SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 1299

92ND GENERAL ASSEMBLY

Reported from the Committee on Financial Services, April 27, 2004, with recommendation that the House Committee Substitute for Senate Bill No. 1299 Do Pass.

STEPHEN S. DAVIS, Chief Clerk

4729L.02C

AN ACT

To repeal sections 375.772, 375.773, 375.774, 375.775, 375.776, 375.778, 375.779, 379.110, 379.815, 379.825, 384.043, 384.062, and 384.065, RSMo, and to enact in lieu thereof thirteen new sections relating to residential property insurance.

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

Section A. Sections 375.772, 375.773, 375.774, 375.775, 375.776, 375.778, 375.779, 379.110, 379.815, 379.825, 384.043, 384.062, and 384.065, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 375.772, 375.773, 375.774, 375.775, 375.776, 375.778, 375.779, 379.110, 379.815, 379.825, 384.043, 384.062, and 384.065, to read as follows:

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

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

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

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

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

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

insurer becomes an insolvent insurer;

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

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

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

(7) "Covered claim", an unpaid claim including those for unearned premiums, presented **by a claimant** within the time specified in accordance with subsection 1 **and subdivision (2) of subsection 2** of section **[**375.670, and which arises**] 375.775, and is for a loss arising** out of and is within the coverage of an insurance policy to which sections 375.771 to 375.779 apply **[**issued by a member insurer, if such insurer becomes an insolvent insurer after September 28, 1971,**] made by a person insured under such policy or by a person suffering injury or for which a person insured under such policy is legally liable, if:**

(a) The policy is issued by a member insurer and such member insurer becomes an insolvent insurer after August 28, 2004; and

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

(c) "Covered claim" shall not include**:**

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

b. Any amount sought as a return of premium under any retrospective rating plan**[**,**];** or

c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, **health maintenance organization, hospital plan corporation, health services corporation, or self-insurer** as subrogation recoveries**, reinsurance recoveries, contribution, indemnity,** or otherwise**[**, and**].** To the extent of any amount due any reinsurer, insurer, insurance pool, or underwriting association, **health maintenance organization, hospital plan corporation, health services corporation, or self-insurer** as subrogation recoveries or otherwise there shall be no right of recovery by any person against a tortfeasor insured of an insolvent insurer, except that such

limitation shall not apply with respect to those amounts that exceed the limits of the policy issued such tortfeasor by the insolvent insurer**[**. "Covered claim" shall not include**];**

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

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

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

g. Any claims for interest;

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

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

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

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

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

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

[(4)**] (10)** "Member insurer", any person who writes any kind of insurance to which sections 375.771 to 375.779 apply, including the exchange of reciprocal or interinsurance contracts, and

possesses a certificate of authority to transact the business of insurance in this state issued by the director of the department of insurance **[**except an insurer which was insolvent on September 28, 1971**]**. Whether or not approved by the director of the department of insurance for the placing of lines of insurance by **[**brokers**]** **producers** so authorized under the provisions of chapter 384, RSMo, an insurance company not licensed to do business in this state shall not be a member insurer. Missouri mutual and extended Missouri mutual insurance companies doing business under chapter 380, RSMo, shall be considered member insurers for the purposes of sections 375.771 to 375.779, and a special account shall be established applicable only to such companies;

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

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

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

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

(15) "Political subdivision", the same meaning as such term is defined in section 70.210, RSMo;

(16) "Self-insurer", a person that covers its liability through a qualified individual or group self-insurance program or any other formal program created for the specific purpose of covering liabilities typically covered by insurance. Self-insurer does not include the Missouri Private Sector Individual Self-Insurers Guaranty Corporation created pursuant to section 287.860, et seq.

375.773. 1. For purposes of administration and assessment, the association shall be divided

into four separate accounts:

(1) The workers' compensation insurance account;

(2) The automobile insurance account;

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

(4) The account for all other insurance to which sections 375.771 to 375.779 apply.

2. Sections 375.771 to 375.779 shall apply to all kinds of direct insurance**[**, except life, accident and sickness, title, surety, disability, credit, mortgage guaranty, ocean marine insurance, and assessment insurance written under the provisions of chapter 383, RSMo**], but shall not be applicable to the following:**

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

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

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

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

(5) Insurance of warranties or service contracts, including insurance that provides for the repair, replacement, or service of goods or property, or indemnification for repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in material, workmanship, or normal wear and tear, or provides reimbursement for the liability incurred by the issuers of agreements or service contracts that provide such benefits;

(6) Title insurance;

(7) Ocean marine insurance;

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

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

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

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.

375.775. 1. The association shall**[**:

(1)**]** Be obligated to the extent of the covered claims existing prior to the date of a final order of liquidation or a judicial determination by a court of competent jurisdiction in the insurer's domiciliary state that an insolvent insurer exists and arising within thirty days from the date or at the time of the first such order or determination, or before the policy expiration date if less than thirty days after such date, or before or at the time the insured replaces the policy or causes its cancellation, if he does so within thirty days of such date**[**, but obligation shall include only that amount of each covered claim which is in excess of one hundred dollars and is less than three hundred thousand dollars, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy**]**. **Such obligation shall be satisfied by paying to the claimant an amount as follows:**

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

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

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

2. In no event shall the association be obligated to an insured or claimant in an amount in excess of the face amount or the limits of the policy from which a claim arises or be obligated for

the payment of unearned premium in excess of the amount of **[**ten**]** **twenty-five** thousand dollars, or to an insured or claimant on any covered claim until it receives confirmation from the receiver or liquidator of an insolvent insurer that the claim is within the coverage of an applicable policy of the insolvent insurer, except that within the sole discretion of the association, if the association deems it has sufficient evidence from other sources, including any claim forms which may be propounded by the association, that the claim is within the coverage of an applicable policy of the insolvent insurer, it shall proceed to process the claim, pursuant to its statutory obligations, without such confirmation by the receiver or liquidator:

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

[a.**]** **(a)** The particulars of the claim;

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

[c.**]** **(c)** The name and address of the claimant and the attorney who represents the claimant, if any; and

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

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

[(b)**]** **(2)** In the case of claims arising from a member insurer subject to a final order of liquidation issued on or after September 1, 2000, the provisions of **[**paragraph (a) of subdivision (1) of subsection 1**]** **subdivision (1) of subsection 2** of this section shall not apply and in lieu thereof, such claims shall be governed by this **[**paragraph**]** **subdivision**. All covered claims shall be filed with the association, liquidator or receiver **[**no later than the final date first set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer, except that if the time first set by the court for filing claims is one year or less from the date of the insolvency, and an extension of the time to file claims is granted by the court, claims may be filed no later than the new date set by the court or within one year of the date of insolvency, whichever first occurs**]**. **Notwithstanding**

any other provisions of sections 375.771 to 375.779, a covered claim shall not include a claim filed after the earlier of eighteen months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. The association may require **[**that the prescribed forms be used and may require**]** that other information and documents be included in confirming the existence of a covered claim or in determining eligibility of any claimant. Such information may include, but is not limited to:

[a.**] (a)** The particulars of the claim;

[b.**] (b)** A statement that the sum claimed is justly owing and that there is **[**not**] no** setoff, counterclaim, or defense to said claim;

[c.**] (c)** The name and address of the claimant and the attorney who represents the claimant, if any; and

[d.**] (d)** A verification under oath of such requested information.

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

[(c)**] 3.** In the case of claims arising from bodily injury, sickness or disease, the amount of any such award shall not exceed the claimant's reasonable expenses incurred for necessary medical, surgical, X-ray, dental services and comparable services for individuals who, in the exercise of their constitutional rights, rely on spiritual means alone for healing in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, including prosthetic devices and necessary ambulance, hospital, professional nursing, and any amounts lost or to be lost by reason of claimant's inability to work and earn wages or salary or their equivalent, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. Such award may also include payments in fact made to others, not members of claimant's household, which were reasonably incurred to obtain from such other persons ordinary and necessary services for the production of income in lieu of those services the claimant would have performed for himself had he not been injured. Verdicts as respect only those civil actions as may be brought to recover damages as provided in this section shall specifically set out the sums applicable to each item in this section for which an award may be made**[**;**].**

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

5. Notwithstanding any other provision of sections 375.771 to 375.779, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to or on behalf of the insured and its affiliates on covered claims shall cease when ten million dollars has been paid in the aggregate by the association and any one or more

associations similar to the association in any other state or states to or on behalf of such insured, its affiliates, and additional insureds on covered claims or allowed claims arising under the policy or policies of any one insolvent insurer.

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

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

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

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

[(3)**] 8. The association shall** allocate claims paid and expenses incurred among the four accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligations of the association under **[**subdivision (1) of this**]** subsection **1 of this section** to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under subdivision **[**(6) of this subsection**] (3) of subsection 9 of this section**, and other expenses authorized by sections 375.771 to 375.779. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year of the kinds of insurance in the account. **Each member insurer's assessment may be rounded to the nearest ten dollars.** Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year on any account an amount greater than one percent of that member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association may defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to

reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or, in the discretion of any such company, credited against future assessments. No dividends shall be paid stockholders or policyholders of a member insurer so long as all or part of any assessment against such insurer remains deferred. Each member insurer may set off against any assessment, authorized payments made on covered claims and expenses incurred in the payment of such claims by the member insurer if they are chargeable to the account for which the assessment is made. Assessments made under sections 375.771 to 375.779 and section 375.916 shall not be subject to subsection 1 of section 375.916;

[(4)**] 9. The association shall:**

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

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

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

[(7) Be considered to have been designated commissioner pursuant to subsection 2 of section 375.670, and it shall proceed to investigate, hear, settle, and determine covered claims unless the claimant shall, within thirty days from the date the claim is presented, present a written demand that such claim be processed in the liquidation proceedings as a claim not covered by sections 375.771 to 375.779**] (4) Proceed to investigate, settle, and determine covered claims**.

[2.**] 10.** The association may:

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

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

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

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

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

[(5)**] (6)** Negotiate and become a party to such contracts as are necessary to carry out the

purpose of sections 375.771 to 375.779;

[(6)**] (7)** Perform such other acts as are necessary or proper to effectuate the purpose of sections 375.771 to 375.779;

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

[(8)**] (9)** Become a member of the National **[**Committee**] Conference** on Insurance Guaranty Funds.

375.776. 1. The board of directors, subject to the supervision of the director, shall:

(1) Establish a plan of operation whereby the duties of the association under section 375.775 will be performed;

(2) Establish procedures for handling assets of the association;

(3) Establish regular places and times for meetings of the board of directors;

(4) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the director within thirty days after the action or decision;

(6) Establish the procedures whereby selections for the board of directors will be submitted to the director; and

(7) Have and exercise such additional powers necessary or proper for the execution of the powers and duties of the association.

2. The plan of operation may provide that any or all powers and duties of the association, except those under **[**subdivision (3) of subsection 1 and subdivision (3) of subsection 2**] subsection 8 and subdivision (4) of subsection 10** of section 375.775, are delegated to a corporation, association, or organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this section shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by sections 375.771 to 375.779.

3. The board of directors of the association shall consist of seven persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the director. Not less than four of the members shall represent domestic insurers. Vacancies on the board shall be filled for the remaining period of the term by appointment of the director. If no members are selected within sixty days, the director shall appoint the initial members of the board of directors.

4. Members of the board shall receive no remuneration.

5. To aid in the detection and prevention of insurer insolvencies:

(1) It shall be the duty of the board of directors, upon majority vote, to notify the director of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public;

(2) The board of directors may, upon majority vote, make reports and recommendations to the director upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents; and

(3) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the director.

375.778. 1. Any person having a claim against **[**his**] an** insurer**, regardless of whether such insurer is a member insurer,** under any provision in **[**his**] an** insurance policy**, other than the policy of the insolvent insurer, which arises out of the same facts, injury, or loss that gave rise to the covered claim against the association and** which is also a covered claim shall **[**first**]** be required to **first** exhaust his **or her** right under such policy**[**. Any amount payable on a covered claim under sections 375.771 to 375.779 shall be reduced by the amount of such recovery under the claimant's insurance policy**] or policies of insurance. Such other policies of insurance shall include, but not be limited to, liability coverage, health and accident insurance, hospitalization and other medical expense coverage, health care coverage by a health maintenance organization or health services corporation, or any amount payable by or on behalf of a self-insured plan, workers' compensation benefits, disability insurance, uninsured motorist coverage, and underinsured motorist coverage. The association's obligation pursuant to subsection 1 of section 375.775 shall be reduced by the amount recovered or recoverable, whichever is greater under any such other insurance policy or policies. To the extent the association's obligation pursuant to subsection 1 of section 375.775 is reduced by the application of the section, the liability of the person insured by the insolvent insurer's policy for the claim shall be reduced in the same amount**.

2. Any person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall first seek recovery from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, from the association of the location of the property, and if it is a workers' compensation claim, from the association of the residence of the claimant. Any recovery under sections 375.771 to 375.779 shall be reduced by the amount of the recovery from any other insurance guaranty association or its equivalent.

3. **Any person having a claim or legal right of recovery against any governmental**

insurance or guaranty program that is also a covered claim shall be required to exhaust first such rights under that program. Any amount payable on a covered claim by the association shall be reduced by the amount of recovery under the program.

4. The association shall have no duty to provide a separate defense at its cost to an insured of an insolvent insurer as to any issue arising out of the coverage of this section.

5. (1) Any person recovering under sections 375.771 to 375.779 shall be deemed to have assigned his **or her** rights under the policy to the association to the extent of his **or her** recovery from the association. Every insured or claimant seeking the protection of sections 375.771 to 375.779 shall cooperate with the association to the same extent as such person would have been required to cooperate with the insolvent insurer.

(2) **[**Any person eligible to recover a covered claim under sections 375.771 to 375.779 shall have the right to assign such rights of recovery to the agent of the insolvent member insurer.

(3)**]** The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

[4. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state shall be stayed for sixty days from the date the insolvency is determined. In addition, the association, upon application to any court in which the insolvent insurer is a party or is obligated to defend a party and upon showing that the association first received notice from the insured or claimant of such claim or lawsuit not more than twenty days prior to making the application, shall be granted a continuance of not less than sixty days from any trial setting.**]**

6. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court of this state shall, subject to waiver by the association in specific cases involving covered claims, be stayed until the last day fixed by the court for the filing of claims and such additional time thereafter as may be determined by the court from the date the insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action.

7. As to any covered claims arising from a judgment under any decision, verdict or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of such insured, may apply to have such judgment, order, decision, verdict or finding set aside by the same court or administrator that made such judgment, order, decision, verdict or finding and shall be permitted to defend against such claim on the merits.

[5.**]** **8.** With respect to a subrogation claim arising out of payment for property damage caused by a tortfeasor insured by an insolvent insurer, the insurer making such payment shall not be entitled to any right of recovery against such tortfeasor in excess of the proceeds recovered from the assets of the insolvent insurer of such tortfeasor; provided that, such limitation shall not apply with respect to property damage in excess of the limits of liability of the policy issued such

tortfeasor by the insolvent insurer.

[6.**] 9.** The liquidator, receiver, or statutory receiver of an insolvent member insurer covered by sections 375.771 to 375.779 shall permit access by the board of directors of the association or its authorized representative to such of the insolvent insurer's records which are necessary for the board in carrying out its functions under sections 375.771 to 375.779 with regard to covered claims. In addition, the liquidator, receiver, or statutory receiver shall provide the board or its representatives with copies of such records upon the request by the board and at the expense of the board.

375.779. 1. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents **[**or**],** employees, **or any servicing agent acting at the direction of the association,** the board of directors **or any person serving as a representative of any director**, or the director **of the department of insurance** or **[**his**] the director's** representatives for any action taken by them in the performance of their powers and duties under sections 375.771 to 375.779.

2. It is an unfair trade practice for any insurer or **[**agent**] producer** to make use in any manner of the protection given policyholders by sections 375.771 to 375.779 as a reason for buying insurance from **[**him**] such insurer or producer**. If a policy exceeds the limitations of coverage under sections 375.771 to 375.779, the insurer shall prominently inscribe on an endorsement to the insurance contract the limitations of coverage provided by the guaranty association.

379.110. As used in sections 379.110 to 379.120 the following words and terms mean:

(1) "Insurer" **[**means**],** any insurance company, association or exchange authorized to issue policies of automobile insurance in the state of Missouri**[**.**];**

(2) "Nonpayment of premium" **[**means**],** failure of the named insured to discharge when due any of his **or her** obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit**[**.**];**

(3) "Policy" **[**means**],** an automobile policy providing automobile liability coverage, uninsured motorists coverage, automobile medical payments coverage, or automobile physical damage coverage insuring a private passenger automobile owned by an individual or partnership which has been in effect for more than sixty days or has been renewed. "Policy" does not mean:

(a) Any policy issued under an automobile assigned risk plan or automobile insurance plan;

(b) Any policy insuring more than four motor vehicles;

(c) Any policy covering the operation of a garage, automobile sales agency, repair shop, service station or public parking place;

(d) Any policy providing insurance only on an excess basis, or to any contract principally providing insurance to such named insured with respect to other than automobile hazards or losses even though such contract may incidentally provide insurance with respect to such motor vehicles**[**.**];**

(4) "Renewal" or "to renew" **[**means**],** the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, such renewal policy to provide types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy being extended; provided, however, that any policy with a policy period or term of less than **[**twelve**] six** months or any period with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of **[**twelve**] six** months. **Nothing in this subdivision shall be construed as superseding the provisions of subsection 9 of section 375.918, RSMo, and the term "third anniversary date of the initial contract" as used in subsection 9 of section 375.918, RSMo, means three years after the date of the initial contract.**

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

(1) "All-industry placement facility" (hereinafter referred to as "the facility"), the organization formed by insurers to assist applicants in securing basic property insurance, to issue policies and to administer the program and the joint reinsurance association;

(2) "Basic property insurance", the coverage against direct loss to real and tangible personal property at a fixed location that is provided in the standard fire policy and extended coverage endorsement, including builders' risk, and such vandalism and malicious mischief **[**insurance**] endorsements,** and such other classes of insurance as may be added to the program with respect to the property by amendment as hereinafter provided. Basic property insurance does not include automobile risks or such types of manufacturing risks as the governing committee may exclude with the approval of the director**. Any contract, as defined in section 375.918, RSMo, of the facility shall be subject to the provisions of section 375.918, RSMo**;

(3) "Commercial", basic property insurance not included under the personal lines statistical plan;

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

(5) "Habitational", basic property insurance included under the personal lines statistical plan;

(6) "Inspection bureau", the rating bureau or other organization designated by the facility with the approval of the director to make inspections as required under the program and to perform such other duties as may be authorized by the facility;

(7) "Insurer", any insurance company, reciprocal or interinsurance exchange or other organization licensed and authorized by the director to write property insurance, including the property insurance components of multiperil policies, on a direct basis, in this state;

(8) "Person" includes any individual or group of individuals, corporation, partnership, or association, or any other organized group of persons;

(9) "Premiums written", gross direct premiums (excluding that portion of premium on risks

ceded to the joint reinsurance association) charged during the second preceding calendar year with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, as computed by the facility, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits;

(10) "Property owner", with respect to any real, personal, or mixed real and personal property, means any person having an insurable interest in such property;

(11) "Secretary", the Secretary of the United States Department of Housing and Urban Development.

379.825. 1. The facility, upon receipt of an application for coverage and the corresponding inspection report from the inspection bureau, shall, after it finds that the property is eligible for insurance under this program, issue a policy.

2. The facility shall apportion the liability so assumed to the insurers in the manner hereinafter provided in section 379.835.

3. Assessments upon each insurer in the program for expenses in connection with program business shall be levied and assessed by the governing committee of the facility in the manner hereinafter provided in section 379.835, subject to such minimum assessment as shall be established by the governing committee.

4. Subject to the insurable value thereof, the maximum limits of liability which may be placed through this program are: on any habitational property at one location, **[**one**]** **two** hundred thousand dollars; and on any commercial property at one location, one million dollars. The facility will endeavor to assist in placement when the requested amount of insurance exceeds the maximum limit of liability available under this program. The word "location" as used herein means real and personal property consisting of and contained in a single building or consisting of and contained in contiguous buildings under one ownership.

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

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

(1) Remitted the one hundred dollar initial fee to the director;

(2) Submitted a completed license application on a form supplied by the director; **and**

(3) Passed a qualifying examination approved by the director, except that all holders of a license prior to July 1, 1987, shall be deemed to have passed such an examination**[**; 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 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**]**.

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.

384.062. 1. If the tax collectible by a surplus lines licensee under the provisions of sections 384.011 to 384.071 has been collected and is not paid within the time prescribed, the same shall be recoverable in a suit brought by the director against the surplus lines licensee **[**and the surety on the bond filed under section 384.043**]**.

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

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

384.065. The director may suspend, revoke, or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provisions of this state's laws upon any one or more of the following grounds:

(1) Removal of the resident surplus lines licensee's office from this state;

(2) Removal of the resident surplus lines licensee's office accounts and records from this state during the period during which such accounts and records are required to be maintained under section 384.059;

(3) Closing of the surplus lines licensee's office for a period of more than thirty business days, unless permission is granted by the director;

(4) Failure to make and file required reports;

(5) Failure to transmit required tax on surplus lines premiums;

(6) **[**Failure to maintain required bond;

(7)**]** Violation of any provision of **[**this act**]** **sections 384.011 to 384.071**; or

[(8)**] (7)** For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under section 375.141, RSMo.