FIRST REGULAR SESSION

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 535

91ST GENERAL ASSEMBLY

Reported from the Committee on Insurance and Housing, March 29, 2001, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

1917S.05C

AN ACT

To repeal sections 148.400, 354.315, 354.450, 354.710, 375.246, 375.325, 375.326, 375.345, 375.774, 375.1168, 375.1176, 375.1182, 375.1202, 376.300, 376.301, 376.303, 376.305, 376.307, 379.080, 379.082 and 384.043, RSMo 2000, relating to the solvency of certain entities regulated by the director of the department of insurance, and to enact in lieu thereof twenty new sections relating to the same subject, with penalty provisions and an effective date for a certain section.

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

Section A. Sections 148.400, 354.315, 354.450, 354.710, 375.246, 375.325, 375.326, 375.345, 375.774, 375.1168, 375.1176, 375.1182, 375.1202, 376.300, 376.301, 376.303, 376.305, 376.307, 379.080, 379.082 and 384.043, RSMo 2000, are repealed and twenty new sections enacted in lieu thereof, to be known as sections 148.400, 354.315, 354.450, 354.710, 375.172, 375.246, 375.325, 375.345, 375.774, 375.1168, 375.1176, 375.1182, 375.1202, 376.300, 376.301, 376.303, 376.305, 379.080, 379.082 and 384.043, to read as follows:

148.400. All insurance companies or associations organized in or admitted to this state may deduct from premium taxes payable to this state, in addition to all other credits allowed by law, income taxes, franchise taxes, personal property taxes, valuation fees, registration fees and examination fees paid, including taxes and fees paid by the attorney in fact of a reciprocal or interinsurance exchange to the extent attributable to the principal business as such attorney in fact, under any law of this state. **For all tax years beginning on or after January 1, 2003, a deduction for examination fees which exceeds an insurance company's or**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

association'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.

354.315. Notwithstanding any prohibitions or restrictions contained in the statutes, any corporation subject to the provisions of sections 354.010 to 354.380 may acquire by purchase electronic **[**or mechanical machines constituting a**]** data processing **[**system**] equipment and operating system software**, and thereafter may hold **[**the system**] such equipment and software, but not nonoperating system software,** as an admitted asset for use in connection with the business of the company if

(1) **[**The system**] Such asset** shall have an aggregate cost **[**of not less than twenty-five thousand dollars and its aggregate cost**], net of accumulated depreciation, that** shall not exceed **[**five**] three** percent of the **[**admitted assets**] capital and surplus as required to be shown on the statutory balance sheet** of the company **for its most recently filed statement with the director adjusted to exclude any such asset and net deferred tax assets**;

(2) The cost of **[**the component machines constituting the system**] any such asset** shall be fully amortized over a period not to exceed **[**ten calendar**] three** years. **[**If a data processing system consists of separate component machines which are acquired at different times, then the cost of each component shall be fully amortized over a period not to exceed ten calendar years commencing with the date of acquisition of each component.**]**

354.450. With the exception of investments made in accordance with **[**subdivisions**] subdivision** (1) **[**and (2)**]** of subsection 1 of section 354.415 and subsection 2 of section 354.415, the investable funds of a health maintenance organization shall be invested only in securities or other investments permitted by the laws of this state for the investment of assets constituting the legal reserves of life insurance companies, or such other securities or investments as the director may permit.

354.710. 1. Every prepaid dental plan organization shall, not later than January 1, 1994, have accumulated reserves in the amount of two percent of its subscription income up to a maximum amount of one hundred fifty thousand dollars. One-third of such reserves shall be accumulated not later than January 1, 1990. Two-thirds of such reserves shall be accumulated not later than January 1, 1992. Such reserves shall constitute restricted surplus on the books of the company and shall be in addition to the deposit requirement of section 354.707. A prepaid dental plan organization shall maintain as a claim or loss reserve in cash or securities, assets sufficient to discharge all liabilities on all uncovered expenses arising under policies issued. **[**Such liabilities on uncovered expenses shall be determined in accordance with generally accepted accounting principles for the actual contractual obligations with providers and shall not be recorded as unearned premium or deferred revenue.**]**

2. The reserve prescribed by subsection 1 of this section shall not apply with respect to a

prepaid dental plan corporation which is funded by a federal, state, or municipal government or by any political subdivision thereof and which meets the requirements of subdivision (4) of subsection 2 of section 354.707.

3. Any prepaid dental plan in existence prior to January 1, 1987, will have five years to meet the surplus requirements of subsection 1 of section 354.707. However, at no time shall the liabilities of a prepaid plan exceed its assets.

4. The reserve prescribed by subsection 1 of this section, and the fidelity bond prescribed by section 354.705, shall not be required of any prepaid dental plan operated and offered by any provider prior to August 28, 1987, which primarily serves low-income patients.

375.172. Any insurer or insurance producer may charge additional incidental fees for premium installments, late payments, policy reinstatements, policy cancellations or other similar services specifically provided for by law or regulation. Such fees shall not be subject to written disclosure requirements specified in section 375.116.

375.246. 1. **The purpose of this section is to protect the interest of insureds, claimants, ceding insurers, assuming insurers and the public generally. Upon the insolvency of a non-United States insurer or reinsurers that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state insurance department with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies.**

2. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a **[**deduction**] reduction** from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1) to **[**(4)**] (5)** of this subsection. **[**If meeting the requirements of subdivision (3) or (4) of this subsection, the requirements of subdivision (5) must also be met.**] Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) have been satisfied.**

(1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**] that** is licensed to transact insurance in this state;

(2) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**] that** is accredited as a reinsurer in this state. An accredited reinsurer is one **[**which**] that**:

(a) Files with the director evidence of its submission to this state's jurisdiction;

(b) Submits to the authority of the department of insurance to examine its books and records;

(c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

[(e) Either:**]**

a. Maintains a surplus as regards policyholders in an amount **[**which is**]** not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or

b. Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director;

[c. The requirements in subparagraphs a and b of this paragraph do not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system;**]**

No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director after notice and hearing.

(3) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**] that** is domiciled **[**and licensed**]** in, or in the case of a United States branch of an alien assuming insurer is entered through, a state **[**which**] that** employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(a) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(b) Submits to the authority of the department of insurance to examine its books and records;

The requirement of paragraph (a) of this subdivision does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer **[**which**] that** maintains a trust fund in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section, for the payment of the valid claims of its United States **[**policyholders and**]** ceding insurers, their assigns and successors in interest. **To enable the director to determine the sufficiency of the trust fund,** the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the

National Association of Insurance Commissioners' annual statement form by licensed insurers**. The assuming insurer shall submit to examination of its books and records by the director**. **[**to enable the director to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust shall consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than twenty million dollars. In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trusteed account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers or any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the director an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants;

(b) In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in the previous paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the authority of the department of insurance to examine its books and records and bears the expense of such examination, and which has aggregate policyholders' surplus of ten billion dollars; the trust shall be in an amount equal to the group's several liabilities attributable to United States business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of such group; plus the group shall maintain a joint trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of United States ceding insurers or any member of the group as additional security for any such liabilities, and each member of the group shall make available to the director an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant;

(c) Such**] (b) Credit for reinsurance shall not be granted pursuant to this subdivision unless the form of the** trust **[**shall be established in a form**] and any amendments to the trust have been** approved by **[**the director of insurance.**]:**

a. The commissioner or director of the state agency regulating insurance in the state where the trust is domiciled; or

b. The commissioner or director of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(c) The form of the trust and any trust amendments also shall be filed with the commissioner or director of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and

enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in **[**the**] its** trustees **[**of the trust**]** for **[**its**] the benefit of the assuming insurer's** United States **[**policyholders and**]** ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.

(d) The trust **[**described herein must**] shall** remain in effect for as long as the assuming insurer **[**shall have**] has** outstanding obligations due under the reinsurance agreements subject to the trust**[**;

(d)**].** No later than February twenty-eighth of each year the trustees of the trust shall report to the director in writing **[**setting forth**]** the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust **[**shall**] will** not expire prior to the **[**next**]** following December thirty-first;

(e) The following requirements apply to the following categories of assuming insurer:

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by the United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusted surplus of not less than twenty million dollars.

b. In the case of a group incorporated and individual unincorporated underwriters:

(i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trusted account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;

(ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business in the United States; and

(iii) In addition to these trusts, the group shall maintain in trust a trusted surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account; and

c. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level

of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

d. Within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the director an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(5) **Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of subdivision (1), (2), (3) or (4) of this section, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction;**

(6) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer shall submit to the jurisdiction of the courts of this state, will comply with all requirements necessary to give such courts jurisdiction, and will abide by the final decisions of such courts or of any appellate courts in this state in the event of an appeal; and

(b) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This **[**provision**] subdivision** is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if **[**such an**] this** obligation is created in the agreement **[**and the jurisdiction and situs of the arbitration is the state of Missouri**];**

(7) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3), the credit permitted by subdivision (4) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (e) of subdivision (4) of this subsection, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner or director with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner or director with regulatory oversight all of the assets of the trust fund;

(b) The assets shall be distributed by and claims shall be filed with and valued by the commissioner or director with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;

(c) If the commissioner or director with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner or director with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and

(d) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.

[2. A**] 3. An asset or** reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection **[**1**] 2** of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer **[**and such**]. The** reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with **[**such**] the** assuming insurer as security for the payment of obligations thereunder, if **[**such**] the** security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in subdivision (2) of subsection **[**3**] 4** of this section. This security may be in the form of:

(1) Cash;

(2) Securities listed by the securities valuation office of the National Association of Insurance Commissioners and qualifying as admitted assets;

(3) **(a)** Clean, irrevocable, unconditional letters of credit, as defined in subdivision (1) of subsection **[**3**] 4** of this section, issued or confirmed by a qualified United States **financial** institution no later than December thirty-first **[**with respect to**] of** the year for which filing is being made, and in the possession of**, or in trust for,** the ceding company on or before the filing date of its annual statement**[**.**];**

(b) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, shall continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs;

(4) Any other form of security acceptable to the director **[**and approved by the attorney general**]**.

[3.**] 4.** (1) For purposes of subdivision (3) of subsection **[**2**] 3** of this section, a "qualified United States financial institution" means an institution that:

(a) Is organized or**,** in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(c) Has been determined by either the director, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.

(2) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(a) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.

[4.**]** **5.** The director may adopt rules and regulations implementing the provisions of this section.

[5.**]** **6. (1)** The director shall disallow any credit as an asset or as a deduction from liability for any reinsurance found by him to have been arranged for the purpose principally of deception as to the ceding company's financial condition as of the date of any financial statement of the company. Without limiting the general purport of this provision, reinsurance of any substantial part of the company's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the assuming insurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception within the intent of this provision.

(2) (a) The director shall also disallow **as an asset or deduction from liability, to any ceding insurer,** any credit for reinsurance unless the reinsurance is payable to the ceding company, and if it be impaired or insolvent to its **[**rehabilitator or**]** receiver, by the assuming insurer on the basis of the liability of the ceding company under the contracts reinsured without diminution because of the insolvency of the ceding company.

(b) Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

a. Where the contract of insurance or reinsurance specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

b. Where the assuming insurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for such claim payment.

(d) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

[6. After an insurer has been declared insolvent the liquidator or receiver of such insurer shall file with the director a statement which shall reflect the claims reserves (including incurred but not reported losses) and unearned premium reserves which have been established by the liquidator or receiver and which shall also set forth the amounts of such reserves that are allocable to particular reinsurers of the insolvent company. Each such statement shall be filed by each liquidator or receiver not less frequently than annually and shall be considered for all intents and purposes as the annual statement which was required to be filed by the insurer with the director prior to the liquidation proceedings.**]** **7.** To the extent that any reinsurer of an insurance company in liquidation would have been required under any agreement pertaining to reinsurance to post

letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon a statement [required to post letters of credit or other security to cover] **filed with a regulatory authority** such **reinsurer shall be required to post letters of credit or other security to cover** reserves after a company has been placed in liquidation or receivership. [If a reinsurer shall fail to post letters of credit or other security required by a reinsurance agreement or the provisions of this section, the director may issue an order barring such reinsurer from thereafter reinsuring any insurance company which is incorporated under the laws of the state of Missouri or admitted to do business in the state of Missouri.] The provisions of section 375.420 shall not apply to any action, suit or proceeding by a ceding insurer against an assuming insurer arising out of a contract of reinsurance effectuated in accordance with the laws of Missouri.

[7.] **8.** The provisions of this section shall become effective on January 1, [1992] **2002**, and shall be applicable to the financial statements of a reinsurer as of December 31, [1991] **2001**.

375.325. Notwithstanding any prohibitions or restrictions contained in the statutes, any insurance company may acquire by purchase electronic [or mechanical machines constituting a] data processing **and operating** system **software**, and thereafter may hold [the system] **such equipment and software, but not nonoperating system software,** as an admitted asset for use in connection with the business of the company if

(1) [The system] **Such asset** shall have an aggregate cost [of not less than twenty-five thousand dollars and its aggregate cost]**, net of accumulated depreciation, that** shall not exceed [five] **three** percent of the [admitted assets] **capital and surplus as required to be shown on the statutory balance sheet** of the company **for its most recently filed statement with the director adjusted to exclude any such asset and net deferred tax assets**;

(2) The cost of [the component machines constituting the system] **any such asset** shall be fully amortized over a period not to exceed ten calendar years. If a data processing system consists of separate component machines which are acquired at different times, then the cost of each component shall be fully amortized over a period not to exceed [ten calendar] **three** years [commencing with the date of acquisition of each component].

[375.326. 1. Notwithstanding any prohibitions or restrictions contained in the statutes or otherwise, any stock, mutual, or reciprocal insurance company doing the business of property and casualty business in this state may acquire by purchase motor vehicles and thereafter may hold them as admitted assets for use in connection with the business of the company if:

(1) The aggregate cost of such motor vehicles shall be at least twenty-five thousand dollars. Such aggregate cost shall not exceed two percent of the admitted assets of the company, and such company shall have a minimum of three million dollars of surplus;

(2) The cost of each such motor vehicle shall be fully amortized over a period not to exceed five years;

(3) The company has obtained in its name proper title or registration from a governmental agency authorized by law or custom to issue such title or registration.

2. Nothing in this section shall be construed to allow insurers to declare motor vehicles to the extent such vehicles are used for personal use and not used in furtherance of activities not necessary to the business of the insurer.

3. No insurance company domiciled in another state which state refuses to allow insurance companies domiciled in this state to declare on any statement to be filed in that state motor vehicles under the provisions of this section shall be allowed to declare such amounts on statements filed in this state.**]**

375.345. 1. As used in this section, the following words and terms mean:

[(1) "Call option", an exchange-traded option contract under which the holder has the right to buy (or to make a cash settlement in lieu thereof) a fixed number of shares of stock, a fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed expiration date;

(2) "Commodity Futures Trading Commission", the federal regulatory agency charged and empowered under the Commodity Futures Trading Commission Act of 1974, as amended, with the regulation of futures trading in commodities;

(3) "Financial futures contract", an exchange-traded agreement to make or take delivery of (or to make cash settlement in lieu thereof) a fixed amount of an underlying security, or an index of underlying securities, on a specified date or during a specified period of time, or a call or put option on such an agreement, made through a registered futures commission merchant on a board of trade which has been designated by the Commodity Futures Trading Commission as a contract market. Such financial futures contracts shall include the following categories: United States treasury bills, bonds and notes; securities or pools of securities issued by the Government National Mortgage Association; bank certificates of deposit; Standard and Poor's 500 Stock Price Index; NYSE Composite Index; KC Value Line Index; and such other agreements which have been approved by and which are governed by the rules and regulations of the Commodity Futures Trading Commission and the respective contract markets on which such financial futures contracts are traded;

(4) "Margin", any type of deposit or settlement made or required to be made with a futures commission merchant, clearinghouse, or safekeeping agent to insure performance of the terms of the financial futures contract. For the purposes of this section, "margin" includes initial, maintenance and variation margins as such terms are commonly and customarily employed in the futures industry;

(5) "Put option", an exchange-traded option contract under which the holder has the right to sell (or to make a cash settlement in lieu thereof) a fixed number of shares of stock, fixed amount of an underlying security, or an index of underlying securities at a stated price on or before a fixed

expiration date;

(6) "Securities and Exchange Commission", the federal regulatory agency charged and empowered under the Securities Exchange Act of 1934, as amended, with the regulation of trading in securities; and

(7) "Underlying security", the security subject to being purchased or sold upon exercise of a call option or put option, or the security subject to delivery under a financial futures contract.**]**

(1) "Caps", options in which the cap writer (seller), in return for a premium, agrees to limit, or cap, the cap holder's (purchaser) risk associated with an increase in a reference rate or index;

(2) "Collars", options that are a combination of a cap and a floor (one purchased and one written) and that fixes the rate between two levels;

(3) "Derivatives", swaps, options, forwards, futures, caps, floors and collars;

(4) "Director", the director of the department of insurance of this state;

(5) "Floors", options in which the floor writer (seller), in return for a premium, agrees to limit the risk associated with a decline in a reference rate or index;

(6) "Forwards", agreements between two parties that commit one party to purchase and the other to sell the instrument or commodity underlying the contract at a specified future date and that fix the price, quantity, quality, and date of the purchase and sale;

(7) "Futures", standardized forwards traded on organized exchanges;

(8) "Options", contracts that give the option holder (purchaser of the option rights) the right, but not the obligation, to enter into a transaction with the option writer (seller of the option rights) to buy or sell an underlying instrument or commodity on terms specified in the contract;

(9) "Swaps", contracts to exchange, for a period of time, the investment performance of one underlying instrument for the investment performance of another underlying instrument.

2. The purchase and sale of **[**put options or call options**] derivatives** may take place under the following conditions:

(1) **A derivative is an admitted asset to the extent that a derivative is in an asset position and it conforms to the requirements of this section, any rules or orders adopted or issued by the director pursuant to this section, and any other insurance laws of this state;**

(2) An insurance company may purchase **[**put options**]** or sell **[**call options**] derivatives** with regard to underlying securities owned by the insurance company, underlying securities which the insurance company may reasonably expect to obtain through exercise of warrants or conversion rights owned by the insurance company at the time the **[**put option**] derivative** is purchased or

[the call option is**]** sold, or to reduce the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.

[(2)**]** **(3)** An insurance company may sell **[**put options**]** or purchase **[**call options**]** **derivatives for the purpose of hedging against or** to reduce the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in the normal course of business, or to offset obligations and rights of the insurance company under other options held by the insurance company pertaining to the same underlying securities, or index of underlying securities.

[(3)**]** **(4)** An insurance company may purchase or sell **[**put options or call options**]** **derivatives** only on underlying securities, or an index of underlying securities, which are eligible for investment by an insurance company under the laws of the state of Missouri.

[(4)**]** **(5)** An insurance company may purchase or sell **[**put or call options**]** **derivatives** only through an exchange which is registered with the Securities and Exchange Commission as a national securities exchange pursuant to the provisions of the Securities Exchange Act of 1934, as amended.

[(5)**]** **(6)** An insurance company shall not purchase **[**call options**]** or sell **[**put options**]** **derivatives**, if such purchase or sale could result in the acquisition of an amount of underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under the laws of the state of Missouri for investment in those particular underlying securities by the type or kind of insurance company involved.

[(6) The premiums paid for all option contracts purchased, less the premiums received for all option contracts sold, plus amounts calculated pursuant to subdivision (3) of subsection 3 of this section, shall not at any one time exceed in the aggregate five percent of the insurance company's admitted assets.

3. The purchase and sale of financial futures contracts may take place under the following conditions:

(1) An insurance company may purchase or sell financial futures contracts for the purpose of hedging against the economic risk associated with an insurance company asset or liability, group of such assets or liabilities, or assets, liabilities or groups of assets or liabilities reasonably expected to be acquired or incurred by the insurance company in its normal course of business. Such assets or liabilities must be subject to an economic risk, such as changing interest rates or prices.

(2) An insurance company shall not purchase or sell financial futures contracts or options on such contracts, if such purchase or sale could result in the acquisition of an amount of

underlying securities which, when aggregated with current holdings, exceeds applicable limitations imposed under the laws of the state of Missouri for investment in those particular underlying securities by the type or kind of insurance company involved.

(3) For all purchased or sold financial futures contracts together, plus amounts calculated pursuant to subdivision (6) of subsection 2 of this section,**]**

(7) An insurance company shall not invest **in derivatives** at any one time an aggregate amount of more than **[**five percent of its admitted assets**] the limit applicable to the securities underlying the derivatives**. **[**For the purposes of transactions in financial futures contracts,**]** Such admitted assets limitation shall be calculated by taking the net asset value of the property used to margin the **[**financial futures contract**] derivatives** positions, plus **[**option**]** premiums paid on **[**financial futures contracts**] derivatives**, less **[**option**]** premiums received on **[**financial futures contracts**] derivatives**.

[4.**] 3.** Written investment policies and recordkeeping procedures shall be approved by the board of directors of the insurance company or by a committee authorized by such board before the insurance company may engage in the practices and activities authorized by this section. These policies and procedures must be specific enough to define and control permissible and suitable investment strategies with regard to **[**put options, call options, and financial futures contracts**] derivatives** with a view toward the protection of the policyholders. The minutes of any such committee shall be recorded and regular reports of such committee shall be submitted to the board of directors.

[5.**] 4.** The director **[**of the department of insurance**]** may**:**

(1) Promulgate **reasonable** rules**[**, guidelines**]** and regulations **pursuant to the provisions of chapter 536, RSMo, not inconsistent with this section and any other insurance laws of this state,** establishing standards and requirements relating to practices and activities authorized in this section**, including standards and requirements for the accounting treatment, reporting and statement value, and investment limits regarding the purchase and sale of and investment in any derivative;**

(2) Issue any reasonable orders to a specific insurer, not inconsistent with this section and any other insurance laws of this state and not inconsistent with any rules or regulations adopted by the director pursuant to this section, establishing standards and requirements for such insurer's accounting treatment, reporting and statement value, and investment limitations regarding the purchase and sale of and investment in any derivative.

375.774. 1. The association shall issue to each insurer paying an assessment under sections 375.771 to 375.779 a certificate of contribution, in appropriate form and terms as prescribed by the director, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue.

2. A certificate of contribution **[**issued before September 1, 1991,**]** may be shown by the insurer in its financial statements as an admitted asset for such amount and period of time, as follows:

(1) One hundred percent for the calendar year of issuance;

(2) Sixty-six and two-thirds percent for the first calendar year after the year of issuance;

(3) Thirty-three and one-third percent for the second year after the year of issuance which shall be the last year each such certificate shall be carried as an asset**[**;

(4) An insurer shall not show a certificate of contribution issued on and after September 1, 1991, in its financial statements as an admitted asset**]**.

3. The insurer shall be entitled to a credit against the premium tax liability under sections 148.310 to 148.461, RSMo, for contributions paid to the association. This tax credit shall be taken over a period of the three successive tax years beginning after the year of contribution at the rate of thirty-three and one-third percent, per year, of the contribution paid to the association, and such credit shall not be subject to subsection 1 of section 375.916.

4. Any sums recovered by the association representing sums which have theretofore been written off by contributing insurers and offset against premium taxes as provided in subsection 3 of this section shall be paid by the association to the director of revenue who shall handle such funds in the same manner as provided in section 148.380, RSMo.

5. The association shall be exempt from payment of all fees and all capitation or poll and excise taxes levied by this state or any of its political subdivisions and the real and personal property of the association is hereby declared to be property actually and regularly used exclusively for purposes purely charitable and not held for private or corporate profit within the meaning of subdivision (5) of section 137.100, RSMo 1986.

375.1168. 1. The director as rehabilitator may appoint one or more special deputies, who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the director may employ such counsel, clerks and assistants as deemed necessary**, except that no person shall be employed by the rehabilitator who is related within the second degree by blood or by marriage to the rehabilitator or special deputy rehabilitator, nor shall any member or employee of a law firm, consultant or other person receiving substantial fees or other income from the insurer's assets be related within the second degree by blood or by marriage to the rehabilitator or special deputy rehabilitator. An attorney who serves as a special deputy rehabilitator may not also serve as counsel to the rehabilitator or to the company in rehabilitation unless the court determines that such dual appointment will contribute to conserving the assets of the insurer. This restriction shall also apply to any law firm with which the special deputy rehabilitator is affiliated**. The compensation of the special deputy, counsel, clerks and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the

director with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the director. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the director may advance the costs so incurred out of any appropriation to the department for such purpose. Any amounts so advanced for expenses or administration shall be repaid to the director out of the first available money of the insurer, and shall be paid by the director to the state treasurer for deposit to the general revenue fund.

2. The rehabilitator may take such action as he deems necessary or appropriate to reform and revitalize the insurer. He shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with property and business of the insurer.

3. If it appears to the rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agency, employee or other person, the rehabilitator may pursue all appropriate legal remedies on behalf of the insurer**, subject to prior court approval. Upon application of the rehabilitator for authority to pursue legal remedies on behalf of the insurer, and after such notice and hearing as the court may prescribe, the court shall consider anticipated costs and benefits. The court may impose such conditions on the rehabilitator's pursuit of legal remedies as may contribute to the conservation of the insurer's assets**.

4. If the rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer is appropriate, he shall prepare a plan to effect such changes **and file the plan with the court within ninety days of the order of rehabilitation unless an extended period for filing the plan is approved by the court**. Upon application of the rehabilitator for approval of the plan, and after such notice and hearings as the court may prescribe, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for such period and to such an extent as may be necessary.

5. The rehabilitator shall have all powers provided by law to avoid fraudulent transfers.

6. The rehabilitator, with the approval of the court, may appoint an advisory committee of policyholders, claimants, or other creditors should such a committee be deemed necessary. Such committee shall serve at the pleasure of the rehabilitator and shall serve without compensation other than reimbursement for reasonable travel and other expenses. No other committee of any

nature shall be appointed by the rehabilitator or the court in rehabilitation proceedings conducted under this section.

7. Any appeal by the rehabilitator to the court of appeals or the supreme court of a lower court opinion or order releasing the company in rehabilitation from that rehabilitation may be taken only if the rehabilitator and the attorney general both agree, after consultation, that an appeal is appropriate.

375.1176. 1. An order to liquidate the business of a domestic insurer shall appoint the director and his successors as liquidator and shall direct the liquidator forthwith to take immediate possession of the assets of the insurer and to administer them subject to the supervision of the court until the liquidator is discharged by the court. The liquidation of any insurer shall be considered to be the business of insurance for purposes of application of any law of this state. The liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the order of liquidation. The order shall require the liquidator to take immediate possession of and to secure all of the records and property of the insurer wherever it is located, and to take all measures necessary to preserve the integrity of the insurer's records. The filing or recording of the order with the clerk of the court and the recorder of deeds of the county in which its principal office or place of business is located or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that recorder of deeds would have imparted.

2. With the approval of the court, the director as liquidator may appoint a special deputy or deputies to act for him under sections 375.1175 to 375.1230. The special deputy shall not be an employee of the department of insurance**. The special deputy shall not be anyone who served as a special deputy rehabilitator for the same insurer unless the court determines that such appointment will contribute to conserving the assets of the insurer**. The special deputy shall have all powers of the liquidator granted by sections 375.1175 to 375.1230. The special deputy shall administer and liquidate the insolvent insurer subject to the general supervision of the director and the specific supervision of the court as provided in sections 375.1175 to 375.1230.

3. Upon issuance of the order of liquidation, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and any other persons interested in its estate shall become fixed and the termination of any period fixed by any statute of limitations provided by law shall be suspended as of the date of entry of the order of liquidation, except as provided in sections 375.1178, 375.1206 and 375.1210. Rights of shareholders provided by any law other than as provided by sections 375.1150 to 375.1246 shall be suspended upon issuance of the order of liquidation.

4. An order to liquidate the business of an alien insurer domiciled in this state shall be in

the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included therein.

5. At the time of petitioning for an order of liquidation, or at any time thereafter, the director, after making determination of an insurer's insolvency, may petition the court for a judicial declaration of such insolvency. After providing such notice and hearing as it deems proper, the court may make the declaration.

6. (1) Any order issued under this section shall require periodic financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.

(2) **[**After an order of liquidation has been entered, the liquidator of such insurer shall file with the director a statement which shall reflect the claims reserves, including losses incurred but not reported, and unearned premium reserves which have been established by the liquidator and which shall also set forth the amounts of such reserves that are allocable to particular reinsurers of the insolvent company. A similar statement shall be filed by each liquidator not less frequently than annually and shall be considered for all intents and purposes as the annual statement which was required to be filed by the insurer with the director prior to the liquidation proceedings.**]** To the extent that any reinsurer of an insurer in liquidation would have been required under any agreement pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon a statement filed with a regulatory authority, such reinsurer shall be required to post letters of credit or other security to cover such reserves after an insurer has been placed in liquidation. **[**If a reinsurer shall fail to post letters of credit or other security required by a reinsurance agreement or the provisions of this section, the director may issue an order barring such reinsurer from thereafter reinsuring any insurer which is incorporated under the laws of the state of Missouri.**]**

7. (1) Within five days after the initiation of an appeal of an order of liquidation, the liquidator shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition, in the judgment of the liquidator, will not support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the liquidator finds

to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court shall examine the plan submitted by the liquidator and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. No action shall lie against the liquidator or any of his deputies, agents, clerks, assistants or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

(3) Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any guaranty association, including reasonable allocated loss adjustment expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable guaranty associations.

8. Any person who shall knowingly destroy, conceal, convert or alter any records or property of an insurer after entry of an order of liquidation, without having received prior written permission of the liquidator or of the court, or who shall knowingly neglect or refuse, upon the order or demand of the liquidator, to deliver to the liquidator any records or property of an insurer in his possession or control, shall be guilty of a class C felony.

375.1182. 1. The liquidator shall have the power:

(1) To employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants and such other personnel as he may deem necessary to assist in the liquidation**, except that no person shall be employed by the liquidator who is related within the second degree by blood or by marriage to the liquidator or special deputy liquidator, nor shall any employee of a law firm, consultant or other person receiving substantial fees or other income from the insurer's assets be related to within the second degree by blood or by marriage to the liquidator or special deputy liquidator**;

(2) To fix the reasonable compensation of employees and agents, legal counsel, actuaries, accountants, appraisers and consultants with the approval of the court;

(3) To pay reasonable compensation to persons appointed and to defray from the funds or assets of the insurer all expenses of taking possession of, conserving, conducting, liquidating, disposing of, or otherwise dealing with the business and property of the insurer. In the event that the property of the insurer does not contain sufficient cash or liquid assets to defray the costs

incurred, the director may advance the costs so incurred out of funds appropriated for that purpose. Any amounts so advanced for expenses of administration shall be repaid to the director out of the first available moneys of the insurer and such funds repaid shall be transferred by the director to the state treasurer for deposit to the general revenue fund;

(4) To hold hearings, to subpoena witnesses to compel their attendance, to administer oaths, to examine any persons under oath, and to compel any person to subscribe to his testimony after it has been correctly reduced to writing; and in connection therewith to require the production of any books, papers, records or other documents which he deems relevant to the inquiry;

(5) To audit the books and records of all agents of the insurer insofar as those records relate to the business activities of the insurer;

(6) To collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose:

(a) To institute timely action in other jurisdictions, in order to forestall garnishment and attachment proceedings against such debts;

(b) To do such other acts as are necessary or expedient to collect, conserve or protect its assets or property, including the power to sell, compound, compromise or assign debts for purposes of collection upon such terms and conditions as he deems best; and

(c) To pursue any creditor's remedies available to enforce his claims;

(7) To conduct public and private sales of the property of the insurer;

(8) To use assets of the estate of an insurer under a liquidation order to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under section 375.1218;

(9) To acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon or otherwise dispose of or deal with, any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable. He shall also have power to execute, acknowledge and deliver any and all deeds;

(10) To borrow money on the security of the insurer's assets or without security and to execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation. Any such funds borrowed may be repaid as an administrative expense and have priority over any other claims in class 1 under the priority of distribution;

(11) To enter into such contracts as are necessary to carry out the order to liquidate, and to affirm or disavow any contracts to which the insurer is a party;

(12) To continue to prosecute and to institute in the name of the insurer or in his own name any and all suits and other legal proceedings, in this state or elsewhere, and, with the approval of the supervising court, to abandon the prosecution of claims he deems unprofitable to pursue further. If the insurer is dissolved under section 375.1180, he shall have the power to apply to any court in this state or elsewhere for leave to substitute himself for the insurer as plaintiff;

(13) To prosecute any action which may exist on behalf of the creditors, members, policyholders or shareholders of the insurer against any officer of the insurer, or any other person;

(14) To institute proceedings in the same case for receivership for any organization or corporation having the exclusive or dominant right to manage or control the insurer which is the subject of the main case, when it appears that a receiver is necessary for the preservation of the assets of the insurer or that a receiver is necessary to determine the assets of the insurer held by the organization or corporation. The duration of the receivership and the duties of the receiver shall be in the discretion of the court;

(15) To remove any or all records and property of the insurer to the offices of the director or to such other place as may be convenient for the purposes of efficient and orderly execution of the liquidation. Guaranty associations and foreign guaranty associations shall have such reasonable access to the records of the insurer as is necessary for them to carry out their legal obligations;

(16) To deposit in one or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions and to invest all sums not currently needed, unless the court orders otherwise; provided that, at the election of the supervising court, funds held by the liquidator of the insurer's estate shall be deposited and invested by the liquidator pursuant to either of the following standards as the court shall order:

(a) The standards specified by law for the deposit and investment of state funds by the state treasurer, as such standards are determined to be applicable by the court;

(b) The standards specified by law for the investment of money and property of the Missouri state employees' retirement system, as such standards are determined to be applicable by the court;

(17) To file any necessary documents for record in the office of any recorder of deeds or other office in this state or elsewhere where property of the insurer is located;

(18) To assert all defenses available to the insurer as against third persons, including statutes of limitation, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition in liquidation has been filed shall not bind the liquidator. Whenever a guaranty association or foreign guaranty association has an obligation to defend any suit, the liquidator shall give precedence to such obligation and may defend only in the absence of a defense by such guaranty associations;

(19) To exercise and enforce all the rights, remedies, and powers of any creditor, shareholder, policyholder or member, including any power to avoid any transfer or lien that may be given by the general law and that is not included **[**with**] within** sections 375.1192 to 375.1195, except for any right of distribution pursuant to section 375.1218;

(20) To intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and to act as the receiver or trustee whenever the appointment is offered;

(21) To enter into agreements with any receiver or director of any other state relating to the rehabilitation, liquidation, conservation or dissolution of an insurer doing business in both states; and

(22) To exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with the provisions of sections 375.1150 to 375.1246.

2. (1) If an insurer being liquidated issued liability policies on a claims-made basis, which provided an option to purchase an extended period to report claims, then the liquidator may make available to holders of such policies, for a charge, an extended period to report claims as stated herein. The extended reporting period shall be made available only to those insureds who have not secured substitute coverage. The extended period made available by the liquidator shall begin upon termination of any extended period to report claims in the basic policy and shall end at the earlier of the final date for filing of claims in the liquidation proceeding or eighteen months from the entry of the order of liquidation.

(2) The extended period to report claims made available by the liquidator shall be subject to the terms of the policy to which it relates. The liquidator shall make available such extended period within sixty days after the order of liquidation at a charge to be determined by the liquidator subject to approval of the court. Such offer shall be deemed rejected unless the offer is accepted in writing and the charge is paid within ninety days after the order of liquidation. No commissions, premium taxes, assessments or other fees shall be due on the charges paid by policyholders pertaining to the extended period to report claims.

3. The enumeration in this section of the powers and authority of the liquidator shall not be construed as a limitation upon him, nor shall it exclude in any manner his right to do such other acts not herein specifically enumerated, or otherwise provided for, as may be necessary or appropriate for the accomplishment of or in aid of the purpose of liquidation.

4. Notwithstanding the powers of the liquidator as stated in this section, the liquidator shall have no obligation to defend claims or to continue to defend claims subsequent to the discharge of the liquidator.

5. The director as liquidator, any special deputy, all employees, agents and attorneys of the liquidator and the special deputy, and all employees of the state of Missouri when acting with respect to the liquidation shall be considered to be officers of the court when acting in such capacities and as such shall be subject to the orders and directions of the court with respect to their actions or omissions in connection with the liquidation. The liquidator, special deputy, commissioners and referees appointed by the court, the agents, attorneys and employees of the liquidator and employees of the state of Missouri when acting with respect to the liquidation shall enjoy absolute judicial immunity and be immune from any claim against them personally for any act or omission committed in the performance of their functions and duties in connection with the liquidation.

6. Notwithstanding the provisions of section 375.1158, subdivision (16) of subsection 1 of this section shall apply to and govern delinquency proceedings commenced before and after August 28, 1991.

7. Any appeal by the liquidator to the court of appeals or the supreme court of a lower court's refusal to approve a petition to liquidate the company may be taken only if the liquidator and the attorney general both agree, after consultation, that an appeal is appropriate.

375.1202. **1.** The amount recoverable by the liquidator from reinsurers shall not be reduced as a result of the delinquency proceedings, regardless of any provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor shall not diminish the reinsurer's obligation to the insurer's estate**[.] except where:**

(1) The reinsurance contract specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the ceding insurer's insolvency; or

(2) The assuming insurer, with the consent of the direct insured or insureds, has directly assumed the ceding insurer's policy obligations to the payees under such policies in substitution for the ceding insurer's obligations to such payees.

2. Notwithstanding subsection 1, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for said claim payment.

376.300. 1. All other laws to the contrary notwithstanding, the **assets,** capital, reserve and surplus of all life insurance companies of whatever kind and character organized pursuant to the laws of this state shall be invested only in **and consist only of** the following:

(1) Bonds, notes or other evidences of indebtedness, issued, assumed or guaranteed as to principal and interest, by the United States, any state, territory or possession of the United States, the District of Columbia, or of an administration, agency, authority or instrumentality of any of the political units enumerated, and of the Dominion of Canada;

(2) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as to principal and interest by any foreign country or state not mentioned in subdivision (1) insofar as such bonds, notes or other evidences of indebtedness may be necessary or required in order to do

business in such foreign state or country;

(3) Bonds, notes or other evidences of indebtedness issued, guaranteed or insured as to principal and interest, by a city, county, drainage district, levee district, road district, school district, tax district, town, township, village or other civil administration, agency, authority, instrumentality or subdivision of a city, county, state, territory or possession of the United States or of the District of Columbia, provided such obligations are authorized by law;

(4) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or insured, but only to the extent guaranteed or insured by the United States, any state, territory or possession of the United States, the District of Columbia, or by any agency, administration, authority or instrumentality of any of the political units enumerated;

(5) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by a corporation organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, provided such bonds, notes or other evidences of indebtedness shall meet with the requirements of either paragraph (a) or (b) of this subdivision:

(a) The issuing, assuming or guaranteeing corporation shall have had bonds, notes or other evidences of indebtedness outstanding for five years prior to the time of acquisition of such bonds or other evidences of indebtedness and shall not have defaulted in the payment of either principal or interest upon any of its outstanding indebtedness during such five-year period;

(b) Such bonds, notes or other evidences of indebtedness are not in default as to principal or interest; and

a. The net earnings of the issuing, assuming or guaranteeing corporation or corporations, for a period of five fiscal years next preceding the date of acquisition, shall have averaged per year not less than one and one-half times its or their annual fixed charges as of the date of acquisition; or

b. Such corporation or corporations, over the period of the five fiscal years immediately preceding purchase, shall have earned an average amount per annum at least equal to two times the amount of the yearly interest charges upon all its or their bonds, notes and other evidences of indebtedness of equal or prior lien outstanding at date of purchase;

(6) **[**(a)**]** Notes, equipment trust certificates or obligations which are adequately secured, or other adequately secured instruments evidencing an interest in any **[**equipment leased or sold to a corporation, other than the life insurance company making the investment or its parent or affiliates, which qualifies under subdivision (5) of this subsection for investment in its bonds, notes, or other evidences of indebtedness, or to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding one million dollars in the fiscal year immediately preceding purchase, which provide a right to receive determined rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment and which obligatory payments are adequate to retire the obligations within twenty years from date of issue; or

(b) Notes, trust certificates, or other instruments which are adequately secured. Such notes, trust certificates, or other instruments shall be considered adequately secured for the purposes of this paragraph if a corporation or corporations which qualify under subdivision (5) of this subsection for investment in their bonds, notes, or other evidences of indebtedness, are jointly or severally obliged under a binding lease or agreement to make rental, purchase, use, or other payments for the benefit of the life insurance company making the investment which are adequate to retire the instruments according to their terms within twenty years from date of issue**] otherwise admissible asset**;

(7) Preferred or guaranteed stocks or shares of any solvent corporation created or existing under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, if all of the prior obligations and prior preferred stocks, if any, of such corporation, at the date of acquisition, are eligible as investments under any provisions of this section; and if qualified under paragraph (a) or paragraph (b) following:

(a) Preferred stocks or shares shall be deemed qualified if both of the following requirements are fulfilled:

a. The net earnings of such corporation available for its fixed charges for a period of five fiscal years next preceding the date of acquisition shall have averaged per year no less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements applicable to such period; and

b. During each of the last two years of such period, such net earnings shall have been no less than one and one-half times the sum of its fixed charges, contingent interest and preferred dividend requirements for each year. The term "preferred dividend requirements" shall be deemed to mean cumulative or noncumulative dividends, whether paid or not;

(b) Guaranteed stocks or shares shall be deemed qualified if the assuming or guaranteeing corporation meets the requirements of subparagraph a. of paragraph (b) of subdivision (5) of this subsection construed so as to include as a fixed charge the amount of guaranteed dividends of such issue or the rental covering the guarantee of such dividends;

(8) Stocks or shares of insured state-chartered building and loan associations, federal savings and loan associations, if such shares are insured by the Federal Savings and Loan Insurance Corporation pursuant to the terms of Title IV of the act of the Congress of the United States, entitled "The National Housing Act" (12 U.S.C.A. Sections 1724 to 1730), as the same presently exists or may subsequently be amended, and federal home loan banks;

(9) Loans evidenced by notes or other evidences of indebtedness and secured by first mortgage liens on unencumbered real estate or unencumbered leaseholds having at least twenty-five years of unexpired term, such real estate or leaseholds to be located in the United States, any territory or possession of the United States. Such loans shall not exceed eighty percent

of the fair market value of the security of the loan for insurance companies. However, insurance companies may make loans in excess of eighty percent of the fair market value of the security for the loan, but not to exceed ninety-five percent of the fair market value of the security for the loan, if that portion of the total indebtedness in excess of seventy-five percent of the value of the security for the loan is guaranteed or insured by a mortgage insurance company authorized by the director of insurance to do business in this state, and provided the mortgage insurance company is not affiliated with the entity making the loan. In addition, an insurance company may not place more than two percent of its admitted assets in loans in which the amount of the loan exceeds ninety percent of the fair market value of the security for the loan. An entity which is restricted by section 104.440, RSMo, in making investments to those authorized life insurance companies may make loans in excess of eighty percent of the fair market value of the security of the loan if that portion of the total indebtedness in excess of eighty percent of the fair market value is insured by a mortgage insurance company authorized by the director of insurance to do business in this state. Any life insurance company may sell any real estate acquired by it and take back a purchase money mortgage or deed of trust for the whole or any part of the sale price; and such percentage may be exceeded if and to the extent such excess is guaranteed or insured by the United States, any state, territory or possession of the United States, any city within the United States having a population of one hundred thousand or more or by an administration, agency, authority or instrumentality of any such governmental units; and such percentage shall not exceed one hundred percent if such a loan is made to a corporation which qualifies pursuant to subdivision (5) for investment in its bonds, notes or other evidences of indebtedness, or if the borrower assigns to the lender a lease or leases on the real estate providing rentals payable to the borrower in amounts sufficient to repay such loan with interest in the manner specified by the note or notes evidencing such loan and executed as lessee or lessees by a corporation or corporations, which qualify pursuant to subdivision (5) for investment in its or their bonds, notes or other evidences of indebtedness. No mortgage loan upon a leasehold shall be made or acquired pursuant to this subdivision unless the terms of the mortgage loan shall provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within four-fifths of the term of the leasehold which is unexpired at the time the loan is made, but in no event exceeding thirty years. Real estate or a leasehold shall not be deemed to be encumbered by reason of the existence in relation thereto of:

(a) Liens inferior to the lien securing the loan made by the life insurance company;

(b) Taxes or assessment liens not delinquent;

(c) Instruments creating or reserving mineral, oil or timber rights, rights-of-way, common or joint driveways, easements for sewers, walls or utilities;

(d) Building restrictions and other restrictive covenants; or

(e) An unassigned lease reserving rents or profits to the owner;

(10) Shares of stock, bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by an urban redevelopment corporation organized pursuant to the provisions of chapter 353, RSMo, known as the "Urban Redevelopment Corporations Law", or any amendments thereto, or any law enacted in lieu thereof; provided, that one or more such life insurance companies may, with the approval of the director of the department of insurance, subscribe to and own all of the shares of stock of any such urban redevelopment corporation; and provided further, that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent of the admitted assets of such company;

(11) Land situated in this state and located within an area subject to redevelopment within the meaning of the urban redevelopment corporations law, or any amendments thereto, or any law enacted in lieu thereof, which land is acquired for the purposes specified in such urban redevelopment corporations law, and any such life insurance company may erect apartments, tenements or other dwelling houses, not including hotels, but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects, and such company may thereafter own, hold, rent, lease, collect or receive income, maintain and manage such land so acquired and the improvements thereon, as real estate necessary and proper for the carrying on of its legitimate business; provided, that any such life insurance company shall have power to own, hold, maintain and manage such land, and all improvements thereon, in accordance with the urban redevelopment corporations law, amendments thereto or any law enacted in lieu thereof, and shall have all the powers, duties, obligations, privileges and immunities, including any tax exemption, credits or relief, granted an urban redevelopment corporation, pursuant to the urban redevelopment corporations law, amendments thereto or any law enacted in lieu thereof, the same as if such insurance company were an urban redevelopment corporation organized pursuant to the provisions of that law; provided, that two or more such life insurance companies may, with the approval of the director of the department of insurance, enter into agreements whereby the ownership and management and control of a redevelopment project is participated in by each such company; and provided further that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent of the admitted assets of such company;

(12) Investments in property and processes for the development and production of solar or geothermal energy, fossil or synthetic fuels, or gasohol, whether made directly or as a participant in a general partnership, limited partnership or joint venture**;**

(13) Cash;

(14) Deferred income tax assets, in an amount equal to the sum of:

(a) Federal income taxes paid in prior years that can be recovered through loss carrybacks for existing temporary differences that reverse by the end of the subsequent calendar year;

(b) The lesser of:

a. The amount of gross deferred income tax assets, after the application of paragraph (a) of this subdivision, expected to be realized within one year of the balance sheet date; or

b. Ten percent of statutory capital and surplus as required to be shown on the statutory balance sheet of the insurance company for its most recently filed statement with the director adjusted to exclude any net deferred income tax assets, electronic data processing equipment and operating system software and any net positive goodwill; and

(c) The amount of gross deferred income tax assets, after application of paragraph (a) and (b) of this subdivision, that can be offset against gross deferred income tax liabilities;

(15) Repurchase agreements and reverse repurchase agreements (including dollar repurchase agreements and dollar reverse repurchase agreements involving debt instruments that are pay-through securities collateralized with Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation (FHLMC), and Federal National Mortgage Association (FNMA) collateral, and pass-through certificates sponsored by GNMA, mortgage participation certificates issued by the FHLMC, or similar securities issued by FNMA), provided that the agreement meets each of the following criteria:

(a) The agreement consists of an agreement under which the insurer purchases (or sells) securities and simultaneously agrees to resell (or repurchase) the same or substantially the same securities at a stated price on a specified date within twelve months of the purchase (or sale) date; and

(b) For securities to be considered substantially the same:

a. For mortgage-backed securities excluding mortgage pass-through securities, the projected cash flows of the securities must be substantially the same under multiple scenario prepayment assumptions; and

b. All the following criteria must be met:

i. The debt instrument must have the same primary obligor, except for debt instruments guaranteed by a sovereign government, central bank, government-sponsored enterprise or agency thereof, in which case the guarantor and terms of the guarantee must be the same;

ii. The debt instruments must be identical in form and type so as to give the same risks and rights to the holder;

iii. The debt instruments must bear the same identical contractual interest rate;

iv. The debt instruments must have the same maturity except for mortgage-backed pass-through securities for which the mortgages collateralizing the

securities must have similar remaining weighted average maturities that result in approximately the same market yield;

v. Mortgage-backed pass-through and pay-through securities must be collateralized by a similar pool of mortgages, such as single-family residential mortgages; and

vi. The debt instruments must have the same aggregate unpaid principal amounts, except for mortgage-backed pass-through and pay-through securities, where the aggregate principal amounts of the mortgage-backed securities given up and the mortgage-backed securities reacquired must be within the accepted "good delivery" standard for the type of mortgage-backed security involved;

(16) Investments in any joint venture, partnership or limited liability company, that meets the following criteria:

(a) A joint venture must:

a. Be owned and operated by an identifiable group of individual or entities (joint venturers) as a separate and specific business or project for the mutual benefit of the members of the group; and

b. Provide each joint venturer with an interest or relationship other than as a passive investor;

(b) A partnership may involve either:

a. An interest in a general partnership with unlimited and joint and several liability for all partnership debts; or

b. An interest in a limited partnership as either a limited or general partner;

(c) A limited liability company must be a business organization by which the owners have limited liability like a corporation and profits may pass through to the owners for certain purposes like a partnership;

(17) Policy loans, namely any loan to a policyholder, under the provisions of an insurance contract, that is secured by the cash surrender value or collateral assignment of the related policy or contract;

(18) Assets specifically identified as admitted by the insurance laws of this state;

(19) Cash value of life insurance policies where the insurance company is the owner and beneficiary;

(20) Receivables for the sale of securities when the receivable is due from a securities broker registered with the division of securities regulation of the secretary of state and is paid within fifteen days from the settlement date of the sale of securities;

(21) Amounts receivable from Servicemen's Group Life Insurance or Federal Employees' Group Life Insurance pools and Federal Crop Insurance programs;

(22) Guaranteed investment contracts purchased for investment purposes,

provided that it is probable that the carrying value is fully recoverable;

(23) Promissory notes receivable from any state guaranty association;

(24) Any asset which is both expressly approved in writing by the director of the department of insurance as admissible and has the three following essential characteristics:

(a) It embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows;

(b) A particular entity can obtain the benefit and control others access to it; and

(c) The transaction or other event giving rise to the entity's right to control of the benefit has already occurred.

[2. No such life insurance company shall invest in any of the foregoing securities in excess of the following percentages of the admitted assets of such company, as shown by its last annual statement preceding the date of acquisition, as filed with the director of the insurance department of the state of Missouri:

(1) Ten percent of its admitted assets in the securities issued by any one corporation or governmental unit falling pursuant to the classification set forth in subdivisions (3), (5), (6), (7) and (8) of subsection 1;

(2) One percent of its admitted assets or ten percent of its capital and surplus, whichever is greater, in any single loan on real estate pursuant to subdivision (9) of subsection 1;

(3) Ten percent of the admitted assets in the total amount of securities described in subdivision (7) of subsection 1, and no such life insurance company shall own securities described in subdivision (7) of subsection 1 of any one corporation which, in the aggregate, represents more than five percent of the total of all outstanding shares of stock of that corporation;

(4) One percent of its admitted assets in the bonds, notes or other evidences of indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1; provided, however, that in addition thereto any such life insurance company which has outstanding insurance contracts on lives of persons residing in the Dominion of Canada may invest in bonds, notes or other evidences of indebtedness of the Dominion of Canada and mentioned in subdivision (1) of subsection 1, to an amount not in excess of the total amount of its reserves and other accrued liabilities under such contracts;

(5) Five percent of its admitted assets in the notes or trust certificates secured by any equipment leased or sold to a corporation falling under the classification set forth in subdivision (5) of subsection 1 or to a common carrier domiciled in the Dominion of Canada and mentioned in subdivision (6) of subsection 1;

(6) Three percent of its admitted assets in loans evidenced by notes or other evidences of indebtedness and secured by liens on unencumbered leaseholds having at least twenty-five years

of unexpired term and mentioned in subdivision (9) of subsection 1;

(7) One percent of its admitted assets, or five percent of that portion of its admitted assets in excess of two hundred fifty million dollars, whichever is greater, in energy-related investments specified in subdivision (12) of subsection 1.**]**

2. (1) Life domestic insurers shall maintain assets which meet both the following requirements:

(a) The assets shall be diversified both as to type and issue; and

(b) The assets shall be reasonably liquid.

(2) As used in this subsection, the following terms mean:

(a) "Insurer", a domestic insurer organized pursuant to the provisions of this chapter;

(b) "Policyholder obligations", those liabilities of the insurer to, or for, its policyholders arising out of its policies and to its creditors and includes the liabilities required to be included in the insurer's annual statement, including, but not limited to:

a. Policy, claim and loss reserves;

b. Minimum capital and minimum surplus or minimum policyholders surplus; and

c. Ceded reinsurance balances payable. "Policyholder obligations" do not include that portion of the insurer's capital and surplus, or policyholders surplus if a mutual, in excess of the minimum capital and surplus or minimum policyholders surplus required by law for such insurer.

(3) An insurer's assets covering policyholder obligations shall meet all of the following standards in order to be deemed diversified under paragraph (a) of subdivision (1) of this subsection:

(a) An insurer may have assets consisting of investments in, without limitation and notwithstanding the provisions of paragraph (b) of this subdivision:

a. Assets described in subdivisions (1), (4) and (13) of subsection 1 of this section; and

b. Bonds and other evidences of indebtedness issued by corporations organized under the laws of this state or of the United States or of any other state, if rated 1 or 2 by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(b) No insurer may have assets to cover policyholder obligations or investments to cover policyholder obligations in:

a. Subsidiaries in excess of five percent of policyholder obligations;

b. The securities, including for this purpose partnership and other equity interests, in one institution in excess of five percent of policyholder obligations. For

purposes of this paragraph, one institution includes all entities under common ownership or control as defined in subdivision (2) of section 382.010, RSMo. This subparagraph is an additional standard applicable to bonds and short term investments under subparagraph c. of this paragraph, common stocks under subparagraph d. of this paragraph, preferred stocks under subparagraph e. of this paragraph, and other invested assets and aggregate write-ins for invested assets under subparagraph f. of this paragraph;

c. Investments in bonds and short term investments which violate the standards mandated by sections 375.1070 to 375.1075, RSMo. No insurer shall be forced to liquidate or nonadmit bonds purchased before August 28, 2001;

d. Common stocks in excess of ten percent of policyholder obligations;

e. Preferred stocks in excess of ten percent of policyholder obligations;

f. Other invested assets and aggregate write-ins for invested assets; and aggregate write-ins for other than invested assets, as described in the insurer's filed annual statement, in excess of five percent of policyholder obligations;

g. Mortgage loans on real estate, in excess of:

i. Ten percent of policyholder obligations, regarding the aggregate of such loans; and

ii. One percent of policyholder obligations regarding the amount loaned upon any one particular piece of real estate;

h. Real estate occupied by the company and for other purposes, in excess of the standards set forth in section 375.330, RSMo;

i. Collateral loans personal property in excess of:

i. Five percent of policyholder obligations, regarding the aggregate of such loans; and

ii. One percent of policyholder obligations, regarding the amount loaned upon any one particular personal property;

j. Receivables from parents, subsidiaries or affiliates, as described in the insurer's filed annual statement, in excess of five percent of policyholder obligations.

(c) Assets may be invested or held in amounts in excess of the limitations provided by paragraph (b) of this subdivision to the extent of that portion of the insurer's capital and surplus, or policyholders surplus if a mutual, in excess of the minimum capital and surplus or minimum policyholders surplus required by law for such insurer.

(4) Assets shall be deemed reasonably liquid under paragraph (b) of subdivision (1) of this subsection, if the assets are convertible to cash within a reasonable period of time to discharge timely the insurer's claims and other liabilities.

3. The term "corporation", as used in subdivisions (5) and (7) of subsection 1, shall include private corporations, joint stock associations or business trusts. In applying the earnings tests, provided herein, to any issuing, assuming or guaranteeing corporation, whether or not in legal existence during the whole of the test period, and if such corporation has during the test period acquired the assets of any other corporation or corporations by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings available for interest and dividends of such other predecessor or constituent corporation or the corporation so reorganized shall be considered as the earnings of the issuing, assuming or guaranteeing corporation.

4. Nothing contained in this section shall be construed as repealing or affecting the provisions of sections 375.330, 375.340, and 375.355, RSMo.

376.301. **[**1.**]** In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life insurance companies of whatever kind and character, organized under the laws of this state, may be invested in the following, and the same shall be eligible for deposit under section 376.170:

(1) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed as to principal and interest, by the Dominion of Canada, or any province thereof;

(2) Investments in Canada which are substantially of the same kinds, classes and investment grades or quality as those specified in subsection 1 of section 376.300.

[2. No life insurance company shall invest in excess of one percent of its admitted assets in any one investment under this section and the aggregate amount of all investments under this section shall not exceed ten percent of its admitted assets; provided, however, that in addition thereto any life insurance company which has outstanding insurance contracts on lives of persons residing in the Dominion of Canada may make investments under this section to an amount not in excess of the total amount of its reserves and other accrued liabilities under such contracts.**]**

376.303. In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life insurance companies of whatever kind and character, organized or doing business under this chapter, may be invested in bonds, notes, or other evidences of indebtedness, payable in United States dollars, issued, assumed or guaranteed as to principal and interest by the International Bank for Reconstruction and Development, Inter-American Development Bank, the Asian Development Bank, or the African Development Bank, and such securities shall be eligible for deposit under section 376.170**[**, provided, however, that the amount invested by any such life insurance company in such bonds, notes, or other evidences of indebtedness shall not in the aggregate exceed two percent of the admitted assets of such life insurance company**]**.

376.305. **[**1.**]** In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life insurance companies of whatever kind and character organized or doing business under sections 376.010 to 376.670, may be invested in the common stock of any

solvent corporation, organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, or of the Dominion of Canada, or any province of the Dominion of Canada, provided the corporation's net worth as shown on its balance sheet at the end of the last fiscal year preceding purchase shall have been at least ten million dollars, and that such common stocks are registered on a national securities exchange or quoted in established over-the-counter markets, or provided that such corporation is registered and operated as an open-end regulated investment company in accordance with the Investment Company Act of 1940, as amended. Common stocks meeting the preceding qualifications shall be eligible for deposit, as provided under section 376.170.

[2. No such life insurance company shall invest in excess of ten percent of its admitted assets or an amount in excess of its combined capital and surplus, whichever is the lesser, as shown by its last annual statement preceding the date of acquisition, as filed with the director of the insurance department of the state of Missouri, in the total amount of such common stocks, nor shall such life insurance company own securities described in subdivision (7) of subsection 1 of section 376.300, and subsection 1 of this section, which, in the aggregate, represent more than five percent of the total of all outstanding shares of stock of the issuing corporation, nor shall any such life insurance company own common stock described in subsection 1 issued by any one corporation which represents more than two percent of the admitted assets of such life insurance company.**]**

[376.307. 1. Notwithstanding any direct or implied prohibitions in chapter 375 or 376, RSMo, the capital, reserve and surplus funds of all life insurance companies of whatever kind and character organized or doing business under chapter 375 or 376, RSMo, may be invested in any investments which do not otherwise qualify under any other provision of chapter 375 or 376, RSMo, provided, however, the investments authorized by this section are not eligible for deposit with the department of insurance and shall be subject to all the limitations set forth in subsection 2.

2. No such life insurance company shall invest in such investments in an amount in excess of the following limitations, to be based upon its admitted assets, capital and surplus as shown in its last annual statement preceding the date of the acquisition of such investment, all as filed with the director of the department of insurance of the state of Missouri:

(1) The aggregate amount of all such investments under this section shall not exceed the lesser of (a) eight percent of its admitted assets or (b) the amount of its capital and surplus in excess of nine hundred thousand dollars; and

(2) The amount of any one such investment under this section shall not exceed one percent of its admitted assets.

3. If, subsequent to its acquisition hereunder, any such investment shall become specifically authorized or permitted under any other section contained in chapter 375 or

376, RSMo, any such company may thereafter consider such investment as held under such other applicable section and not under this section.**]**

379.080. 1. (1) The amount of the minimum capital required of a stock company to write the lines of business it proposes to transact or is transacting, or if the company is a mutual company an amount equal to the minimum capital required of a stock company transacting the same classes of business, shall be held in cash or invested in:

(a) Treasury notes or bonds of the United States;

(b) Bonds of the state of Missouri;

(c) Bonds issued by any school district of the state of Missouri;

(d) Bonds of any political subdivision of this state;

(2) The remainder of the capital, surplus or policyholders' surplus of these companies and their other assets may be invested, to the extent allowed by this or any other provision of law, in **only**:

(a) The investments authorized by subdivision (1) of subsection 1 of this section;

(b) Loans safely secured by **[**personal property**]** collateral **that consists of an otherwise admissible asset and that is** worth, at its cash market value, not less than twenty percent in excess of the amount loaned thereon;

(c) Stocks, bonds or evidences of indebtedness issued by corporations organized under the laws of this state, or of the United States or of any other state;

(d) Bonds or other obligations issued by multinational development banks in which the United States is a member nation, including the African Development Bank;

(e) Bonds of any other state, or of any political subdivision of any other state;

(f) Mortgages or deeds of trust on unencumbered real estate in this or any other state worth not less than twenty percent in excess of the amount loaned thereon;

(g) If a company is authorized to do business in a foreign country or a possession of the United States or has outstanding insurance or reinsurance contracts on risks located in a foreign country or United States' possession, the company may invest the remainder of its capital and other assets in securities, cash or other investments payable in the currency of the foreign country or possession that are of substantially the same kinds and classes as those eligible for investments under this subsection, provided that such investments are made with the approval of the director. The aggregate amount of the foreign investments and cash shall not exceed the greater of one and one-half times the amount of the company's reserves and other obligations under the contracts or the amount that the company is required by law to invest in the foreign country or possession, and the aggregate amount of foreign investments and cash shall not exceed five percent of the company's admitted assets. All foreign investments shall be reported to the director from time to time as he directs;

(h) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or

insured, but only to the extent guaranteed or insured by the United States, any state, territory or possession of the United States, the District of Columbia, or by any agency, administration, authority or instrumentality of any of the political units enumerated;

(i) Shares of insured state-chartered building and loan associations and federal savings and loan associations, if such shares are insured by the Federal Deposit Insurance Corporation;

(j) Investments permitted by section 99.550, RSMo;

(k) Data processing equipment, **[**automobiles,**]** real estate and **[**put or call options and financial futures contracts**] derivatives** to the extent allowed by this section and any other provision of law;

(l) Investments in subsidiaries to the extent allowed by section 382.020, RSMo;

(m) **[**Any other investments not described herein provided the aggregate amount of such investments shall not exceed eight percent of the admitted assets of the company;

(n)**]** Any investments in an investment pool meeting the requirements of section 379.083 and any other provision of law relating to investments made by individual property and casualty companies; **[**and**]**

(n) Any asset which is both expressly approved in writing by the Director of the department of insurance as admissible and has the three following essential characteristics:

a. It embodies a probable future benefit that involves a capacity, singly or in combination with other assets, to contribute directly or indirectly to future net cash inflows;

b. A particular entity can obtain the benefit and control others access to it; and

c. The transaction or other event giving rise to the entity's right to control of the benefit has already occurred;

(o) Any other **[**investments**] assets** expressly authorized **[**in writing by the director of the department of insurance**] by section 376.300.1 as admissible for life insurance companies**.

2. Violation of any of the provisions of this section by an insurer is grounds for the suspension or revocation of its certificate of authority by the director.

379.082. 1. Property or liability domestic insurers shall maintain assets which meet both the following requirements:

(1) The assets shall be diversified both as to type and issue; and

(2) The assets shall be reasonably liquid.

2. As used in this section, the following terms mean:

(1) "Insurer", a property or liability domestic insurer;

(2) "Policyholder obligations", those liabilities of the insurer to, or for, its policyholders arising out of its policies and to its creditors and includes the liabilities required to be included in the insurer's annual statement, including, but not limited to:

(a) The unearned premium reserve;

(b) Claim or loss reserves, including incurred but not reported claims and including loss adjustment expense reserves;

(c) Minimum capital and minimum surplus or minimum policyholders surplus; and

(d) Ceded reinsurance balances payable. "Policyholder obligations" do not include that portion of the insurer's capital and surplus, or policyholders surplus if a mutual, in excess of the minimum capital and surplus or minimum policyholders surplus required by law for such insurer.

3. An insurer's assets covering policyholder obligations shall meet all of the following standards in order to be deemed diversified under subdivision (1) of subsection 1 of this section:

(1) An insurer may have assets consisting of investments in, without limitation and notwithstanding the provisions of subdivision (2) of this subsection:

(a) Assets described in paragraphs (a), (b), (c) and (d) of subdivision (1) of subsection 1 of section 379.080;

(b) Bonds and other evidences of indebtedness issued by corporations organized under the laws of this state or of the United States or of any other state, if rated 1 or 2 by the Securities Valuation Office of the National Association of Insurance Commissioners; and

(c) Assets described in paragraphs (e) and (h) of subdivision (2) of subsection 1 of section 379.080, where such bonds, notes or evidences of indebtedness are:

a. Issued, guaranteed or insured by the United States or any agency, administration, authority or instrumentality of the United States; or

b. Rated 1 or 2 by the Securities Valuation Office of the National Association of Insurance Commissioners;

(2) No insurer may have assets to cover policyholder obligations or investments to cover policyholder obligations in:

(a) Subsidiaries in excess of the amount allowed by paragraph (o) of subdivision (2) of subsection 1 of section 379.080;

(b) The securities, including for this purpose partnership and other equity interests, in one institution in excess of five percent of policyholder obligations. For purposes of this paragraph, one institution includes all entities under common ownership or control as defined in subdivision (2) of section 382.010, RSMo. This paragraph is an additional standard applicable to bonds and short term investments under paragraph (c) of this subdivision, common stocks under paragraph (d) of this subdivision, preferred stocks under paragraph (e) of this subdivision, and other invested assets and aggregate write-ins for invested assets under paragraph (f) of this subdivision;

(c) Investments in bonds and short term investments which violate the standards mandated by sections 375.1070 to 375.1075, RSMo. No insurer shall be forced to liquidate or nonadmit bonds purchased before August 28, 1991;

(d) Common stocks in excess of ten percent of policyholder obligations;

(e) Preferred stocks in excess of ten percent of policyholder obligations;

(f) Other invested assets and aggregate write-ins for invested assets, and aggregate write-ins for other than invested assets, as described in the insurer's filed annual statement, in excess of five percent of policyholder obligations;

(g) Mortgage loans on real estate, in excess of:

a. Ten percent of policyholder obligations, regarding the aggregate of such loans; and

b. One percent of policyholder obligations, regarding the amount loaned upon any one particular piece of real estate;

(h) Real estate occupied by the company and for other purposes, in excess of the standards set forth in section 375.330, RSMo;

(i) Collateral loans on **[**personal property**]** **otherwise admissible assets** in excess of:

a. Five percent of policyholder obligations, regarding the aggregate of such loans; and

b. One percent of policyholder obligations, regarding the amount loaned upon any one particular personal property;

(j) Receivables from parents, subsidiaries or affiliates, as described in the insurer's filed annual statement, in excess of five percent of policyholder obligations**[**;

(k) Assets other than cash and the assets described in paragraphs (c) to (j) of this subdivision, in excess of twenty-five percent of policyholder obligations**]**.

(3) Assets may be invested or held in amounts in excess of the limitations provided by subdivision (2) of this subsection to the extent of that portion of the insurer's capital and surplus, or policyholders surplus if a mutual, in excess of the minimum capital and surplus or minimum policyholders surplus required by law for such insurer.

4. Assets shall be deemed reasonably liquid under subdivision (2) of subsection 1 of this section, if the assets are convertible to cash within a reasonable period of time to discharge timely the insurer's claims and other liabilities.

384.043. 1. No agent or broker **[**licensed by the state**]** 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 **[**resident**]** holder of a current **resident or nonresident** property and casualty **[**broker's**]** license but only when the **[**broker**]** **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;

(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; and

(4) Filed with the director, and maintains during the term of the license, in force and unimpaired, a bond in favor of this state in the penal sum of **[**ten**]** **one hundred** thousand dollars

or in a sum equal to the tax liability for the previous tax year, whichever is smaller, aggregate liability, with corporate sureties approved by the director. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of sections 384.011 to 384.071 and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least thirty days' prior written notice is given to the licensee and director. **[**If the director determines that a surplus lines licensee of a reciprocal sister state is competent and trustworthy, then he may, in his discretion, issue a nonresident surplus lines agent's license. A nonresident licensee shall be limited in his authority to servicing of business negotiated elsewhere and filing any appropriate taxes. A nonresident licensee shall not solicit business.**]**

3. Each surplus lines license shall be renewed annually on the 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 renewal fee for the license is not paid on or before the anniversary date the license terminates. The annual renewal fee is fifty dollars.

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