

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 464
95TH GENERAL ASSEMBLY

2158L.05C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 143.441, 147.010, 148.370, 303.024, 374.456, 374.702, 374.715, 374.740, 374.755, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1057, 375.1224, 376.428, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, 384.062, and 407.1243, RSMo, and to enact in lieu thereof forty-nine new sections relating to the regulation of insurance, with penalty provisions and an emergency clause for a certain section.

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

Section A. Sections 143.441, 147.010, 148.370, 303.024, 374.456, 374.702, 374.715, 374.740, 374.755, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1057, 375.1224, 376.428, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, 384.062, and 407.1243, RSMo, are repealed and forty-nine new sections enacted in lieu thereof, to be known as sections 143.441, 147.010, 148.370, 303.024, 374.702, 374.715, 374.740, 374.755, 375.020, 375.1025, 375.1028, 375.1030, 375.1032, 375.1035, 375.1037, 375.1038, 375.1040, 375.1042, 375.1045, 375.1047, 375.1050, 375.1052, 375.1053, 375.1054, 375.1056, 375.1057, 375.1224, 376.428, 376.502, 379.1300, 379.1302, 379.1310, 379.1326, 379.1332, 379.1339, 379.1373, 379.1388, 379.1412, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.043, 384.051, 384.057, 384.062, and 407.1243, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

147.010. 1. For the transitional year defined in subsection 4 of this section and each taxable year beginning on or after January 1, 1980, but before January 1, 2000, every corporation organized pursuant to or subject to chapter 351, RSMo, or pursuant to any other law of this state shall, in addition to all other fees and taxes now required or paid, pay an annual franchise tax to the state of Missouri equal to one-twentieth of one percent of the par value of its outstanding shares and surplus if its outstanding shares and surplus exceed two hundred thousand dollars, or if the outstanding shares of such corporation or any part thereof consist of shares without par value, then, in that event, for the purpose contained in this section, such shares shall be considered as having a value of five dollars per share unless the actual value of such shares exceeds five dollars per share, in which case the tax shall be levied and collected on the actual value and the surplus if the actual value and the surplus exceed two hundred thousand dollars. If such corporation employs a part of its outstanding shares in business in another state or country, then such corporation shall pay an annual franchise tax equal to one-twentieth of one percent of its outstanding shares and surplus employed in this state if its outstanding shares and surplus employed in this state two hundred thousand dollars, and for the purposes of sections 147.010 to 147.120, such corporation shall be deemed to have employed in this state that proportion of its entire outstanding shares and surplus that its property and assets employed in this state bears to all its property and assets wherever located. A foreign corporation engaged in business in this state, whether pursuant to a certificate of authority issued pursuant to chapter 351, RSMo, or not, shall be subject to this section. Any corporation whose outstanding shares and surplus as calculated in this subsection does not

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

2. Sections 147.010 to 147.120 shall not apply to corporations not organized for profit, nor to corporations organized pursuant to the provisions of chapter 349, RSMo, nor to express companies, which now pay an annual tax on their gross receipts in this state, nor to insurance companies, which [pay] **are subject to** an annual tax on their premium receipts in this state, nor to state, district, county, town and farmers' mutual companies now organized or that may be hereafter organized pursuant to any of the laws of this state, organized for the sole purpose of writing fire, lightning, windstorm, tornado, cyclone, hail and plate glass and mutual automobile insurance and for the purpose of paying any loss incurred by any member by assessment, nor to any mutual insurance corporation not having shares, nor to a company or association organized to transact business of life or accident insurance on the assessment plan for the purpose of mutual protection and benefit to its members and the payment of stipulated sums of moneys to the family, heirs, executors, administrators or assigns of the deceased member, nor to foreign life, fire, accident, surety, liability, steam boiler, tornado, health, or other kind of insurance company of whatever nature coming within the provisions of section 147.050 and doing business in this state, nor to savings and loan associations and domestic and foreign regulated investment companies as defined by Section 170 of the Act of Congress commonly known as the "Revenue Act of 1942", nor to electric and telephone corporations organized pursuant to chapter 351, RSMo, and chapter 392, RSMo, prior to January 1, 1980, which have been declared tax exempt organizations pursuant to Section 501(c) of the Internal Revenue Code of 1986, nor for taxable years beginning after December 31, 1986, to banking institutions subject to the annual franchise tax imposed by sections 148.010 to 148.110, RSMo; but bank deposits shall be considered as funds of the individual depositor left for safekeeping and shall not be considered in computing the amount of tax collectible pursuant to the provisions of sections 147.010 to 147.120.

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

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

5. The franchise tax payable for a corporation's transitional year shall be computed by multiplying the amount otherwise due for that year by a fraction, the numerator of which is the number of months between January 1, 1980, and the end of the taxable year and the denominator of which is twelve. The franchise tax payable, if a corporation's taxable year is changed as provided in section 143.271, RSMo, shall be similarly computed pursuant to regulations prescribed by the director of revenue.

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

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

franchise tax reports returned to the director.

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

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

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

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

(1) The name and address of the insurer;

(2) The name of the named insured;

(3) The policy number;

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

(5) A description of the insured motor vehicle, including year and make or at least five digits of the vehicle identification number or the word "Fleet" if the insurance policy covers five or more motor vehicles; and

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

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

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

(1) Name of the self-insurer;

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

(3) The statement "THIS CARD MUST BE CARRIED IN THE SELF-INSURED MOTOR VEHICLE

FOR PRODUCTION UPON DEMAND" prominently displayed on the card.

5. An insurance identification card shall be carried in the insured motor vehicle at all times. The operator of an insured motor vehicle shall exhibit the insurance identification card on the demand of any peace officer, commercial vehicle enforcement officer or commercial vehicle inspector who lawfully stops such operator or investigates an accident while that officer or inspector is engaged in the performance of the officer's or inspector's duties. If the operator fails to exhibit an insurance identification card, the officer or inspector shall issue a citation to the operator for a violation of section 303.025. A motor vehicle liability insurance policy, a motor vehicle liability insurance binder, or receipt which contains the policy information required in subsection 2 of this section, shall be satisfactory evidence of insurance in lieu of an insurance identification card.

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

374.702. 1. No person shall engage in the bail bond business as a bail bond agent or a general bail bond agent without being licensed as provided in sections 374.695 to 374.775.

2. No judge, attorney, court official, law enforcement officer, state, county, or municipal employee who is either elected or appointed shall be licensed as a bail bond agent or a general bail bond agent.

3. A licensed bail bond agent shall not execute or issue an appearance bond in this state without holding a valid appointment from a general bail bond agent and without attaching to the appearance bond an executed and prenumbered power of attorney referencing the general bail bond agent or insurer.

4. [A person licensed as an active bail bond agent shall hold the license for at least two years prior to owning or being an officer of a licensed general bail bond agent] **Beginning August 28, 2009, a person licensed as an active bail bond agent shall hold the license for at least four years prior to becoming a general bail bond agent or being an officer of a corporation that is authorized as surety on a bail bond.**

5. A general bail bond agent shall not engage in the bail bond business:

(1) Without having been licensed as a general bail bond agent pursuant to sections 374.695 to 374.775; or

(2) Except through an agent licensed as a bail bond agent pursuant to sections 374.695 to 374.775.

6. A general bail bond agent shall not permit any unlicensed person to solicit or engage in the bail bond business on the general bail bond agent's behalf, except for individuals who are employed solely for the performance of clerical, stenographic, investigative, or other administrative duties which do not require a license pursuant to sections 374.695 to 374.789.

7. Any person who is convicted of a violation of this section is guilty of a class A misdemeanor. For any subsequent convictions, a person who is convicted of a violation of this section is guilty of a class D felony.

374.715. 1. Applications for examination and licensure as a bail bond agent or general bail bond agent shall be in writing and on forms prescribed and furnished by the department, and shall contain such information as the department requires. Each application shall be accompanied by proof satisfactory to the department that the applicant is a citizen of the United States, is at least twenty-one years of age, has a high

school diploma or general education development certificate (GED), is of good moral character, and meets the qualifications for surety on bail bonds as provided by supreme court rule. Each application shall be accompanied by the examination and application fee set by the department. Individuals currently employed as bail bond agents and general bail bond agents shall not be required to meet the education requirements needed for licensure pursuant to this section.

2. (1) In addition, each applicant for licensure as a general bail bond agent shall furnish proof satisfactory to the department that [the applicant or, if the applicant is a corporation, that each officer thereof has completed at least two years as a bail bond agent, and that the applicant possesses liquid assets of at least ten thousand dollars, along with a duly executed assignment of ten thousand dollars to the state of Missouri. The assignment shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. The director may require by regulation conditions by which additional assignments of assets of the general bail bond agent may occur when the circumstances of the business of the general bail bond agent warrants additional funds. However, such additional funds shall not exceed twenty-five thousand dollars] :

(a) For a general bail bond agent licensed prior to August 28, 2009, the applicant or, if the applicant is a corporation, each officer of the corporation has completed at least two years as a bail bond agent and the applicant possesses liquid assets of at least ten thousand dollars, along with an executed assignment of ten thousand dollars to the state of Missouri;

(b) For a general bail bond agent licensed on or after August 28, 2009, the applicant or, if the applicant is a corporation, each officer of the corporation has completed at least four years as a bail bond agent and the applicant possesses liquid assets of fifty thousand dollars, along with an executed assignment of such fifty thousand dollars to the state of Missouri.

(2) In addition to the assignment requirements in paragraphs (a) and (b) of subdivision (1) of this subsection, the general bail bond agent shall execute an assignment to the state of Missouri in the amount of five thousand dollars for each additional bail bond agent newly licensed under the authority of the general bail bond agent on or after August 28, 2009; except that, the general bail bond agent shall not be required to assign five thousand dollars for any agent licensed under the authority of the same general bail bond agent prior to August 28, 2009.

(3) The assignments required by this section shall become effective upon the applicant violating any provision of sections 374.695 to 374.789, and shall be in the form and executed in the manner prescribed by the department. The director may require by rule conditions by which additional assignments of assets of the general bail bond agent may occur when the circumstances of the business of the general bail bond agent warrants additional funds; except that, such additional funds shall not exceed fifty thousand dollars.

374.740. Any person applying to be licensed as a nonresident general bail bond agent who has been licensed in another state shall devote fifty percent of his or her working time in the state of Missouri and shall file proof with the director of the department of insurance, financial institutions and professional registration as to his or her compliance, and accompany his or her application with the fees set by the director by

[regulation] **rule** and, if applying for a nonresident general bail bond agent's license, with [a duly] **an** executed assignment of [twenty-five] **fifty** thousand dollars to the state of Missouri, [which assignment] **along with an additional assignment of five thousand dollars for each bail bond agent licensed under the authority of the general agent. Such assignments** shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. Failure to comply with this section will result in revocation of the nonresidence license. The assignment required by this section shall be in the form and executed in the manner prescribed by the department. All licenses issued pursuant to this section shall be subject to the same renewal requirements set for other licenses issued pursuant to sections 374.695 to 374.789.

374.755. 1. The department may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any license required by sections 374.695 to 374.775 or any person who has failed to renew or has surrendered his or her license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of the profession licensed under sections 374.695 to 374.775;

(2) Final adjudication or a plea of guilty or nolo contendere [within the past fifteen years] in a criminal prosecution under any state or federal law for a felony or a crime involving moral turpitude [whether or not a sentence is imposed, prior to issuance of license date] . **A suspended imposition of sentence is not required to be disclosed for licensing or renewal purposes and shall not serve as a basis for denial of licensure;**

(3) Use of fraud, deception, misrepresentation or bribery in securing any license or in obtaining permission to take any examination required pursuant to sections 374.695 to 374.775;

(4) Obtaining or attempting to obtain any compensation as a member of the profession licensed by sections 374.695 to 374.775 by means of fraud, deception or misrepresentation;

(5) Misappropriation of the premium, collateral, or other things of value given to a bail bond agent or a general bail bond agent for the taking of bail, incompetency, misconduct, gross negligence, fraud, or misrepresentation in the performance of the functions or duties of the profession licensed or regulated by sections 374.695 to 374.775;

(6) Violation of any provision of or any obligation imposed by the laws of this state, department of insurance, financial institutions and professional registration rules and regulations, or aiding or abetting other persons to violate such laws, orders, rules or regulations, or subpoenas;

(7) Transferring a license or permitting another person to use a license of the licensee;

(8) Disciplinary action against the holder of a license or other right to practice the profession regulated by sections 374.695 to 374.789 granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) Being finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice the profession licensed or regulated by sections 374.695 to 374.789 who is not currently licensed and eligible to practice pursuant to sections 374.695 to 374.789;

(11) Acting in the capacity of an attorney at a trial or hearing of a person for whom the attorney is

acting as surety;

(12) Failing to provide a copy of the bail contract, renumbered written receipt for acceptance of money, or other collateral for the taking of bail to the principal, if requested by any person who is a party to the bail contract, or any person providing funds or collateral for bail on the principal's behalf.

2. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that one or more of the causes stated in subsection 1 of this section have been met, the director may suspend or revoke the license or enter into an agreement for a monetary or other penalty pursuant to section 374.280.

3. In lieu of filing a complaint at the administrative hearing commission, the director and the bail bond agent or general bail bond agent may enter into an agreement for a monetary or other penalty pursuant to section 374.280.

4. In addition to any other remedies available, the director may issue a cease and desist order or may seek an injunction in a court of competent jurisdiction pursuant to the provisions of section 374.046 whenever it appears that any person is acting as a bail bond agent or general bail bond agent without a license or violating any other provisions of sections 374.695 to 374.789.

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

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

- (1) American College Courses (CLU, ChFC);
- (2) Life Underwriters Training Council (LUTC);
- (3) Certified Insurance Counselor (CIC);
- (4) Chartered Property and Casualty Underwriter (CPCU);
- (5) Insurance Institute of America (IIA);
- (6) Any other professional financial designation approved by the director by rule;
- (7) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;
- (8) A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized producer association or insurance trade association, **or any other entity engaged in the business of providing education courses to producers.** A local producer group may also be approved if the instructor

receives no compensation for services.

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

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

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

- (1) Serious physical injury or illness;
- (2) Active duty in the armed services for an extended period of time;
- (3) Residence outside the United States; or
- (4) The licensee is at least seventy years of age.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs or seminars of instruction taken and successfully completed by such person. Every provider of continuing education courses authorized in this state shall, within thirty working days of a licensed producer completing its approved course, provide certification to the director of the completion in a format prescribed by the director.

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

8. The provisions of this section shall not apply to a life insurance producer who is limited by the terms of a written agreement with the insurer to transact only specific life insurance policies having an initial face amount of five thousand dollars or less, or annuities having an initial face amount of ten thousand dollars or less, that are designated by the purchaser for the payment of funeral or burial expenses. The director may require the insurer entering into the written agreements with the insurance producers pursuant to this subsection to certify as to the representations of the insurance producers.

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

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

(2) Filing fees for course approval: every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars per course. Fees shall be waived for state and local insurance producer groups. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval. Courses approved by the

director prior to August 28, 1993, for which continuous certification is sought should be resubmitted for approval sixty days before the anniversary date of the previous approval.

10. All funds received pursuant to the provisions of this section shall be transmitted by the director to the department of revenue for deposit in the state treasury to the credit of the insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the insurance dedicated fund by the legislature.

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

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

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

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

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

(4) **"Audit committee", a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of such controlled insurers solely for the purposes of sections 375.1025 to 375.1062 at the election of the controlling person. Such election shall be exercised under subsection 5 of section 375.1053. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee;**

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

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

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

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

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

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

[(4)] (11) **"Insurer", an insurer certified to do business in this state pursuant to section 375.161 or 375.831, and to companies authorized to transact business in this state pursuant to chapters 354, 376, 377,**

378, 379 and 381, RSMo;

(12) **"Internal control over financial reporting", a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in subsections 2 to 7 of section 375.1032 and includes those policies and procedures that:**

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

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

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

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

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

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

(16) **"Section 404 report", management's report on internal control over financial reporting, as defined by the SEC and the related attestation report of the independent certified public accountant as described in subsection 1 of section 375.1030;**

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

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

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

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

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

2. Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirement for **filing of** audited financial reports which [are] **have been** found by the director to be substantially similar to the requirements herein, are exempt from sections [375.1025 to 375.1062] **375.1030 to 375.1050** if:

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

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

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

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

375.1030. 1. All insurers shall have an annual audit [performed] by an independent certified public accountant and shall file an audited financial report with the director on or before June first [with respect to the calendar] **for the** year ended December thirty-first immediately preceding. The director may require an insurer to file an audited financial report earlier than June first with ninety days' advance notice to the insurer.

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

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

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

375.1032. 1. The annual audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operation, cash flows and changes in capital and surplus for the previous year ended in conformity with accounting practices prescribed, or otherwise permitted, by law or rule of the department of insurance of the state of domicile of the insurer.

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

- (1) Report of independent certified public accountant;
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
- (3) Statement of [gain or loss from] operations;
- (4) Statement of cash [flows] **flow**;

(5) Statement of changes in capital and surplus;

(6) Notes to financial statements. These notes shall be those required by the **appropriate** National Association of Insurance Commissioners' Annual Statement Instructions [and any other notes required by generally accepted accounting principles] **the NAIC's Accounting Practices and Procedures Manual as adopted by the director** and shall include[:

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

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

(c) A narrative explanation of all significant intercompany transactions and balances]. 3. The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement of the insurer filed with the director[:

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

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

(3) Insignificant amounts may be combined].

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

2. The insurer shall obtain a letter from such accountant, and file a copy with the director stating that the accountant is aware of the provisions of the insurance laws and the rules and regulations of the department of insurance of the state of domicile that relate to accounting and financial matters and affirming that [he] **the accountant** will express his **or her** opinion on the financial statements in [the] terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that department of insurance, specifying such exceptions as he **or she** may believe appropriate.

3. If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the director of this event. The insurer shall also furnish the director with a separate letter within ten business days of the notification stating whether in the twenty-four months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing

scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him **or her** to make reference to the subject matter of the disagreement in connection with his **or her** opinion. Disagreements required to be reported by this section include both disagreements resolved to the former accountant's satisfaction, and disagreements not resolved to the former accountant's satisfaction. Disagreements contemplated by this section are those that occur at the decision-making level, between personnel of the insurer responsible for the presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in writing request such former accountant to furnish a letter addressed to the [director] **insurer** stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree, and the insurer shall furnish such responsive letter from the former accountant to the director together with its own.

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

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

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

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

3. [No partner or other person responsible for rendering a report may] **The lead or coordinating audit partner or person having primary responsibility for the audit shall not** act in that capacity for more than [seven] **five** consecutive years. [Following any period of service] Such **partner or** person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of [two] **five** years. An insurer may make application to the director for relief from the above rotation requirement on the basis of unusual circumstances. **Such application shall be made at least thirty days before the end of the calendar year. The insurer shall file, with its annual statement filing, the approval, if any, for relief from this subsection with the states that it is licensed in or doing business in and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.** The director may consider the following factors in determining if the relief should be granted:

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

(2) Premium volume of the insurer; or

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

4. The director shall [not] **neither** recognize as [capable or competent,] a **qualified independent**

certified public accountant, nor [shall the director] accept any annual audited financial report, prepared in whole or in part by any **natural** person who:

(1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961 to 1968, or any dishonest conduct or practices under federal law or the laws of any state;

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

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

5. The director [shall notify the insurer should he determine that the certified public accountant is not independent or is incapable or incompetent] **may hold a hearing under sections 536.100 to 536.140, RSMo, to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified** for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to sections 375.1025 to [375.1057. If the insurer contests such determination, the director shall hold a hearing to determine whether the certified public accountant is independent, capable and competent, and, considering the evidence presented, may rule that the accountant is not independent or is incapable or incompetent for purposes of expressing his opinion on the financial statements in the annual audited financial report] **375.1062** and require the insurer to replace the accountant with another whose relationship with the insurer is [independent] **qualified** within the meaning of[, or who is capable or competent to perform the requirements of,] sections 375.1025 to [375.1057] **375.1062**.

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

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

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

(2) **Financial information systems design and implementation;**

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

(4) **Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods,**

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

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

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

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

(5) Internal audit outsourcing services;

(6) Management functions or human resources;

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

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

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

8. Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from subsection 7 of this section. The insurer shall file with the director a written statement discussing the reasons why the insurer should be exempt from these provisions. If the director finds, upon review of this statement, that compliance with this requirement would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

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

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

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

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

(3) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.

11. The audit committee may delegate to one or more designated members of the audit

committee the authority to grant the preapprovals required by subsection 10 of this section. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.

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

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

375.1038. An insurer may make written application to the director for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies that utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

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

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

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

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

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

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

(1) [That he] **Such accountant** is independent with respect to the insurer and conforms to the standards of his **or her** profession as contained in the code of professional ethics and pronouncements of the American Institute of Certified Public Accountants, and the rules of professional conduct of the Missouri board of accountancy, or similar code;

(2) The background and experience in general, and the experience in audits of insurers, of the staff assigned to audit the financial statements of the insurer and whether each is an independent certified public accountant. **Nothing within this requirement shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where use is consistent with the standards prescribed**

by generally accepted auditing standards;

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

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

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

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

(7)] That the accountant is in compliance with the requirements of section 375.1037.

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

375.1045. 1. The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report, in writing, within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the director as of the balance sheet date currently under [examination] **audit** or that the insurer does not meet the minimum capital and surplus requirement of the law as of that date. An insurer who has received a report pursuant to this subsection shall forward a copy of the report to the director within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the director. If the independent certified public accountant fails to receive such evidence within the required five-business-day period, the independent certified public accountant shall furnish to the director a copy of its report within the next five business days.

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

with subsection 1 of this section.

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

375.1047. 1. In addition to the annual audited financial report, each insurer shall furnish the director with a [report of evaluation performed by the accountant, in connection with his examination, of the system of internal accounting controls of the insurer] **written communication as to any unremediated material weaknesses in its internal control over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report and shall contain a description of any unremediated material weakness, as the term material weakness is defined by Statement on Auditing Standard 60, Communication of Internal Control Related Matters Noted in an Audit, or its replacement, as of December thirty-first immediately preceding in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses were noted, the communication shall so state.**

2. [A report of the evaluation by the accountant of the system of internal accounting controls of the insurer, including any remedial action taken or proposed, shall be filed annually by the insurer with the director within sixty days after the filing of the annual audited financial report. This report shall follow generally the form for reports on internal control structure related matters noted in an audit described in Volume 1, Section AU 325 of the professional standards of the American Institute of Certified Public Accountants, as may be amended, or in the event that such standards no longer be published, a similar standard to be designated by the director by duly promulgated regulation] **The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.**

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

2. Every insurer required to file an audited financial report pursuant to sections 375.1025 to 375.1062 shall require the accountant to make available for review by the examiners of the department of insurance, financial institutions and professional registration all workpapers prepared in the conduct of [his examination] **the accountant's audit** and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department of insurance, financial institutions and professional registration or at any other reasonable place designated by the director. The insurer shall require that the accountant

retain the audit workpapers **and communications** until the department has filed a report on examination covering the period of the audit, but no longer than seven years from the date of the audit report.

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

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

2. Domestic insurers:

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

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

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

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

(a) Report of independent certified public accountant;

(b) Audited balance sheet;

(c) Notes to audited balance sheet;

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

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

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

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

5. The requirements of section 375.1053 are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority but not a supermajority of independent audit committee members, because the total written and assumed

premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded, but not earlier than January 1, 2010, to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

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

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

2. The audit committee shall be directly responsible for the appointment, compensation, and oversight of the work of any accountant, including resolution of disagreements between management and the accountant regarding financial reporting, for the purpose of preparing or issuing the audited financial report or related work under sections 375.1025 to 375.1062. Each accountant shall report directly to the audit committee.

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

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

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

6. To exercise the election of the controlling person to designate the audit committee for purposes of sections 375.1025 to 375.1062, the ultimate controlling person shall provide written notice to the chief state insurance regulatory officials of the affected insurers. Notification shall be made

timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the director by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Omit to state, or cause another person to omit to state, any material fact necessary in order

to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review, or communication required under sections 375.1025 to 375.1062.

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

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

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

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

(3) Not to withdraw an issued report; or

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

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

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

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

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

(1) Directly subject to Section 404;

(2) Part of a holding company system whose parent is directly subject to Section 404;

(3) Not directly subject to Section 404 but is a SOX compliant entity; or

(4) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity

may file its or its parent's Section 404 report and an addendum in satisfaction of the requirement of this section, provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements, namely those items included in subdivisions 2 to 6 of subsection 2 of section 375.1032, were included in the scope of the Section 404 report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the Section 404 report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements and those internal controls were not included in the scope of the Section 404 report, the insurer or group of insurers may either file a report under this section, or the Section 404 report and a report under this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 report.

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

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

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

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

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

(5) Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of December thirty-first immediately preceding. Management is not permitted to conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;

(6) A statement regarding the inherent limitations of internal control systems; and

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

5. Management shall document and make available upon financial condition examination the basis upon which its assertions required in subsection 4 of this section are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a

cost-effective manner and, as such, may include assembly of or reference to existing documentation. Management's report on internal control over financial reporting, required by subsection 1 of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the department.

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

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

2. For such Canadian and British insurers, the letter required by **subsection 2 of** section 375.1035 shall state that the accountant is aware of the requirements relating to the annual audited financial report filed with the director pursuant to section 375.1030 and shall affirm that the opinion expressed is in conformity with such requirements.

375.1224. 1. [All unclaimed funds subject to distribution remaining in the liquidator's hands when he is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found, shall be deposited with the director of the department of economic development to be held and disposed of as provided by laws for unclaimed property.

2.] All funds withheld under section 375.1212 which are not distributed, **and all unclaimed funds subject to distribution remaining in the liquidator's possession when he or she applies to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found,** shall upon discharge of the liquidator be [deposited with the director of the department of economic development as provided by laws for unclaimed property and distributed by him] **distributed** in accordance with section 375.1218. Any sums remaining which under section 375.1218 would revert to the undistributed assets of the insurer shall be converted to cash and paid to the state treasurer for deposit to the general revenue fund of the state.

[3.] **2.** This section shall be applicable to proceedings instituted before and after August 28, 1991.

376.428. 1. A group policy delivered or issued for delivery in this state [on or after one hundred twenty days following September 28, 1985, by an insurance company, health service corporation or health maintenance organization] **by a health carrier or health benefit plan, as defined in section 376.1350,** which insures employees or members and their eligible dependents for hospital, surgical or major medical insurance on an expense-incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that employees or members whose coverage under the group policy, which includes coverage for their eligible dependents, would otherwise terminate because of termination of employment or membership shall be entitled to continue their hospital, surgical or major medical coverage, including coverage for their eligible dependents, under that group policy [subject to the following terms and conditions:

(1) Continuation shall only be available to an employee or member who has been continuously insured under the group policy, and for similar benefits under any group policy which it replaced, during the entire three-month period ending with such termination. If employment is reinstated during the continuation period, then coverage under the group policy will be reinstated for the employee and any dependents who were covered under continuation;

(2) Continuation shall not be available for any person covered under the group policy who is or could be covered by Medicare, nor any person who is or could be covered by any other insured or uninsured arrangement which provides hospital, surgical or major medical coverage for individuals in a group and under which the person was not covered immediately prior to such termination;

(3) Continuation need not include dental, vision care or prescription drug benefits or any other benefits provided under the group policy in addition to its hospital, surgical or major medical benefits, but continuation must include maternity benefits if those benefits are provided under the group policy;

(4) The employee or member must request such continuation in writing within thirty-one days of the date coverage would otherwise terminate and must pay to the group policyholder, on a monthly basis, the amount of contribution required to continue the coverage. Such premium contribution shall not be more than the group rate of the insurance being continued on the due date of each payment; but, if any benefits are omitted as provided by subdivision (3) of this subsection, such premium contribution shall be reduced accordingly. The employee's or member's written request for continuation, together with the first required premium contribution, must be given to the group policyholder within thirty-one days of the date the coverage would otherwise terminate. Employers must notify their employees and members, in writing, of the duties of such employees and members under this subdivision no later than the date on which coverage would otherwise terminate;

(5) Continuation of coverage under the group policy for any covered person shall terminate upon failure to satisfy subdivision (2) of this subsection or, if earlier, at the first to occur of the following:

(a) The date nine months after the date the employee's or member's coverage under the group would have terminated because of termination of employment or membership;

(b) If the employee or member fails to make timely payment of a required premium contribution, the end of the period for which contributions were made;

(c) The date on which the group policy is terminated or, in the case of an employee, the date the employer terminates participation under a group policy. However, if this condition applies and the coverage ceasing by reason of termination is replaced by similar coverage under another group policy, then:

a. The employee or member shall have the right to become covered under that other group policy for the balance of the period that he would have remained covered under the prior group policy in accordance with the conditions of this section;

b. The minimum level of benefits to be provided by the other group policy shall be the applicable level of benefits of the prior group policy reduced by any benefits payable under that prior policy; and

c. The prior group policy shall continue to provide benefits to the extent of its accrued liabilities and extensions of benefits as if the replacement had not occurred] **in the same manner as continuation of coverage is required under the continuation of coverage provisions set forth in the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended.**

2. The spouse of an employee or member whose coverage under the group policy would otherwise terminate due to dissolution of marriage or death of the employee or member shall have the same continuation privilege accorded under sections 376.421 to 376.442, 376.694 to 376.696, and 376.779 to the employee or member upon termination of employment or membership.

3. The right to a converted policy pursuant to sections 376.395 to 376.404 for an employee or member entitled to continuation of coverage under sections 376.421 to 376.442, 376.694 to 376.696, and 376.779 shall commence upon termination of the continued coverage provided for in sections 376.421 to 376.442, 376.694 to 376.696, and 376.779.

4. This section shall only apply to those persons who are not subject to the continuation and conversion provisions set forth in Title I, Subtitle B, Part 6 of the Employment Retirement Income Security Act of 1974 or Title XXII of the Public Health Service Act, as said acts were in effect on January 1, 1987.

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

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

3. The provisions of this section shall apply to any life insurance policy issued or renewed on or after August 28, 2009.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) "Industrial insured", an insured:

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

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

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

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

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

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

(b) Have complete voting control over an industrial insured captive insurance company incorporated

as a mutual insurer;

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

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

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

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

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

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

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

(1) No pure captive insurance company shall insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;

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

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

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

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

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

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

(8) No captive insurance company shall transact business as a risk retention group under sections 375.1080 to 375.1105, RSMo.

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

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

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

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

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

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

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

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

(b) Submit to the director for approval a description of the coverages, deductibles, coverage limits, and rates, together with such additional information as the director may reasonably require. In the event of any subsequent material change in any item in such description, the captive insurance company shall submit to the director for approval an appropriate revision and shall not offer any additional kinds of insurance until a revision of such description is approved by the director. The captive insurance company shall inform the director of any material change in rates within thirty days of the adoption of such change.

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

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

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

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

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

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

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

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

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

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

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

(b) The director may, in the director's discretion, disclose such information to a public officer having

jurisdiction over the regulation of insurance in another state, provided that:

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

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

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

(4) Each captive insurance company shall pay to the director a nonrefundable license fee of seven thousand five hundred dollars for examining, investigating, and processing its application for license, and the director is authorized to retain legal, financial, and examination services from outside the department, the reasonable cost of which may be charged against the applicant. The provisions of sections 374.160 to 374.162 and sections 374.202 to 374.207, RSMo, shall apply to examinations, investigations, and processing conducted under the authority of this section. In addition, each captive insurance company shall pay a renewal fee for each year thereafter of seven thousand five hundred dollars. Each captive insurance company may deduct the license and renewal fee paid from the premium taxes payable under section 379.1326.

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

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

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

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

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

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

(4) Organized as a reciprocal insurer in accordance with sections 379.650 to 379.790.

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

4. In the case of a captive insurance company:

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

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

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

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

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

(2) Formed as a limited liability company, before the articles of organization are transmitted to the secretary of state, the organizers shall petition the director to issue a certificate setting forth the director's finding that the establishment and maintenance of the proposed company will promote the general good of the state. In arriving at such a finding, the director shall consider the items set forth in paragraphs (a) to (c) of subdivision (1) of this subsection;

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

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

6. In the case of a captive insurance company:

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

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

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

7. Other than captive insurance companies formed as limited liability companies under chapter 347, RSMo, or as nonprofit corporations under chapter 355, RSMo, captive insurance companies formed as corporations under sections 379.1300 to 379.1350 shall have the privileges and be subject to chapter 351, RSMo, as well as the applicable provisions contained in sections 379.1300 to 379.1308. In the event of conflict between the provisions of such general corporation law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall control.

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

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

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

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

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

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

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

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

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

379.1326. 1. Each captive insurance company shall pay to the director of revenue, on or before May first of each year, a premium tax at the rate of thirty-eight-hundredths of one percent on the first twenty million dollars and two hundred eighty-five-thousandths of one percent on the next twenty million dollars and nineteen-hundredths of one percent on the next twenty million dollars and seventy-two-thousandths of one percent on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders; provided, however, that no tax shall be due or payable as to considerations received for annuity contracts.

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

insurance company.

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

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

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

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

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

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

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

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

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

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

11. A captive insurance company may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, license fees and renewal fees payable under section 379.1302. A deduction for fees which exceeds a captive insurance company's premium tax liability for the same tax year shall not be

refundable, but may be carried forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed.

379.1332. 1. (1) The insurance dedicated fund under section 374.150, RSMo, shall be adequately funded through the collection of fees and taxes for the purpose of providing the financial means for the director of the department of insurance, financial institutions and professional registration to administer sections 379.1300 to 379.1350 and for reasonable expenses incurred in promoting the captive insurance industry in Missouri. All fees and assessments received by the department for the administration of sections 379.1300 to 379.1350 shall be paid into the fund. [In addition, the transfer of twenty percent of the premium tax under section 375.1014, RSMo, shall be made to the insurance dedicated fund until two hundred thousand dollars has been transferred. Thereafter, up to ten percent of the premium tax under section 379.1326 may be transferred to the insurance dedicated fund for the administration of sections 379.1300 to 379.1350, and up to two percent of the premium tax under section 379.1326 may be transferred to the department of economic development, with approval of the commissioner of administration, for promotional expenses.] All fees received by the department from reinsurers who assume risk solely from captive insurance companies and are subject to the provisions of section 375.246, RSMo, shall be deposited into the insurance dedicated fund.

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

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

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

2. Any plan for such conversion or merger shall provide a fair and equitable plan for purchasing, retiring, or otherwise extinguishing the interests of the stockholders and policyholders of a stock insurer, and the members and policyholders of a mutual insurer, including a fair and equitable provision for the rights and remedies of dissenting stockholders, members, or policyholders.

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

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

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

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

(c) Provides a fair and equitable plan for the conversion of stockholder, member, or

policyholder interests into subscriber interests in the resulting reciprocal insurer substantially proportionate to the corresponding interests in the stock or mutual insurer; provided, however, that this requirement shall not preclude the resulting reciprocal insurer from applying underwriting criteria that could affect ongoing ownership interests; and

(d) Is approved:

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

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

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

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

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

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

4. A merger authorized under subsection 1 of this section shall be accomplished substantially in accordance with such procedures and plan of merger adopted by the board of directors of the captive insurance company and as authorized by the director; except that, solely for purposes of such merger:

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

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

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

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

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

(6) Notwithstanding section 379.1306, the director may permit the formation, without surplus, of a captive insurance company organized as a reciprocal insurer into which an existing captive insurance company may be merged for the purpose of facilitating a transaction under this section; provided,

however, that there shall be no more than one authorized insurance company surviving such merger; and

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

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

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

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

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

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

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

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

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

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

(1) Permitted investments;

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

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

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

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

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

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

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

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

4. A SPLRC may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, application fees payable under section 379.1359 and license fees and renewal fees payable under section 379.1364. A deduction for fees which exceeds a SPLRC's premium tax liability for the same tax year shall not be refundable, but may be carried forward to any subsequent tax year, not to exceed five years, until the full deduction is claimed.

5. Every SPLRC shall, on or before February first each year, make a return on a form provided by the director, verified by the affidavit of the company's president and secretary

or other authorized officers, to the director stating the amount of all direct premiums received and assumed reinsurance premiums received, whether in cash or in notes, during the year ending on December thirty-first next preceding. Upon receipt of such returns, the director shall verify the same and certify the amount of tax due from the various companies on the basis and at the rate provided in this section, and shall certify the same to the director of revenue, on or before March thirty-first of each year. The director of revenue shall immediately thereafter notify and assess each company the amount of tax due.

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

7. Upon receiving the taxes collected under this section from the director of revenue, the state treasurer shall receipt ninety percent thereof into the general revenue fund of the state and the state treasurer shall place the remainder of such taxes collected to the credit of the insurance dedicated fund established under section 374.150, RSMo, subject to a maximum of three percent of the current fiscal year's appropriation from such fund, and he or she shall place the remainder of such taxes collected to the general revenue fund of the state.

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

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

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

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

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

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

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

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

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

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

(6) "Producer", an insurance broker or brokers or any other person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm,

association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of an insurance contract on behalf of an insured other than the person, firm, association, or corporation.

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

382.405. 1. (1) The provisions of this section shall apply if in any calendar year the aggregate amount of gross written premium on business placed with a controlled insurer by controlling [broker] **producer** is equal to or greater than five percent of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September thirtieth of the prior year.

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

(a) The controlling [broker] **producer**:

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

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

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

2. A controlled insurer shall not accept business from a controlling [broker] **producer** and a controlling [broker] **producer** shall not place business with a controlled insurer unless there is a written contract between the controlling [broker] **producer** and the insurer specifying the responsibilities of each party, which contract has been approved by the board of directors of the insurer and contains the following minimum provisions:

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

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

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

the controlled insurer under the contract;

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

(5) The controlling [broker] **producer** shall maintain separately identifiable records of business written for the controlled insurer;

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

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

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

(9) If the contract provides that the controlling [broker] **producer**, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five years after the premiums on liability insurance are earned and at least one year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection 1 of this section;

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

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

3. Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the director to review the adequacy of the insurer's loss reserves.

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

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

382.407. The [broker] **producer**, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the [broker] **producer** and the controlled insurer, except that if the business is placed through a subproducer who is not a controlling [broker] **producer**, the controlling [broker] **producer** shall retain in his records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the [broker] **producer** and that the subproducer has or will notify the insured.

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

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

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

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

4. Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors or other third parties.

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

(1) Is in unsound financial condition;

- (2) Is no longer eligible under section 384.021;
- (3) Has willfully violated the laws of this state; or
- (4) Does not make reasonably prompt payment of just losses and claims in this state or elsewhere;

the director may declare it ineligible.

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

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

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

- (1) Remitted the one hundred dollar initial fee to the director;
- (2) Submitted a completed license application on a form supplied by the director; and
- (3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination.

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

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

- (1) The name and address of the insured or insureds;
- (2) The name and address of the insurer or insurers;
- (3) The subject of the insurance;
- (4) A general description of the coverage;
- (5) The amount of premium currently charged therefor;

(6) Such additional pertinent information as may be reasonably requested by the director. 2. If any such insurance covers also a subject of insurance resident, located or to be performed outside this state, for the purposes of this section, a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located or to be performed in this state.

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

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

384.057. 1. Before March second of each year, each surplus lines broker shall report under oath to the director on forms prescribed by him **or her** a statement showing, **with respect to the year ending the immediately preceding December thirty-first:**

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

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

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

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

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

384.062. 1. If [the tax collectible] **any tax, penalty, or interest payable** by a surplus lines licensee under the provisions of sections 384.011 to 384.071 [has been collected and] is not paid within the time prescribed, the same shall be recoverable in a suit brought by the director against the surplus lines licensee.

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

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

407.1243. 1. No travel club may offer vacation benefits for sale unless the travel club maintains an effective registration statement with the Missouri attorney general that discloses the following information:

(1) The name of the travel club, including the name under which the travel club is doing or intends to do business, if it is different from the name of the travel club;

(2) The name of any parent or affiliated organization that will engage in business transactions with the purchasers of travel benefits or accept responsibility for statements made by, or acts of, the travel club that relate to sales solicited by the travel club;

(3) The travel club's business type and place of organization;

(4) If the travel club is an entity, the travel club's formation and governing documents, including articles of organization, bylaws, operating agreements, and partnership agreements;

(5) If operating under a fictitious business name, the location where the fictitious name has been registered and the same information for any parent or affiliated organization disclosed under subdivision (2) of this subsection;

(6) The names and addresses of the principal owners, officers, and directors of the travel club;

(7) The addresses where the travel club shall offer travel club memberships for sale;

(8) The name and address of the registered agent in the state of Missouri for service of process for the travel club; and

(9) A brief description of the travel club memberships the travel club is offering for sale. 2.

Any travel club offering vacation benefits for sale shall demonstrate that it possesses liquid assets of at least two hundred fifty thousand dollars by posting with the attorney general or the department of insurance, financial institutions and professional registration, in the form of one or more certificates of deposit, a letter of credit that is issued by a financial institution with assets of at least seventy-five million dollars, or if posted with the department, an executed assignment to the state of Missouri in such amount. Such requirement shall also apply to renewals under section 407.1246. Such liquid assets shall be available to the attorney general or, if the travel club is adjudged to have failed to satisfy legal obligations to its members, the assignments shall become effective. Any interest earned on an instrument provided shall accrue to the travel club; except that, the attorney general shall receive, when required, any moneys due the attorney general prior to the accrual of interest to the travel club on such moneys.

3. The attorney general shall evidence his or her receipt, approval, or disapproval, as the case may be, of a travel club's registration statement or registration renewal statement within thirty days from and after the submission. Upon compliance with the foregoing requirements, the attorney general shall approve the registration statement. Should any registration fail to address any of the registration conditions as set forth above, the attorney general shall advise in writing the registration deficiencies and the manner in which said deficiencies shall be cured. Such advice shall be provided by the attorney general within fifteen working days from the initial filing of the documents.

[3.] 4. Travel clubs that are operational prior to August 28, 2005, may continue their business activities during the pendency of the attorney general's processing of their registration statements; provided that such registration statement is filed with the attorney general within ninety calendar days of August 28, 2005. Registration of a travel club shall not be transferable.

[4.] 5. The registration statement shall additionally have appended thereto:

(1) The form of contract under which the travel club proposes to sell travel club memberships which contains the rescission statement;

(2) A check made to the order of the Missouri attorney general in the amount of fifty dollars.

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

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

[384.031. Within thirty days after the placing of any surplus lines insurance, each surplus lines licensee shall file with the director a written report, on a form prescribed by the director, which shall be kept confidential, regarding the insurance with the director, including the following:

- (1) The name and address of the insured;
- (2) The identity of the insurer or insurers;
- (3) A description of the subject and location of the risk;
- (4) The amount of premium charged for the insurance; and
- (5) Such other pertinent information as the director may reasonably require.]

Section B. Because of the need to ensure that employees or members in this state may continue health care coverage upon termination of employment or membership to the same extent as similarly situated employees or members in other states, the repeal and reenactment of section 376.428 of section A of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and the repeal and reenactment of section 376.428 of section A of this act shall be in full force and effect upon its passage and approval.

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