

FIRST REGULAR SESSION

# SENATE BILL NO. 535

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROHRBACH,

Read 1st time February 21, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1917S.031

## AN ACT

To repeal sections 375.246, 375.1168, 375.1176, 375.1182 and 375.1202, RSMo 2000, relating to the solvency of certain entities regulated by the director of the department of insurance, and to enact in lieu thereof five 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Section A. Sections 375.246, 375.1168, 375.1176, 375.1182 and 375.1202, RSMo 2000, are repealed and five new sections enacted in lieu thereof, to be known as sections 375.246, 375.1168, 375.1176, 375.1182 and 375.1202, to read as follows:

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

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

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 trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee 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 trustee account representing the group's liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee 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 trustee 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 trust 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 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 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) 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. 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 such 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.] **7. 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**.

375.1168. 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. 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.**

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