thirty days before it is due.
134 No member insurer may be assessed in any year on any account an amount greater than two
135 percent of that member insurer's net direct written premiums for the preceding calendar year
136 on the kinds of insurance in the account. If the maximum assessment, together with the other
137 assets of the association in any account, does not provide in any one year in any account an
138 amount sufficient to make all necessary payments from that account, the funds available shall
139 be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.
140 The association may defer, in whole or in part, the assessment of any member insurer, if the
141 assessment would cause the member insurer's financial statement to reflect amounts of capital
142 or surplus less than the minimum amounts required for a certificate of authority by any
143 jurisdiction in which the member insurer is authorized to transact insurance. Deferred
144 assessments shall be paid when such payment will not reduce capital or surplus below
145 required minimums. Such payments shall be refunded to those companies receiving larger
146 assessments by virtue of such deferment, or, in the discretion of any such company, credited
147 against future assessments. No dividends shall be paid stockholders or policyholders of a
148 member insurer so long as all or part of any assessment against such insurer remains deferred.
149 Each member insurer may set off against any assessment, authorized payments made on
150 covered claims and expenses incurred in the payment of such claims by the member insurer if
151 they are chargeable to the account for which the assessment is made. Assessments made
152 under sections 375.771 to 375.779 and section 375.916 shall not be subject to subsection 1 of
153 section 375.916.

154 ~~[9-]~~ **10.** The association shall:

155 (1) Handle claims through its employees or through one or more insurers or other
156 persons designated as servicing facilities. Designation of a servicing facility is subject to the
157 approval of the director, but such designation may be declined by a member insurer;

158 (2) Reimburse each servicing facility for obligations of the association paid by the
159 facility and for actual expenses incurred by the facility while handling claims on behalf of the
160 association and shall pay the other expenses of the association authorized by this section;

161 (3) Be subject to examination and regulation by the director. The board of directors
162 shall submit, not later than March thirtieth of each year, a financial report for the preceding
163 calendar year in a form approved by the director; and

164 (4) Proceed to investigate, settle, and determine covered claims.

165 ~~[40.]~~ 11. The association may:

166 (1) Appear in, defend and appeal any action on a claim brought against the
167 association;

168 (2) Employ or retain such persons as are necessary to handle claims and perform
169 other duties of the association;

170 (3) Act as a servicing facility for other similar entities created by similar laws in this
171 state or other states;

172 (4) Borrow funds necessary to effect the purposes of sections 375.771 to 375.779 in
173 accord with the plan of operation;

174 (5) Sue or be sued. Such power to sue includes the power and right to intervene as a
175 party before any court that has jurisdiction over an insolvent insurer as defined in section
176 375.772;

177 (6) Negotiate and become a party to such contracts as are necessary to carry out the
178 purpose of sections 375.771 to 375.779;

179 (7) Perform such other acts as are necessary or proper to effectuate the purpose of
180 sections 375.771 to 375.779;

181 (8) Refund to the member insurers in proportion to the contribution of each member
182 insurer to that account that amount by which the assets of the account exceed the liabilities, if,
183 at the end of any calendar year, the board of directors finds that the assets of the association in
184 any account exceed the liabilities of that account as estimated by the board of directors for the
185 coming year; and

186 (9) Become a member of the National Conference on Insurance Guaranty Funds.
375.777. 1. The director shall:

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

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

6 (3) Notify the agents of the insolvent insurer of the determination of insolvency and
7 of the insureds' rights under sections 375.771 to 375.779. Such notification shall be by first
8 class mail at their last known address, where available, but if sufficient information for

9 notification by mail is not available, notice by publication in a newspaper of general
10 circulation shall be sufficient.

11 **2. In order to assist the director in the performance of his or her duties, if the**
12 **director determines that any member insurer as defined under section 375.772 may be**
13 **subject to a future delinquency proceeding under chapter 375, the director may:**

14 **(1) Share confidential and privileged documents, material, or information**
15 **reported under an enterprise risk-filing with the association regarding that member**
16 **insurer;**

17 **(2) Share confidential and privileged documents, material, the contents of an**
18 **examination report, a preliminary examination report or results thereof, or any matter**
19 **relating thereto, including working papers, recorded information, documents, and**
20 **copies thereof produced by, obtained by, or disclosed to the director or to any other**
21 **person in the course of any examination of the association regarding that member**
22 **insurer;**

23 **(3) Disclose the information to the association as long as the association agrees in**
24 **writing to hold the information confidential as required by sections 375.771 to 375.779,**
25 **and to use the information to prepare for a potential liquidation of the member insurer.**
26 **Access to the information disclosed under this subsection shall be limited to the**
27 **association's staff and legal counsel. The board of directors of the association may have**
28 **access to the information disclosed by the director to the association once the member**
29 **insurer is subject to a delinquency proceeding under chapter 375, and subject to any**
30 **terms and conditions established by the director; and**

31 **(4) Disclose the information to associations in other states, and with any**
32 **organization of one or more state associations having similar purposes, as long as the**
33 **recipient of such information agrees in writing to hold the information confidential as**
34 **required by sections 375.771 to 375.779, and use the information to prepare for a**
35 **potential liquidation of the member insurer. Access to the information disclosed under**
36 **this subsection shall be limited to the association's staff and legal counsel. The board of**
37 **directors of the association may have access to the information disclosed by the director**
38 **to the association once the member insurer is subject to a delinquency proceeding under**
39 **chapter 375, and subject to any terms and conditions established by the director.**

40

41 **If the director determines a liquidation is imminent, he or she may cooperate with the**
42 **association and with any organization of one or more state associations of similar**
43 **purposes, to provide for an orderly transition to liquidation in order to minimize any**
44 **delay in the handling and payment of claims.**

45 **3.** The director may require each agent of the insolvent insurer to give prompt written
46 notice, by first class mail, at the insured's last known address, to each insured of the insolvent
47 insurer for whom he was agent of record, provided the agent has received the notification of
48 subsection 1 of this section.

49 ~~[3-]~~ **4.** It is unlawful for any member insurer to fail to pay an assessment when due or
50 fail to comply with the plan of operation. Every day in which the member insurer fails to pay
51 is a separate violation.

52 ~~[4-]~~ **5.** If the director determines that a person has engaged, is engaging in, or has
53 taken a substantial step toward engaging in an act, practice or course of business constituting
54 a violation of this section or a rule adopted or order issued pursuant thereto, or that a person
55 has materially aided or is materially aiding an act, practice, omission, or course of business
56 constituting a violation of this section or a rule adopted or order issued pursuant thereto, the
57 director may issue such administrative orders as authorized under section 374.046. A
58 violation of this section is a level two violation under section 374.049. The director may also
59 suspend or revoke the license or certificate of authority of such person for any willful
60 violation.

61 ~~[5-]~~ **6.** If the director believes that a person has engaged, is engaging in, or has taken a
62 substantial step toward engaging in an act, practice or course of business constituting a
63 violation of this section or a rule adopted or order issued pursuant thereto, or that a person has
64 materially aided or is materially aiding an act, practice, omission, or course of business
65 constituting a violation of this section or a rule adopted or order issued pursuant thereto, the
66 director may maintain a civil action for relief authorized under section 374.048. A violation
67 of this section is a level two violation under section 374.049.

 376.060. When such incorporators propose to form a joint stock company for the
2 purposes designated in section 376.010, the charter comprised in the declaration mentioned in
3 section 376.050 shall set forth

4 (1) The name assumed by such corporation and by which it shall be known;

5 (2) The place where the principal office for the transaction of its business shall be
6 located;

7 (3) The specific kind or kinds of business which it proposes to transact;

8 (4) The amount of its capital stock, and the number of shares into which it shall be
9 divided, and the manner in which it shall be paid up or secured;

10 (5) The manner in which the corporate powers granted by sections 376.010 to
11 376.670 shall be exercised, showing the number of directors, which shall not be less than
12 ~~nine or~~ **five nor** more than twenty-one, their powers and duties, the manner of electing
13 them, the mode of filling vacancies, and such other particulars as may be necessary to make

14 manifest the objects and purposes of the corporation, and the manner in which it is to be
15 conducted.

376.100. When such incorporators propose to form a mutual company, for the purpose
2 designated in section 376.010, the charter comprised in the declaration mentioned in section
3 376.050 shall set forth:

4 (1) The name assumed by such corporation, and by which it shall be known;

5 (2) The place where the principal office for the transaction of its business shall be
6 located;

7 (3) The specific kind or kinds of business which it proposes to transact;

8 (4) The number of persons from whom proposals for assurance shall be received, the
9 amount of premiums to be received on deposit, and the amount of cash to be paid on the
10 same, before the company shall begin to do business and issue policies;

11 (5) The manner in which the corporate powers granted by sections 376.010 to
12 376.670 are to be exercised, showing the number of directors, which shall not be ~~more than~~
13 ~~twenty-one nor~~ less than ~~nine~~ **five nor more than twenty-one**, their powers and duties, the
14 manner of their election, the mode of filling vacancies, and such other particulars as may be
15 necessary to make manifest the objects and purposes of the association, and the manner in
16 which it is to be conducted.

379.035. When such incorporators propose to form a corporation for the purposes
2 designated in section 379.010, on the joint stock plan, the articles of incorporation or
3 association comprised in the declaration in section 379.030 shall set forth:

4 (1) The name assumed by such corporation, and by which it shall be known;

5 (2) The place where the principal office for the transaction of its business shall be
6 located;

7 (3) The specific kind or kinds of business which it proposes to transact;

8 (4) The amount of its capital stock, and the number of shares into which it shall be
9 divided, and the manner in which it shall be paid up or secured;

10 (5) The manner in which the corporate powers granted by this chapter shall be
11 exercised, showing the number of directors, which shall not be less than ~~nine~~ **five** nor more
12 than twenty-five; and such other particulars as may be necessary to make manifest the objects
13 and purposes of the corporation, and the manner in which it is to be conducted.

379.060. When such incorporators propose to form a corporation for the purpose of
2 doing business on the mutual plan, the charter comprised in the declaration mentioned in
3 section 379.030 shall set forth:

4 (1) The name assumed by such corporation, and by which it shall be known;

5 (2) The place where the principal office for the transaction of its business shall be
6 located;

7 (3) The specific kind or kinds of business which it proposes to transact;

8 (4) The number of persons from whom proposals for insurance shall be received, the
9 amount of premiums to be received on deposit, and the amount of cash to be paid on the
10 same, before the company shall begin to do business and issue policies;

11 (5) The manner in which the corporate powers granted by sections 379.010 to
12 379.160 are to be exercised, showing the number of directors and trustees, which shall not be
13 ~~[more than thirteen nor]~~ less than ~~[nine]~~ **five nor more than thirteen**, and their respective
14 powers and duties, and such other particulars as may be necessary to make manifest the object
15 and purposes of the association, and the manner in which it is to be conducted.

379.520. Whenever any such corporation desires to avail itself of the provisions of
2 sections 379.515 to 379.580 and to reorganize and extend and continue its corporate existence
3 under the general laws of this state after the time limited by law or its charter for the
4 termination of its corporate existence, the directors thereof shall within one year prior to such
5 time draw up and submit to its stockholders, if it be a stock company, or to its policyholders if
6 it be a mutual company, or to its stockholders and its policyholders in its mutual department if
7 it be a stock and mutual company, articles of association, which shall set forth

8 (1) The name of the company;

9 (2) The place where the principal office for the transaction of business shall be
10 located;

11 (3) The specific kinds of business it proposes to transact;

12 (4) The period of time for which its corporate existence shall be extended and
13 continued;

14 (5) The manner in which the corporate powers granted under the general insurance
15 statutes shall be exercised, showing the number of directors, which shall not be ~~[more than
16 twenty-five nor]~~ less than ~~[nine]~~ **five nor more than twenty-five**, and such other particulars
17 as may be necessary to make manifest the objects and purposes of the corporation; provided,
18 however, that the name of the corporation shall not be changed, nor shall the objects or plan
19 of business embrace any other or more than under the general insurance statutes of this state
20 can be carried on by any one corporation.

379.590. When any such company desires to avail itself of the provisions of sections
2 379.585 to 379.625, the directors thereof shall draw up articles of association which shall set
3 forth

4 (1) The name of the company;

5 (2) The place where the principal office for the transaction of business shall be
6 located;

7 (3) The specific kind of business it proposes to transact;

8 (4) The manner in which the corporate powers granted under the general insurance
9 statutes shall be exercised, showing the number of directors, which shall not be ~~more than~~
10 ~~thirteen nor~~ less than ~~nine~~ **five nor more than thirteen**, and such other particulars as may
11 be necessary to make manifest the objects and purposes of the corporation; provided,
12 however, that the name of the corporation shall not be changed, nor shall the object or plan of
13 business embrace any others than those designated in the existing charter, nor embrace more
14 than under the general insurance statutes of this state can be carried on by any one
15 corporation.

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

19 (2) For purposes of the information reported and provided to the department of
20 commerce and insurance under section 382.176, the director shall maintain the confidentiality
21 of the group capital calculation and group capital ratio produced within the calculation and
22 any group capital information received from an insurance holding company supervised by the
23 Federal Reserve Board or any U.S. groupwide supervisor.

24 (3) For purposes of the information reported and provided to the department of
25 commerce and insurance under section 382.177, the director shall maintain the confidentiality
26 of the liquidity stress test results and supporting disclosures and any liquidity stress test
27 information received from an insurance holding company supervised by the Federal Reserve
28 Board and non-U.S. groupwide supervisors.

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

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

35 (1) May share documents, materials, or other information including the confidential
36 and privileged documents, materials, or other information subject to subsection 1 of this
37 section, including proprietary and trade secret documents and materials, with other state,
38 federal, and international financial regulatory agencies, with the National Association of
39 Insurance Commissioners, with any third-party consultants designated by the director, and
40 with state, federal, and international law enforcement authorities including members of any
41 supervisory college described in section 382.225; provided that the recipient agrees in writing
42 to maintain the confidentiality and privileged status of such documents, materials, or other
43 information, and has verified in writing the legal authority to maintain confidentiality;

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

49 (3) May receive documents, materials, or other information including otherwise
50 confidential and privileged documents, materials, or information, including proprietary and
51 trade secret information, from the National Association of Insurance Commissioners and its
52 affiliates and subsidiaries and from regulatory and law enforcement officials of other foreign
53 or domestic jurisdictions, and shall maintain as confidential or privileged any documents,
54 materials, or other information received with notice or the understanding that it is confidential
55 or privileged under the laws of the jurisdiction that is the source of the document, material, or
56 other information; and

57 (4) Shall enter into a written agreement with the National Association of Insurance
58 Commissioners and any third-party consultant designated by the director governing sharing
59 and use of information provided under sections 382.010 to 382.300 consistent with this
60 subsection that shall:

61 (a) Specify procedures and protocols regarding the confidentiality and security of
62 information shared with the National Association of Insurance Commissioners or a third-
63 party consultant designated by the director under sections 382.010 to 382.300 including
64 procedures and protocols for sharing by the National Association of Insurance
65 Commissioners with other state, federal, and international regulators. The agreement shall

66 provide that the recipient agrees, in writing, to maintain the confidentiality and privileged
67 status of the documents, materials, or other information and has verified, also in writing, the
68 legal authority to maintain such confidentiality;

69 (b) Specify that ownership of information shared with the National Association of
70 Insurance Commissioners or a third-party consultant as designated by the director under
71 sections 382.010 to 382.300 remains with the director and that the National Association of
72 Insurance Commissioners' or third-party consultant's, as designated by the director, use of
73 such information is subject to the direction of the director;

74 (c) Excluding documents, material, or information reported pursuant to section
75 382.177, prohibit the NAIC or a third-party consultant designated by the director from storing
76 the information shared under sections 382.010 to 382.300 in a permanent database after the
77 underlying analysis is completed;

78 (d) Require prompt notice to be given to an insurer whose confidential information in
79 the possession of the National Association of Insurance Commissioners or a third-party
80 consultant designated by the director under sections 382.010 to 382.300 is subject to a request
81 or subpoena to the National Association of Insurance Commissioners or a third-party
82 consultant designated by the director, for disclosure or production;

83 (e) Require the National Association of Insurance Commissioners or third-party
84 consultant as designated by the director to consent to intervention by an insurer in any judicial
85 or administrative action in which the National Association of Insurance Commissioners or
86 third-party consultant as designated by the director may be required to disclose confidential
87 information about the insurer shared with the National Association of Insurance
88 Commissioners or a third-party consultant designated by the director, and its affiliates and
89 subsidiaries under sections 382.010 to 382.300; and

90 (f) For documents, material, or information reporting under section 382.177, in the
91 case of an agreement involving a third-party consultant designated by the director, provide for
92 notification of the identity of the consultant to the applicable insurers.

93 **4. Notwithstanding the provisions of subdivisions (1) and (2) of subsection 3 of**
94 **this section, the director may:**

95 **(1) Share confidential and privileged documents, material, or information**
96 **reported under section 382.175 or as described in subdivision (1) of subsection 1 of this**
97 **section, by any member insurer as defined under section 375.772 or 376.718, with the**
98 **Missouri property and casualty insurance guaranty association or the Missouri life and**
99 **health insurance guaranty association, if the director determines that the member**
100 **insurer may be subject to a future delinquency proceeding under sections 375.1150 to**
101 **375.1246. The director may disclose the information described in this subsection as long**
102 **as the parties agree in writing to hold the information confidential, in a manner**

103 consistent with sections 375.1150 to 375.1246, and use that information to prepare for a
104 potential delinquency proceeding of the member insurer. Access to the information
105 disclosed by the director to the Missouri property and casualty insurance guaranty
106 association or the Missouri life and health insurance guaranty association shall be
107 limited to the guaranty association's staff and legal counsel. The board of directors of
108 the Missouri property and casualty insurance guaranty association or the Missouri life
109 and health insurance guaranty association may have access to the information disclosed
110 by the director to the guaranty association once the member insurer is subject to a
111 delinquency proceeding under sections 375.1150 to 375.1246, and subject to any terms
112 and conditions established by the director;

113 (2) Disclose the information to associations in other states, and to any
114 organization of one or more state associations having similar purposes, as long as the
115 recipient of such information agrees in writing to hold the information confidential as
116 required by sections 375.771 to 375.779, and use the information to prepare for a
117 potential liquidation of the member insurer. Access to the information disclosed under
118 this subsection shall be limited to the association's staff and legal counsel. The board of
119 directors of the association may have access to the information disclosed by the director
120 to the association once the member insurer is subject to a delinquency proceeding under
121 chapter 375, and subject to any terms and conditions established by the director; and

122 (3) Determine that a liquidation proceeding is imminent, in which case the
123 director may cooperate with the association and with any organization of one or more
124 state associations of similar purposes to provide for an orderly transition to liquidation
125 in order to minimize any delay in the handling and payment of claims.

126 ~~[4-]~~ 5. The sharing of information by the director under sections 382.010 to 382.300
127 shall not constitute a delegation of regulatory or rulemaking authority, and the director is
128 solely responsible for the administration, execution, and enforcement of the provisions of
129 sections 382.010 to 382.300.

130 ~~[5-]~~ 6. No waiver of any applicable privilege or claim of confidentiality in the
131 documents, materials, or other information shall occur as a result of disclosure of such
132 documents, materials, or other information to the director under this section or as a result of
133 sharing as authorized in sections 382.010 to 382.300.

134 ~~[6-]~~ 7. Documents, materials, or other information in the possession or control of the
135 National Association of Insurance Commissioners or a third-party consultant designated by
136 the director under sections 382.010 to 382.300 shall be confidential by law and privileged,
137 shall not be subject to disclosure under chapter 610, shall not be subject to subpoena, and
138 shall not be subject to discovery or admissible in evidence in any private civil action.

139 [7-] 8. The group capital calculation and resulting group capital ratio required under
140 section 382.176 and the liquidity stress test along with its results and supporting disclosures
141 required under section 382.177 are regulatory tools for assessing group risks and capital
142 adequacy and group liquidity risks, respectively, and are not intended as a means to rank
143 insurers or insurance holding company systems generally. Therefore, except as otherwise
144 may be required under sections 382.010 to 382.300, the making, publishing, disseminating,
145 circulating, or placing before the public, or causing directly or indirectly to be made,
146 published, disseminated, circulated, or placed before the public in a newspaper, magazine, or
147 other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any
148 radio or television station or any electronic means of communication available to the public,
149 or in any other way as an advertisement, announcement, or statement containing a
150 representation or statement with regard to the group capital calculation, group capital ratio,
151 the liquidity stress test results, or supporting disclosures for the liquidity stress test of any
152 insurer or any insurer group, or of any component derived in the calculation by any insurer,
153 broker, or other person engaged in any manner in the insurance business, would be
154 misleading and is therefore prohibited; provided, however, that if any materially false
155 statement with respect to the group capital calculation, resulting group capital ratio, an
156 inappropriate comparison of any amount to an insurer's or insurance group's group capital
157 calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures
158 for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or
159 insurance group's liquidity stress test result or supporting disclosures is published in any
160 written publication and the insurer is able to demonstrate to the director with substantial proof
161 the falsity of such statement or the inappropriateness, as the case may be, then the insurer may
162 publish announcements in a written publication if the sole purpose of the announcement is to
163 rebut the materially false statement.

383.155. 1. A joint underwriting association may be created, **or directed to resume**
2 **operations**, upon determination by the director after a public hearing that medical
3 malpractice liability insurance is not reasonably available for health care providers in the
4 voluntary market. The association shall contain as members all companies authorized to
5 write and engaged in writing, on a direct basis, any insurance or benefit, the premium for
6 which is included under the definition of "net direct premiums". Membership in the
7 association shall be a condition of continued authority to do business in this state.

8 2. A plan of operation shall be adopted to be effective concurrently with the effective
9 date of the association.

10 3. The association shall, pursuant to the provisions of sections 383.150 to 383.195
11 and the plan of operation, with respect to medical malpractice insurance, have the authority
12 on behalf of its members:

13 (1) To issue, or to cause to be issued, policies of insurance to applicants, including
14 incidental coverages and subject to limits as specified in the plan of operation but not to
15 exceed one million dollars for each claimant under one policy and three million dollars for all
16 claimants under one policy in any one policy year;

17 (2) To underwrite such insurance and to adjust and pay losses with respect thereto, or
18 to appoint a service company to perform those functions;

19 (3) To assume reinsurance from its members; and

20 (4) To cede reinsurance.

21 4. Within forty-five days following the creation of the association, the directors of the
22 association shall submit to the director for his or her review, a proposed plan of operation,
23 consistent with the provisions of sections 383.150 to 383.195.

24 5. The plan of operation shall provide for economic, fair and nondiscriminatory
25 administration and for the prompt and efficient distribution of medical malpractice insurance,
26 and shall contain other provisions including, but not limited to, preliminary assessment of all
27 members for initial expenses to commence operations, establishment of necessary facilities,
28 management of the association, assessment of members to defray losses and expenses,
29 reasonable and objective underwriting standards, acceptance and cession of reinsurance,
30 appointment of a servicing company and procedures for determining amounts of insurance to
31 be provided by the association. The preliminary assessment shall be an advance to be
32 recouped under the provisions of subsection 5 of section 383.160.

33 6. The composition of the board and the terms of directors of the board shall be
34 established by the plan of operation.

35 7. The plan of operation shall be subject to approval by the director after consultation
36 with the members of the association, representatives of the public and other affected
37 individuals and organizations. If the director disapproves all or any part of the proposed plan
38 of operation, the directors shall within fifteen days submit for review a revised plan of
39 operation. If the directors fail to do so, the director shall promulgate a plan of operation or
40 part thereof, as the case may be. The plan of operation approved or promulgated by the
41 director shall become effective and operational upon his or her order.

42 8. Amendments to the plan of operation may be made by the directors of the
43 association, subject to the approval of the director or shall be made at his direction.

44 9. There shall be no liability imposed on the part of and no cause of action of any
45 nature shall arise against any member insurer or any member of the board of directors for any
46 omission or action taken by them in the performance of their powers and duties under sections
47 383.150 to 383.195.

48 **10. (1) A majority of the directors of the board may suspend the operations of**
49 **an association created under this section if the board of directors determine that**

50 **medical malpractice insurance is reasonably available to health care providers in the**
51 **voluntary market and there are two or fewer individual physicians insured annually by**
52 **the association for at least two consecutive years.**

53 **(2) Suspension of operations of the association shall be in accordance with the**
54 **association's plan of operation, or any amendment thereto. The association's plan of**
55 **operation shall establish the process for suspension of operations and include provisions**
56 **for the administration of association funds until the director determines either to**
57 **resume operations under subsection 1 of this section or to terminate operations in**
58 **compliance with section 383.195.**

59 **(3) During any period of suspension, the association shall not collect dues or fees**
60 **from its members unless and until the director authorizes an assessment or authorizes**
61 **the resumption of operations under this section.**

62 **11. As used in this section, "reasonably available" shall mean that medical**
63 **malpractice insurance products are offered to health care providers in the voluntary**
64 **market by insurance carriers in the ordinary course of business.**

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