SECOND REGULAR SESSION

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 953

93RD GENERAL ASSEMBLY

Reported from the Committee on Insurance Policy May 4, 2006 with recommendation that House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill No. 953 Do Pass. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

4184L.14C

AN ACT

To repeal sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018, 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041, 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088, 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151, 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, 381.241, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and section 381.410 as enacted by conference committee substitute for senate bill no. 664, eighty-eighth general assembly, second regular session, and section 381.412 as enacted by house committee substitute for senate bill no. 148, eighty-ninth general assembly, first regular session, and sections 381.410 and 381.412 as enacted by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, and to enact in lieu thereof sixty-three new sections relating to the regulation of title insurance and service contracts, with penalty provisions and an effective date for certain sections.

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

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

Section A. Sections 374.046, 381.003, 381.009, 381.011, 381.015, 381.018, 381.021, 381.022, 381.025, 381.028, 381.031, 381.032, 381.035, 381.038, 381.041, 381.042, 381.045, 381.048, 381.051, 381.052, 381.055, 381.058, 381.061, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.081, 381.085, 381.088, 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.112, 381.115, 381.118, 381.121, 381.122, 381.125, 381.131, 381.141, 381.151, 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, 381.241, 407.1200, 407.1203, 407.1206, 407.1209, 407.1212, 407.1215, 407.1218, 407.1221, 407.1224, 407.1225, and 407.1227, RSMo, and section 381.410 as enacted by conference committee substitute for senate bill no. 664, eighty-eighth general assembly, second regular session, and section 381.412 as enacted by house committee substitute for senate bill no. 148, eighty-ninth general assembly, first regular session, and sections 381.410 and 381.412 as enacted by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, are repealed and sixty-three new sections enacted in lieu thereof, to be known as sections 374.046, 374.047, 374.048, 374.049, 374.055, 381.003, 381.009, 381.015, 381.018, 381.019, 381.022, 381.023, 381.024, 381.025, 381.026, 381.027, 381.028, 381.029, 381.032, 381.033, 381.034, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.072, 381.075, 381.085, 381.112, 381.113, 381.115, 381.118, 381.122, 381.410, 381.412, 385.200, 385.201, 385.203, 385.204, 385.205, 385.207, 385.208, 385.209, 385.210, 385.211, 385.212, 385.300, 385.301, 385.302, 385.303, 385.304, 385.305, 385.306, 385.307, 385.310, 385.311, 385.312, to read as follows:

374.046. 1. **[**(1) The director may issue cease and desist orders whenever it appears to him upon competent and substantial evidence that any person is acting in violation of any law of this state or any rule or regulation promulgated by the director relating to the business of insurance. Before any cease and desist order shall be issued, a copy of the proposed order together with an order to show cause why such cease and desist order should not be issued shall be served either personally or by certified mail on any person named therein.

(2) (a) Upon issuing any order to show cause the director shall notify the person named therein that the person is entitled to a public hearing before the director if a request for a hearing is made in writing to the director within fifteen days from the day of the service of the order to show cause why the cease and desist order should not be issued.

(b) The cease and desist order shall be issued fifteen days after the service of the order to show cause if no request for a public hearing is made as above provided.

(c) Upon receipt of a request for a hearing the director shall set a time and place for the hearing which shall not be less than ten days or more than fifteen days from the receipt of the

request or as otherwise agreed upon by the parties. Notice of the time and place shall be given by the director not less than five days before the hearing.

(d) At the hearing the person may be represented by counsel and shall be entitled to be advised of the nature and source of any adverse evidence procured by the director and shall be given the opportunity to submit any relevant written or oral evidence in his behalf to show cause why the cease and desist order should not be issued.

(e) At the hearing the director shall have such powers as are conferred upon him in section 374.190.

(f) At the conclusion of the hearing, or within ten days thereafter, the director shall issue the cease and desist order as proposed or as subsequently modified or notify the person that no order shall be issued.

(g) The circuit court of Cole County shall have jurisdiction to review any cease and desist order of the director under the provisions of sections 536.100 to 536.150, RSMo; and, if any person against whom an order is issued fails to request judicial review, or if, after judicial review, the director's cease and desist order is upheld, the order shall become final.

2.**] If the director determines based upon substantial and competent evidence that a person has engaged, is engaging, or is about to engage in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354, RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may order the following relief:**

(1) An order directing the person to cease and desist from engaging in the act, practice, omission, or course of business;

(2) A curative order or order directing the person to take other action necessary or appropriate to comply with the insurance laws of this state;

(3) Order a civil penalty or forfeiture as provided in section 374.049; and

(4) Award reasonable costs of the investigation.

2. In determining any relief sought, the director shall consider, among other factors, whether:

(1) The violations are likely to continue or reoccur;

(2) Actual financial loss was sustained by consumers and restitution has been made;

(3) The act, practice, omission, or course of business was detected as part of a self-audit or internal compliance program and immediately reported to the director; and

(4) The act, practice, omission, or course of business had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

3. Unless the director determines that a summary order is appropriate under subsection 4 of this section, the director shall provide notice of the intent to initiate administrative enforcement by serving a statement of the reasons for the action upon any person subject to the proceedings. A statement of reasons, together with an order to show cause why a cease-and-desist order and other relief should not be issued, shall be served either personally or by certified mail on any person named therein. The director shall schedule a time and place at least ten days thereafter, for hearing, and after notice of and opportunity for hearing to each person subject to the order, the director may issue a final order under subsection 6 of this section.

4. If the director determines that sections 375.014, 375.144, or 375.310, RSMo, are being violated and consumers are being aggrieved by the violations, the order issued under subdivision (1) of subsection 1 of this section may be summary and be effective on the date of issuance. Upon issuance of the order, the director shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered.

5. A summary order issued under subsection 4 of this section must include a statement of the reasons for the order, notice within five days after receipt of a request in a record from the person that the matter will be scheduled for a hearing, and a statement whether the department is seeking a civil penalty or costs of the investigation. If a person subject to the order does not request a hearing and none is ordered by the director within thirty days after the date of service of the order, the order becomes final as to that person by operation of law. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

6. If a hearing is requested or ordered pursuant to subsection 3 or subsection 5 of this section, a hearing before the director or a hearing officer designated by the director must be provided. A final order may not be issued unless the director makes findings of fact and conclusions of law in a record in accordance with the provisions of chapter 536, RSMo, and procedural rules promulgated by the director. The final order may make final, vacate, or modify the order issued under subsection 5 of this section.

7. In a final order under subsection 6 of this section, the director may impose a civil penalty or forfeiture as provided in section 374.049. No civil penalty or forfeiture may be

imposed against a person unless the person has engaged in the act, practice, omission, or course of business constituting the violation.

8. In a final order under subsection 6 of this section, the director may charge the actual cost of an investigation or proceeding for a violation of the insurance laws of this state or a rule adopted or order issued pursuant thereto. These funds shall be paid to the director to the credit of the insurance dedicated fund.

9. The director is authorized to issue subpoenas, compel attendance of witnesses, administer oaths, hear testimony of witnesses, receive evidence, and require the production of books, papers, records, correspondence, and all other written instruments or documents relevant to the proceeding and authorized in contested cases under the provisions of chapter 536, RSMo, and procedural rules promulgated by the director.

10. Statements of charges, notices, orders, and other processes of the director may be served by anyone duly authorized by the director either in the manner provided by law for service of process in civil actions, or by registering or certifying and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process setting forth the manner of such service shall be proof of the same, and the return postcard receipt for such statement, notice, order, or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

11. If a petition for judicial review of a final order is not filed in accordance with section 374.055, the director may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

12. If a person violates or does not comply with an order under this section, the director may under section 374.048 petition a court of competent jurisdiction to enforce the order. The court may not require the director to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may, in addition to relief authorized in section 374.048, adjudge the person in civil contempt of the order. A violation of or failure to comply with an order under this section is a level three violation under section 374.049. The court may impose a further civil penalty against the person for contempt in an amount not less than five thousand dollars but not greater than one hundred thousand dollars for each violation and may grant any other relief the court determines is just and proper in the circumstances.

13. Until the expiration of the time allowed under section 374.055 for filing a petition for judicial review, if no such petition has been duly filed within such time or if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the circuit court of Cole County, the director may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

14. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

15. The director is authorized to issue administrative consent orders in the public interest as complete or partial settlement of any investigation, examination, or other proceeding, which curative orders may contain any provision necessary or appropriate to assure compliance with the insurance laws of this state, require payment of restitution to be distributed directly or by the director to any aggrieved consumers, civil penalties, or voluntary forfeiture, reimbursement for costs of investigation or examination, or any other relief deemed by the director to be necessary and appropriate. Any remaining matters not addressed in settlement may be submitted to the director through a contested proceeding under this section.

16. (1) Any person willfully violating any provision of any cease and desist order of the director after it becomes final, while the same is in force, upon conviction thereof shall be punished by a fine of not more than one **hundred** thousand dollars **[**or one year in jail**] , by imprisonment of up to ten years,** or by both such fine and **[**jail sentence**] imprisonment**.

(2) In addition to any other penalty provided, violation of any cease and desist order shall subject the violator to suspension or revocation of any certificate of authority or license as may be applicable under the laws of this state relating to the business of insurance.

[3. (1) When it appears to the director that there is a violation of the laws of this state or any rule or regulation promulgated by the director relating to the business of insurance, and that the continuance of the acts or actions of any person as herein defined would produce injury to the insuring public or to any other person in this state, or when it appears that a person is doing or threatening to do some act in violation of the laws of this state relating to insurance, the director may file a petition for injunction in the circuit court of Cole County, Missouri, in which he may ask for a temporary injunction or restraining order as well as a permanent injunction to restrain the act or threatened act. In the event the temporary injunction or restraining order or a permanent injunction is issued by the circuit court of Cole County, Missouri, no person against whom the temporary injunction or restraining order or permanent injunction is granted shall do or continue to do any of the acts or actions complained of in the petition for injunction, unless

and until the temporary injunction or restraining order or permanent injunction is vacated, dismissed or otherwise terminated.

(2) Any writ of injunction issued under this law may be served and enforced as provided by law in injunctions issued in other cases, but the director of the insurance department shall not be required to give any bond as preliminary to or in the course of any proceedings to which he is a party as director under this section, either for costs or for any injunction, or in case of appeal to either the supreme court or to any appellate court.

4.**]** **17.** The term "person" as used in this **[**section**]** **chapter** shall include any individual, partnership, corporation, association or trust, or any other legal entity.

18. The term "order" as used in this chapter shall include a formal administrative direction or command of the director issued under this section or in any contested case subject to the provisions of section 536.063, RSMo, or any lawful administrative proceeding subject to judicial review, but shall not include department bulletins, no-action letters, advisory opinions, or any other statement of general applicability that should be adopted by rule.

374.047. 1. If the director determines, based on substantial and competent evidence, that a corporation or insurer with a certificate of authority under the laws relating to insurance willfully has engaged in an act, practice, omission, or course of business constituting a level three, four, or five violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or been convicted of any felony or misdemeanor under any state or federal law, the director may, after hearing, issue an order suspending or revoking the certificate of authority.

2. Prior to issuance of the order under this section, the director shall give at least thirty days' notice with a statement of reasons for the action and afford such corporation or insurer the opportunity for a hearing upon written request. If such corporation or insurer requests a hearing in writing, a final order of suspension or revocation may not be issued unless the director makes findings of fact and conclusions of law in a record in accordance with the contested case provisions of chapter 536, RSMo, and procedural rules promulgated by the director.

3. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

374.048. 1. If the director believes that a person has engaged, is engaging, or is about to engage in an act, practice, omission, or course of business constituting a violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued

pursuant thereto or that a person has, is, or is about to engage in an act, practice, omission, or course of business that materially aids a violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued pursuant thereto, the director may maintain an action in the circuit court of any county of the state or any city not within a county to enjoin the act, practice, omission, or course of business and to enforce compliance with the laws of this state relating to insurance or a rule adopted or order issued by the director.

2. In an action under this section and on a proper showing, the court may:

(1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) Order other appropriate or ancillary relief, which may include:

(a) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, which may be the director, for the defendant or the defendant's assets;

(b) Ordering the director to take charge and control of a defendant's property, including accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(c) Imposing a civil penalty or forfeiture as provided in section 374.049;

(d) Upon showing financial loss, injury, or harm to identifiable consumers, imposing an order of restitution or disgorgement directed to a person who has engaged in an act, practice, omission, or course of business in violation of the laws or rules relating to insurance;

(e) Ordering the payment of prejudgment and post-judgment interest;

(f) Ordering reasonable costs of investigation and prosecution; and

(g) Ordering the payment to the insurance dedicated fund an additional amount equal to ten percent of the total restitution or disgorgement ordered, or such other amount as awarded by the court, which shall be appropriated to an insurance consumer education program administered by the director; or

(3) Order such other relief as the court considers necessary or appropriate.

3. The director may not be required to post a bond in an action or proceeding under this section.

4. The case may be brought in the circuit court of Cole County, any county or city not within a county in which a violation has occurred, or any county or city not within a county, which has venue of an action against the person, partnership, or corporation under other provisions of law.

5. The enforcement authority of the director under this section is cumulative to any other authority of the director to impose orders under other provisions of the insurance laws of this state.

6. If the director determines it to be in the public interest, the director is authorized to enter into a consent injunction and judgment in the settlement of any proceeding under the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo.

7. A "Consumer Restitution Fund" shall be created for the purpose of preserving and distributing to aggrieved consumers disgorgement or restitution funds obtained through enforcement proceedings brought by the director. In addition to the equitable powers of the court authorized above, the court may order that such funds be paid into the consumer restitution fund for distribution to aggrieved consumers. It shall be the duty of the director to distribute such funds to those persons injured by the unlawful acts, practices, omissions, or courses of business by the subject of the proceeding. Notwithstanding the provisions of section 33.080, RSMo, any funds remaining in the director's consumer restitution fund at the end of any biennium shall not be transferred to the general revenue fund, but if the director is unable with reasonable efforts to ascertain the aggrieved consumers, then the funds may be transferred to the insurance dedicated fund to be used for consumer education.

374.049. 1. Violations of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, are classified for the purpose of civil penalties and forfeitures into the following five classifications:

(1) Level one violations;

(2) Level two violations;

(3) Level three violations;

(4) Level four violations; and

(5) Level five violations.

2. An order to impose a civil penalty or forfeiture, when imposed by the director in an administrative proceeding under section 374.046 on a person for any violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

(1) No civil penalty or forfeiture for a level one violation;

(2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;

(3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of one hundred thousand dollars per annum for multiple violations;

(4) Ten thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations;

(5) Fifty thousand dollars per each level five violation, up to an aggregate civil penalty or forfeiture of two hundred fifty thousand dollars per annum for multiple violations.

3. An order to impose a civil penalty or forfeiture, when imposed by the court in an enforcement proceeding under section 374.048 on a person for any violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted or order issued by the director, shall be an order to pay an amount not exceeding the following:

(1) No civil penalty or forfeiture for a level one violation;

(2) One thousand dollars per each level two violation, up to an aggregate civil penalty or forfeiture of fifty thousand dollars per annum for multiple violations;

(3) Five thousand dollars per each level three violation, up to an aggregate civil penalty or forfeiture of two hundred thousand dollars per annum for multiple violations;

(4) Twenty thousand dollars per each level four violation, up to an aggregate civil penalty or forfeiture of one million dollars per annum for multiple violations;

(5) One million dollars per each level five violation, with no limit to civil penalties or forfeitures for multiple violations;

4. No civil penalty or forfeiture may be imposed against a person, unless the person has engaged in the act, practice, omission or course of business constituting the violation.

5. Any violation of the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, which is not classified or does not authorize a specific range for a civil penalty or forfeiture for violations, shall be classified as a level one violation. In bringing an action to enforce a rule adopted by the director, unless the conduct that violates the rule also violates the enabling statute, the violation shall be classified as a level one violation and shall not be subject to any provision in this section regarding the enhancement of a civil penalty or forfeiture.

6. The civil penalties or forfeitures set forth in this section establish a maximum range. The court, or the director in administrative enforcement, shall consider all of the circumstances, including the nature of violations to determine whether, and to any extent, a civil penalty or forfeiture is justified.

7. In any enforcement proceeding, the court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a one classification step increase under this section, if the violation was knowing. The court, or director in administrative enforcement, may enhance the civil penalty or forfeiture with a two level increase if the violation was knowingly committed in conscious disregard of the law.

8. In any enforcement proceeding, the court or director in administrative enforcement may, after consideration of the factors specified in subsection 2 of section 374.046, enhance the civil penalty or forfeiture with a one classification step increase under this section, if the violations resulted in actual financial loss to consumers.

9. In any enforcement proceeding, the court, or director in administrative enforcement, shall reduce the civil penalty or forfeiture on that person with up to a two classification step reduction under this section, if prior to receiving notice of the violation from the department, the person detects the violation through a self-audit or internal compliance program reasonably designed to detect and prevent insurance law violations and immediately reports the violation to the director.

10. If more than one error is caused by a single act or omission in the use of data processing equipment and such errors are not known by the violator at the time the error occurs, then any such errors shall be regarded as a single violation under this section.

11. Any civil penalty or forfeiture recovered by the director shall be paid to the treasurer and then distributed to the public schools as required by Article IX, section 7 of the Missouri Constitution.

12. The penalties and forfeitures authorized by this section govern all actions and proceedings that are instituted on the basis of conduct occurring after August 28, 2006.

374.055. 1. Except as otherwise provided, any interested person aggrieved by any order of the director under the laws of this state relating to insurance in this chapter, except sections 374.700 to 374.789, chapter 354 and chapters 375 to 385, RSMo, or a rule adopted by the director, or by any refusal or failure of the director to make an order pursuant to any of said provisions, shall be entitled to a hearing before the director in accordance with the provisions of chapter 536, RSMo. A final order issued by the director is subject to judicial review in accordance with the provisions of chapter 536, RSMo. However, any findings of fact or conclusions of law in any order regarding the actual costs of the investigation or proceedings under section 374.046, or the classification of any violation under section 374.049, shall be subject to de novo review.

2. A rule adopted by the director is subject to judicial review in accordance with the provisions of chapter 536, RSMo.

381.003. 1. Sections 381.003 to 381.412 shall be known and may be cited as the "Missouri Title Insurance Act".

2. Except as otherwise expressly provided in this chapter and except where the context otherwise requires, all provisions of the laws of this state relating to insurance and insurance companies generally shall apply to title insurance, title insurers, and title agents.

381.009. As used in this chapter, the following terms mean:

(1) "Abstract of title" or "abstract", a written history, synopsis, or summary of the recorded instruments affecting the title to real property;

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

(3) "Affiliated business", any portion of a title insurance agency's business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title agency;

(4) "Associate", any:

(a) Business organized for profit in which a producer of title business is a director, officer, partner, employee, or an owner of a financial interest;

(b) Employee of a producer of title business;

(c) Franchisor or franchisee of a producer of title business;

(d) Spouse, parent, or child of a producer of title insurance business who is a natural person;

(e) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title business;

(f) Person with whom a producer of title insurance business or any associate of the producer has an agreement, arrangement, or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to that producer or associate for the referral of business;

(5) "Control", including the terms "controlling", "controlled by", and "under common control with", 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 or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of another person. This

presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(6) "County" or "counties" includes any city not within a county;

(7) "Direct operations", that portion of a title insurer's operations which are attributable to business written by a bona fide employee;

(8) "Director", the director of the department of insurance, or the director's representatives;

(9) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent, or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(10) "Escrow, settlement or closing fee", the consideration for supervising or handling the actual execution, delivery, or recording of transfer and lien documents and for disbursing funds;

(11) "Financial interest", a direct or indirect legal or beneficial interest, where the holder is or will be entitled to five percent or more of the net profits or net worth of the entity in which the interest is held;

(12) "Foreign title insurer", any title insurer incorporated or organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(13) "Geographically indexed or retrievable", a system of keeping recorded documents which includes as a component a method for discovery of the documents by:

(a) Searching an index arranged according to the description of the affected land; or

(b) An electronic search by description of the affected land;

(14) "Marketable title", when an original title to land has emanated from the government, and all persons who appear in the chain of title to have had any interest in the record title during the last forty-five years have conveyed to the last record owner or persons through whom he or she derives title, and it is established by affidavits or other instruments recorded and included in the chain or title that he or she and persons through whom he or she derives title have been in continuous, open, exclusive, and peaceable possession of the land for the last twenty-seven years;

(15) "Net retained liability", the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, and maintained by the insurer;

(16) "Non-United States title insurer", any title insurer incorporated or organized under the laws of any foreign nation or any province or territory;

(17) "Premium", the charge that is made by a title insurer directly or through a title agent or title agency for the issuance of a title insurance policy or a closing or settlement protection letter that the title insurer is required to issue under this chapter and shall be limited only to title insurers' reasonable overhead and reasonable miscellaneous expenses and other amounts necessary to cover expected losses and loss adjustment expense from underwriting the risk associated with the issuance of such title policy and any such closing or settlement protection letter but shall exclude:

(a) Any commission to be retained by or payable to any title agent or title agency;

(b) An amount equal to any such commission when a title agent or title agency is not involved in the issuance of a title insurance policy;

(c) Overhead and miscellaneous expenses and profit margin incurred by or belonging to the title agent or title agency;

(d) Any other costs and expenses incurred by a title agent or title agency; and

(e) Any charges or fees for related title services;

(18) "Producer", any person, including any officer, director, or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation, or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative, or attorney of a person who buys or sells any interest in real property or who lends or borrows money with the interest as security;

(19) "Qualified depository institution", an institution that is:

(a) 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 and has been granted authority to operate with fiduciary powers;

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

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules established by the director;

(20) "Referral", the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral;

(21) "Related title services", services performed by a title insurer, title agency, or title agent, including but not limited to preparing or obtaining an abstract, title search, or title examination, examining title, examining searches of the records of a Uniform Commercial Code filing office and such other information as may be necessary or appropriate, preparing documents necessary to close the transaction, conducting the closing, or handling the escrow, settlement, and disbursing of funds related to the closing in a real estate closing transaction in which a title insurance commitment or policy is to be issued, issuance of closing or settlement protection letters other than those required to be issued by a title insurer under this chapter, provision of or any endorsement or special coverage, and noninsurance-related information services, or any other items or services not specified in this chapter;

(22) "Search", "search of the public records", or "search of title", a search of those records established by the laws of this state for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge;

(23) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement under which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(24) "Subsidiary", an affiliate controlled by a person directly or indirectly through one or more intermediaries;

(25) "Title agency", an authorized person who issues title insurance on behalf of a title insurer. An attorney licensed to practice law in this state who issues title insurance as a part of his or her law practice, but does not maintain or operate a title insurance business separate from such law practice is not a title agency;

(26) "Title agent" or "agent", an attorney licensed to practice law in this state who issues title insurance as part of his or her law practice, but who is not affiliated with or acting on behalf of a title agency, or an authorized person who performs one or more of the following acts in conjunction with the issuance of a title insurance commitment or policy:

(a) Determines insurability;

(b) Performs searches;

(c) Handles escrows, settlements, or closings; or

(d) Solicits or negotiates title insurance business;

(27) "Title insurance business" or "business of title insurance":

(a) Issuing as insurer or offering to issue as insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of and in conjunction with the issuance of a title insurance policy:

a. Soliciting or negotiating the issuance of a title insurance policy;

b. Guaranteeing, warranting, or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units, and proprietary leases and for all liens or charges affecting the same;

c. Handling of escrows, settlements, or closings;

d. Executing title insurance policies;

e. Effecting contracts of reinsurance; or

f. Abstracting, searching, or examining titles;

(c) Guaranteeing, warranting, or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Promising to purchase or repurchase for consideration an indebtedness because of a title defect, whether or not involving a transfer of risk to a third person; or

(f) Promising to indemnify the holder of a mortgage or deed of trust against loss from the failure of the borrower to pay the mortgage or deed of trust when due if the property fails to yield sufficient proceeds upon foreclosure to satisfy the debt, when one or both of the following conditions exist:

a. The security has been impaired by the discovery of a previously unknown property interest in favor of one who is not liable for the payment of the mortgage or deed of trust; or

b. Perfection of the position of the mortgage or deed of trust which was assured to exist cannot be obtained, notwithstanding timely recordation with the recorder of deeds of the county in which the property is located; or

(g) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of this chapter;

(28) "Title insurance commitment" or "commitment", a preliminary report, commitment, or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions, and other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy. A title insurance commitment is not an abstract of title;

(29) "Title insurance policy" or "policy", a contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(a) Title to the estate or interest in land being otherwise than as stated in the policy;

(b) Defects in or liens or encumbrances on the insured title;

(c) Unmarketability of the insured title;

(d) Lack of legal right of access to the land;

(e) Invalidity or unenforceability of the lien of an insured mortgage;

(f) The priority of a lien or encumbrance over the lien of any insured mortgage;

(g) The lack of priority of the lien of an insured mortgage over a statutory lien for services, labor, or material;

(h) The invalidity or unenforceability of an assignment of the insured mortgage; or

(I) Rights or claims relating to the use of or title to the land;

(30) "Title insurer" or "insurer", a company organized under the laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United States title insurer licensed in this state to transact the business of title insurance;

(31) "Title plant", a set of records encompassing at least the most recent forty-five years, consisting of documents, maps, surveys, or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained. The records in the title plant shall be geographically indexed or retrievable as to those records containing a legal description of affected land, and otherwise by name of affected person;

(32) "Underwrite", the authority to accept or reject risk on behalf of the title insurer.

381.015. 1. When a title insurance commitment issued by a title insurer, title agency, or title agent includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the commitment shall incorporate the following statement in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered."

2. A title insurer, title agency, or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been

requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser-mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. A violation of any provision under this section is a level one violation under section 374.049, RSMo.

381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

3. The title insurer shall have on file proof that the title agency or title agent is licensed by this state.

4. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

5. If a title insurer terminates its agency with a title agency licensed under this chapter, the insurer shall, within seven days of the termination, notify the director of the reasons for termination, including any information that is required to be reported under subsection 5 of section 375.022, RSMo.

6. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.019. 1. A title insurer, title agency or title agent participating in residential closings using the Housing and Urban Development settlement statement (form HUD-1) shall provide clear and conspicuous disclosure of charges. The director may adopt rules

not in conflict with provisions of the federal Real Estate Settlement Procedures Act, as amended, under section 381.042 to implement disclosure of the following:

(1) Premium as defined in section 381.009;

(2) Abstract or title search fee;

(3) Settlement or closing fees;

(4) Policy issuance fees under section 381.113; and

(5) Any other associated fees along with a concise description.

2. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.022. 1. A title insurer, title agency, or title agent not affiliated with a title agency may operate as an escrow, security, settlement, or closing agent, provided that all funds deposited with the title insurer, title agency, or title agent not affiliated with a title agency in connection with any escrow, settlement, closing, or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(1) The funds regulated under this section shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit, or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit, or closing in the records of the title insurer, title agency, or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(2) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted.

2. It is unlawful for any person to:

(1) Commingle personal or any other moneys with escrow funds regulated under this section;

(2) Use such escrow funds to pay or indemnify against debts of the title insurance agent or of any other person;

(3) Use such escrow funds for any purpose other than to fulfill the terms of the individual escrow after the necessary conditions of the escrow have been met;

(4) Disburse any funds held in an escrow account unless the disbursement is made under a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or under an order of a court of competent jurisdiction; or

(5) Disburse any funds held in a security deposit account unless the disbursement is made under a written agreement specifying:

(a) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(b) The duties of the title insurer, title agency, or title agent not affiliated with a title agency with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(c) Any other provisions the director may require by rule or order.

3. Notwithstanding the provisions of subsection 2 of this section, any interest received on funds deposited in connection with any escrow, settlement, security deposit, or closing may be retained by the title insurer, title agency, or title agent not affiliated with a title agency as compensation for administration of the escrow or security deposit, unless the instructions for the funds or a governing statute provides otherwise.

4. Notwithstanding the provisions of subsection 1 of this section, a title insurer, title agency, or title agent is not authorized to provide such services as an escrow, security, settlement, or closing agent in a residential real estate transaction unless as part of the same transaction the title insurer, title agency, or title agent issues a commitment, binder, or title insurance policy, the buyer's agent or agency is representing the same title insurer and a closing protection letter has been issued protecting the seller's interest, or the title agent or agency gives written notice to the affected person, on a form prescribed or approved under regulation promulgated by the director, that the person's interest in the closing or settlement is not protected by the title insurer, title agency, or title agent.

5. A violation of any provision under this section is a level three violation under section 374.049, RSMo.

381.023. 1. A title insurer shall, at least annually, conduct an onsite review of the underwriting, claims, and escrow practices of the title insurance agency or agent with which it has a contract. If the title insurance agency or agent does not maintain separate fiduciary trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agency or agent.

2. Each title insurer authorized to do business in Missouri shall adopt and utilize the following standards and procedures for the on-site review of title insurance agents and agencies. On-site review documentation, work papers, summaries, and reports shall be maintained by each title insurer for a period of at least four years and shall be made available to the director for examination upon request. A report shall be prepared by the

title insurer at the completion of the on-site review setting forth the title insurer's findings. On-site review findings shall include, but not be limited to, the following:

(1) A review of contracts between the title insurer and the title insurance agency or agent;

(2) A statement of financial condition of the title insurance agency or agent, certified by the title insurance agent or designated agent of the agency under oath or by affirmation as being a true and accurate representation of financial condition;

(3) A review of management practices related to conflicts of interest, affiliated business arrangements, and regulatory compliance;

(4) Reconciliation of orders with commitments, title searches, title policies, and collection of premiums;

(5) A review of the procedures for tracking issued commitments;

(6) A review of the practices to cancel commitments on transactions that do not close;

(7) A review of the procedures for follow-up after closing to track status of outstanding conditions required for timely issuance of policies;

(8) A review of the procedures for voiding policies;

(9) A review of the tracking of open escrow, security, settlement or closing files;

(10) A review of issued policy reports to the title insurer by the title insurance agency or agent;

(11) A review of any files awaiting policy issuance that includes a determination of the average length of time between closing and the issuance of the title policy; and

(12) A review of a three-way reconciliation of bank balance, book balance and escrow trial balance for each individual escrow bank account.

3. If the agent or agency is an agent or agency for two or more title insurers, the title insurers may cooperate in complying with the requirements of this section.

4. The title insurer shall provide a copy of the report of each such review it performs to the director. The director may promulgate rules setting forth the minimum threshold level at which a review would be required, the standards thereof and the form of report required.

5. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.024. 1. It is unlawful for any title agency or title agent not affiliated with an agency to deny reasonable access or in any manner fail to cooperate with its underwriters in the title insurers' reviews of the agency's or agent's escrow, settlement, closing and security deposit accounts.

2. It is unlawful for any title agency or title agent not affiliated with an agency, appointed by two or more title insurers, to deny any of the title insurers reasonable access to the fiduciary trust accounts in connection with providing escrow or closing settlement services, and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title agency or title agent.

3. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.025. 1. A title insurer, title agency, title agent, or other person shall not give or receive, directly or indirectly, any consideration for the referral of title insurance business, escrow, closing, or other service provided by a title insurer, title agency, or title agent, except as provided under subsection 2 of this section.

2. Notwithstanding the provisions of subsection 1 of this section, a title agency, title agent, or other person may give discounts directly to the real estate purchaser in a real estate closing transaction if the discounts are solely related to charges or fees for related title services.

3. A violation of any provision under this section is a level three violation under section 374.049, RSMo.

4. If the director fails to initiate a proceeding to enforce this section within forty-five days following receipt of written notice of such violation, any title insurer, title agency, or title agent doing business in the same county may maintain an action for injunctive relief against a title insurer, title agency, or title agent violating any provision of this section. In any action under this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.

381.026. 1. The settlement agent shall record all deeds and security instruments for real estate closings handled by it within five business days after completion of all conditions precedent thereto.

2. Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction in which a title insurer, title agency, or title agent not affiliated with a title agency is the settlement agent, provided all parties to whom payment will become due upon such recording consent thereto in writing.

381.027. A title insurer is liable for the defalcation, conversion, or misappropriation by a licensed title insurance agent or agency of funds held in trust by the agent or agency under section 381.022. If the agent or agency is an agent or agency for two or more title insurers, any liability shall be borne by the title insurer upon which a title insurance commitment or policy was issued prior to the illegal act. If no commitment or policy was

issued, each title insurer represented by the agent or agency at the time of the illegal act shares in the liability in the same proportion that the premium remitted to it by the agent or agency during the one-year period before the illegal act bears to the total premium remitted to all title insurers by the agent or agency during the same time period.

381.028. 1. No title insurer, title agency, or title agent shall participate in any transaction in which it knows that an agent or other person requires, directly or indirectly, or through any trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person a loan, or loan extension, credit, sale, property, contract, lease, or service, that the other person shall place a title insurance policy of any kind with the title insurer or through a particular title agency or agent.

2. It is unlawful for any title insurer, title agency, title agent, or any employee or representative thereof, to:

(1) Pay, allow, or give or offer to pay, allow, or give, directly or indirectly, as an inducement for insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement relating to premiums whatever, not specified or provided for in the policy, except to the extent provided for in the applicable filing with the director;

(2) Pay, allow, or give or offer to pay, allow, or give, directly or indirectly, to any person acting as an agent, representative, attorney, or employee of the owner, lessee, mortgagee, existing, or prospective, of the real property or interest therein which is the subject matter of title insurance or as to which a service is to be performed, any commission or part of its fee or charges, or any other consideration as inducement or compensation for placing any order for a title insurance policy or for performance of any escrow or other service by the insurer, title agency, title agent, or employee, or representative thereof; or

(3) Issue any policy or perform any service in connection with which it or any agent has paid or contemplates paying, allowing or giving any commission, rebate, inducement, or other consideration that would violate subdivision (2) of this section; provided, however, that nothing in this section shall prevent or prohibit or be deemed or construed to prevent or prohibit:

(a) A title insurer from negotiating with a title agency or title agent discounts under a filed rating plan or manual, the amount of any commission to be retained or paid by the

title insurer to the title agency or title agent, or other fees and charges not comprising the premium; or

(b) Notwithstanding the provisions of subsection 1 of section 381.025, without being subject to subdivision (9) of section 375.936, RSMo, and in addition to the provisions of subsection 2 of section 381.025, a title insurer, title agency, title agent, or employee or representative thereof from:

a. Providing directly to the insured all or any portion of any commission; or

b. Negotiating the charges and fees payable by an insured for related title services or which do not comprise the premium.

3. A violation of any provision under this section is a level three violation under section 374.049, RSMo.

381.029. 1. Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title insurer, title agency, or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title insurer, title agency, or agent.

2. The director may establish rules for use by all title agencies in the recording and reporting of the agency's owners and of the agency's ownership interests in other persons or businesses and of material transactions between the parties.

3. The director may require each title insurer, agency, and agent to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the insurer, agency, or agent and who the insurer, agency, or agent knows or has reason to believe are producers of title insurance business or associates of producers.

4. Nothing in this chapter shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(1) The title insurer, title agency, title agent, or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(2) The person being referred is not required to use a specified title insurer, agency, or agent; and

(3) The only thing of value that is received by the title insurer, agency, agent, or party making the referral, other than payments otherwise permitted, is a return on an ownership interest. For purposes of this subsection, the terms "required use" and "return

on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), as amended.

5. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.032. 1. Premium rates shall not be excessive, inadequate or unfairly discriminatory. Premium rates are excessive if they are likely to produce a long-run profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. Premium rates are inadequate when they are clearly insufficient to sustain projected losses and expenses and the use of such rates, if continued, will tend to create a monopoly in the market.

2. Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, so long as the rate reflects the differences with reasonable accuracy.

3. Due consideration shall be given to past and prospective loss and expense experience within and outside of this state, to catastrophe hazards and contingencies, to events or trends within and outside of this state, and to all other relevant factors, including judgment.

4. Premium rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration should be given to all investment income attributable to premiums and reserves.

381.033. 1. Every title insurer shall file with the director all premium rates and supplementary rate information which is to be used in this state. Such rates and supplementary rate information and supporting information required by the director shall be filed before the effective date. Upon application by the filer, the director may authorize an earlier effective date.

2. Rates filed under this section shall be filed in such form and manner as prescribed by the director. Whenever a filing is not accompanied by such information as the director has required under this section, the director shall so inform the insurer within thirty days.

3. It is unlawful for a title insurer, title agency, or title agent to charge a premium for any coverage or protection in a title insurance policy if such premium has not been filed with the director in a manual of classifications, rules, underwriting rules and rates, rating plan, or modification of the foregoing and the forms and policies to which such rates are applied. A violation of this subsection is a level two violation under section 374.049, RSMo.

4. All rates, supplementary rate information and any supporting information, not otherwise confidential under section 374.070, RSMo, shall, as soon as filed, be open to public inspection at any reasonable time. Copies may be obtained by any person on request and upon payment of a reasonable charge.

381.034. 1. A rate may be disapproved at any time subsequent to the effective date. The director may disapprove a rate if the director finds that the rate is inadequate, excessive or unfairly discriminatory under section 381.032.

2. The insurer whose rates have been disapproved shall be given a hearing upon a written request made within thirty days after the disapproval order.

3. Whenever an insurer has no legally effective rates as a result of the director's disapproval of rates or other act, the director shall on request of the insurer specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by him. When new rates become legally effective, the director shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than ten dollars per policyholder shall not be required.

381.038. 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has:

(1) Caused a search of title to be made from the evidence prepared from a title plant of the county where the property is located as herein defined, or if no such title plant of the county exists, or the owner of such plant refuses to furnish the title insurer, title agent, or agency desiring to insure, such title evidence at a customary charge being charged within the county that the property is located and within a customary period of time, then such policy of title insurance shall be based upon the best title evidence available. An attorney licensed to practice law in this state may upon personal inspection use the best evidence available in any county and is not subject to the provisions of the title plant requirement of this chapter. The records on which the title plant is based on shall show all prior matters affecting the title to the property or interest therein for a continuous period of time of at least the most recent forty-five years;

(2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices; and

(3) Caused a title search and title examination to be performed that show all prior matters affecting the title to the property or interest therein for a continuous period of time of at least the most recent forty-five years.

2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or

commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

3. Evidence of the examination of title and determination of insurability generated by a title insurer, title agency, or title agent shall be preserved and maintained by such insurer, agency, or agent for as long as appropriate to the circumstances but in no event less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent or agency may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original.

4. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency, and title agent for as long as appropriate to the circumstances but, in no event less than seven years after the escrow or security deposit account has been closed.

5. A title agent shall promptly remit premiums to the title insurer within sixty days of receiving an invoice from the title insurer or sooner if stipulated by the title insurer. A title insurer or title agent shall promptly issue each title insurance policy within forty-five days after closing, unless special circumstances as defined by rule delay the issuance.

6. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

7. A violation of any provision under this section is a level two violation under section 374.049, RSMo.

381.042. 1. The director under the authority in section 374.045, RSMo, may issue rules, regulations, and orders necessary to carry out the provisions of this chapter.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2007, shall be invalid and void.

381.045. 1. If the director determines that a person has engaged, is engaging, or is about to engage in a violation of this chapter or a rule adopted or order issued pursuant thereto, or a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of this act or a rule

adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. The director of insurance may also suspend or revoke the license of a producer under section 375.141, RSMo, or the certificate of authority of any title insurer as authorized under section 374.047, RSMo, for any such willful violation.

2. If the director believes that a person has engaged, is engaging, or is about to engage in a violation of this chapter or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of this act or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo.

3. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the laws relating to the business of insurance.

4. Nothing contained in this chapter is intended to or shall in any other manner limit or restrict the rights of policyholders, claimants, and creditors.

381.048. 1. The director may bring an action against any title insurer, title agency, title agent, or any director, officer, agent, employee, trustee, or affiliate of a title insurer, title agency, or title agent in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.

2. A violation of any provision under the federal Real Estate Settlement Procedures Act, as amended, is a level two violation under section 374.049, RSMo.

381.052. No person other than a domestic, foreign, or non-United States title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.

381.055. Subject to the exceptions and restrictions contained in this chapter, a title insurer shall have the power to:

(1) Do only title insurance business;

(2) Reinsure title insurance policies; and

(3) Perform ancillary activities, unless prohibited by the director, including examining titles to property and any interest in property and procuring and furnishing related information and information about relevant real and personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.

381.058. 1. No insurer that transacts any class, type, or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten,

or issued by any insurer transacting or licensed to transact any other class, type, or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section, in any residential real estate transaction, a title insurer issuing a commitment, binder, or title insurance policy to be purchased either by or on behalf of a buyer, lender, or seller is required to issue closing or settlement protection letter to such person's interest as a related title service. Such closing or settlement protection letter shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft or other improper acts or omissions with regard to escrow or settlement funds; and

(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The charge for issuance of the closing or settlement protection letter required to be issued under subsection 3 of this section shall be filed as a rate with the director under section 381.032.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.

4. As used in subsection 3 of this section, the term "closing or settlement protection letter" means a statement issued by a title insurer to a party to a real estate transaction acknowledging that the title agency or agent closing a transaction in connection with which the title insurer's policy is being issued is a duly licensed and authorized agency or agent of the title insurer, that the performance of settlement services by such agency or agent is within the scope of its authority as agency or agent for the title insurer, and promising to be responsible for the misapplication of funds or documents by the agency or agent or its failure to follow written instructions in connection with the closing.

381.062. In order to be licensed to do an insurance business in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than eight hundred thousand dollars and, in addition, surplus of at least eight hundred thousand dollars.

381.065. 1. The net retained liability of a title insurer for a single risk in regard to property located in this state, whether assumed directly or as reinsurance, shall not exceed

the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the director.

2. For purposes of this chapter:

(1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

3. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least one million six hundred thousand dollars.

4. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.

381.068. In determining the financial condition of a title insurer doing business under this chapter, the general investment provisions of sections 379.080 to 379.082, RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed twenty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.

381.072. 1. In determining the financial condition of a title insurer doing business under this chapter, the general provisions of the laws regulating the business of insurance requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims, and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim;

(c) Reserves required under this section may be revised from time to time and shall be redetermined at least once each year;

(2) A statutory or unearned premium reserve established and maintained as follows:

(a) A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements;

(b) The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured;

(c) The unearned premium reserve shall consist of:

a. The amount of the unearned premium reserve on January 1, 2007; and

b. A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after January 1, 2007;

(d) Amounts placed in the unearned premium reserve in any year in accordance with paragraph (c) of this subdivision shall be deducted in determining the net profit of the title insurer for that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar

unearned premium reserve maintained before January 1, 2007, shall be released in accordance with the law in effect immediately before January 1, 2007;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required under section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed under this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision.

2. A foreign or alien title insurer licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurers, unless the laws of the jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to this chapter, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured claims as defined in section 375.1152, RSMo.

3. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

4. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon the title

insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

5. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of title agencies, title agents, insureds, or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.

381.085. 1. A title insurer shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the director thirty days prior to use.

2. Forms covered by this section shall include:

(1) Title insurance policies, including standard form endorsements;

(2) Title insurance commitments issued prior to the issuance of a title insurance policy; and

(3) Closing or settlement protection letters.

3. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the director and approved as herein provided.

381.112. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall mean the amount within the definition of "premium" contained in section 381.005.

381.113. 1. A policy issuance fee is imposed on each title insurer for every title insurance policy issued in the state of Missouri. Such fee shall be collected by the title agent from the title insurance policy purchaser at the time of closing and promptly remitted to the title insurer in the same manner premium is remitted. The policy issue fee shall be established by rule by the director and shall be based on the department of insurance cost of regulating the title insurance industry. However, in no case shall the fee exceed two dollars. The policy fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes.

2. All funds received under the provisions of this section shall be transmitted by the director of the department of insurance to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund established under section 374.150, RSMo. Expenditures necessitated by this chapter may be paid from

funds appropriated from the department of insurance dedicated fund by the general assembly.

3. The director may promulgate rules setting forth the standards for remittance of the policy fees. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2007, shall be invalid and void.

381.115. 1. It is unlawful for any person to act in the capacity of a title agency, unless the person is a licensed business entity producer under subsection 2 of section 375.015, RSMo.

2. It is unlawful for any person to act in the capacity of a title agent, unless the person is a licensed individual producer under subsection 1 of section 375.015, RSMo.

3. It is unlawful for any title insurer to contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is licensed as required in this section.

4. An individual employed by a title insurer, or licensed title agency, or title agent to whom the insurer, agency, or agent delegates authority to act on that agency's or agent's behalf shall be individually licensed as an individual producer under subsection 1 of section 375.015, RSMo, if such employee performs any of the functions of a title agent as defined in section 381.009. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of title insurers, title agencies, or title agents, and persons acting on behalf of title insurers, title agencies, or title agents. This subsection is not intended to include persons performing clerical functions.

5. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer, insurance company, or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

6. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

7. If the title insurer, agency, or title agent delegates the title search to a third party, such as an abstract company, the insurer, agency, or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the insurer, agency, or agent with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period.

8. A violation of any provision under this section is a level three violation under section 374.049, RSMo.

381.118. 1. Each title agency shall designate an individual as a qualified principal, who as a condition of licensure, shall successfully pass an examination developed by the producer advisory board established by section 375.019, RSMo, and approved by the director. Each title agent shall successfully pass an examination developed by the producer advisory board and approved by the director. Upon request by a title agency or agent and for good cause, the director, by order, may waive the requirements of this subsection. The examination requirement in this subsection shall be waived for all title agents and qualified principals who have continually been licensed in this state as a title agent or title insurance producer from at least January 1, 2004, through January 1, 2007.

2. Each title agent licensed to sell title insurance in this state, unless exempt under subsection 8 of this section, shall successfully complete courses of study as required by this section. Any person licensed to act as a title agent shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of eight hours of instruction. The initial such two-year period shall begin January first of the year next following the effective date of this chapter.

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

(1) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

(2) A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized agents' association or insurance trade association. A local agents' group may also be approved if the instructor receives no compensation for services;

(3) Courses approved for continuing legal education credit by the Missouri Bar.

4. A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for one and one-half times the number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program, but the credit may be credited no more than once a year.

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

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

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age and is currently licensed as a title agent.

7. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person.

8. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

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

(1) The producer advisory board established by section 375.019, RSMo, shall be utilized by the director to assist the director in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Every applicant seeking approval by the director of a continuing education course under this section shall pay to the director a filing fee of fifty dollars per course, except that such total fee shall not exceed two hundred fifty dollars per year for any single

applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval.

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

11. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification required by this section.

12. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created pursuant to the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after January 1, 2007, shall be invalid and void.

381.122. The director may during normal business hours examine, audit and inspect any and all books and records maintained by a title insurer, title agency, or title agent under this chapter.

381.410. As used in this section and section 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is the division of finance. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed under the Small Business Investment Act of 1958 (15 U.S.C. Section 661, et seq.) as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit System under the Farm Credit Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended; or

(b) A mortgage loan company or mortgage banker doing business under the laws of this state or the United States which is subject to licensing, supervision, or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans' Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer, if their principal place of business is in Missouri or a state which is contiguous to Missouri;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar, or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo; or

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri; or

(3) Drawn on an agency of the United States of America, the state of Missouri, or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. It is unlawful for any title insurer, title agency, or title agent, as defined in section 381.009, to make any payment, disbursement or withdrawal from an escrow account which it maintains as a depository of funds received from the public for the settlement of real

estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement, or withdrawal; or

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. A violation of any provision of this section is a level two violation under section 374.049, RSMo.

385.200. As used in sections 385.200 to 385.212, the following terms mean:

(1) "Administrator", the person, other than a provider, who is responsible for the administration of the service contracts or the service contracts plan or for any filings required by sections 385.200 to 385.212;

(2) "Consumer", a natural person who buys other than for purposes of resale any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes;

(3) "Dealers", any motor vehicle dealer or boat dealer licensed or required to be licensed under the provisions of sections 301.550 to 301.573, RSMo;

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

(5) "Maintenance agreement", a contract of limited duration that provides for scheduled maintenance only;

(6) "Manufacturer", any of the following:

(a) A person who manufactures or produces the property and sells the property under the person's own name or label;

(b) A subsidiary of the person who manufacturers or produces the property;

(c) A person who owns one hundred percent of the entity that manufactures or produces the property;

(d) A person that does not manufacture or produce the property, but the property is sold under its trade name label;

(e) A person who manufactures or produces the property and the property is sold under the trade name or label of another person;

(f) A person who does not manufacture or produce the property but, under a written contract, licenses the use of its trade name or label to another person who sells the property under the licensor's trade name or label;

(7) "Mechanical breakdown insurance", a policy, contract, or agreement issued by an authorized insurer who provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or service, for the operational or

structural failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and tear;

(8) "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

(9) "Nonoriginal manufacturer's parts", replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts";

(10) "Person", an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

(11) "Premium", the consideration paid to an insurer for a reimbursement insurance policy;

(12) "Provider", a person who is contractually obligated to the service contract holder under the terms of a motor vehicle extended service contract;

(13) "Provider fee", the consideration paid for a motor vehicle extended service contract by a service contract holder;

(14) "Reimbursement insurance policy", a policy of insurance issued to a provider and under which the insurer agrees, for the benefit of the motor vehicle extended service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the motor vehicle extended service contracts in the event of nonperformance by the provider. All obligations and liabilities include, but are not limited to, failure of the provider to perform under the motor vehicle extended service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a motor vehicle extended service contract;

(15) "Service contract holder" or "contract holder", a person who is the purchaser or holder of a motor vehicle extended service contract;

(16) "Warranty", a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for

defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.

385.201. 1. Motor vehicle extended service contracts shall not be issued, sold, or offered for sale in this state unless the provider or its designee has:

(1) Provided a receipt for the purchase of the motor vehicle extended service contract to the contract holder at the date of purchase;

(2) Provided a copy of the motor vehicle extended service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) Complied with the provisions of sections 385.200 to 385.212.

2. All providers of motor vehicle extended service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director.

3. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a motor vehicle extended service contract shall:

(1) Insure all motor vehicle extended service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or

(2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the motor vehicle extended service contract for all motor vehicle extended service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

a. A surety bond issued by an authorized surety;

b. Securities of the type eligible for deposit by authorized insurers in this state;

c. Cash;

d. A letter of credit issued by a qualified financial institution; or

e. Another form of security prescribed by regulations issued by the director; or

(3) (a) Maintain a net worth of one hundred million dollars; and

(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and

Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to motor vehicle extended service contracts sold by the provider in this state.

4. Provider fees collected on motor vehicle extended service contracts shall not be subject to premium taxes. Premiums for reimbursement insurance policies shall be subject to applicable premium taxes.

5. Except for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell motor vehicle extended service contracts for providers that comply with sections 379.1050 to 379.1070 are exempt from this state's licensing requirements.

6. Providers complying with the provisions of sections 385.200 to 385.212 are not required to comply with other provisions of chapter 374 or 375, or any other provisions governing insurance companies, except as specifically provided.

385.203. Reimbursement insurance policies insuring motor vehicle extended service contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service for which the provider is legally obligated to perform according to the provider's contractual obligations under the motor vehicle extended service contracts issued or sold by the provider.

385.204. 1. Notwithstanding the provisions of sections 408.140 and 408.233, RSMo, no person, other than a dealer, manufacturer, federally insured depository institution, or a lender licensed and defined under the requirements of sections 367.100 to 367.215, RSMo, shall sell, offer for sale, or solicit the sale of a motor vehicle extended service contract to a consumer.

2. No administrator or provider shall use a dealer as a fronting company, and no dealer shall act as a fronting company. For purposes of this subsection, "fronting company" means a dealer that authorizes a third-party administrator or provider to use its name or business to evade or circumvent the provisions of subsection 1 of this section.

3. Motor vehicle extended service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language, and the entire contract shall be

printed or typed in easy-to-read type and conspicuously disclose the requirements in this section, as applicable.

4. Motor vehicle extended service contracts insured under a reimbursement insurance policy under subsection 3 of section 385.201 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the insurer.

5. Motor vehicle extended service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 385.201 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy." A claim against the provider also shall include a claim for return of the unearned provider fee. The motor vehicle extended service contract also shall state conspicuously the name and address of the provider.

6. Motor vehicle extended service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the motor vehicle extended service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

7. Motor vehicle extended service contracts shall state conspicuously the total purchase price and the terms under which the motor vehicle extended service contract is sold. The purchase price is not required to be preprinted on the motor vehicle extended service contract and may be negotiated at the time of sale with the service contract holder.

8. If prior approval of repair work is required, the motor vehicle extended service contracts shall state conspicuously the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

9. Motor vehicle extended service contracts shall state conspicuously the existence of any deductible amount.

10. Motor vehicle extended service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

11. Motor vehicle extended service contracts shall state the conditions upon which the use of non-original manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

12. Motor vehicle extended service contracts shall state any terms, restrictions, or conditions governing the transferability of the motor vehicle extended service contract.

13. Motor vehicle extended service contracts shall state the terms, restrictions, or conditions governing termination of the service contract by the service contract holder. The provider of the motor vehicle extended service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

14. Motor vehicle extended service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of mailing date of the motor vehicle extended service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall apply only to the original service contract purchaser.

15. Motor vehicle extended service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

16. Motor vehicle extended service contracts shall state clearly whether or not the service contract provides for or excludes consequential damages or preexisting conditions.

17. An administrator or provider may include other products or services, separately or as a part of an extended service contract, as agreed upon by the consumer.

385.205. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business, nor shall such provider use a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2004. However, a company using the prohibited language in its name shall disclose conspicuously in its motor vehicle extended service contract the following statement: "This agreement is not an insurance contract.".

2. A provider or its representative shall not in its motor vehicle extended service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading

if omitted, in connection with the sale, offer to sell or advertisement of a motor vehicle extended service contract.

3. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.

385.207. 1. An administrator, provider, or other intermediary shall keep accurate accounts, books, and records concerning transactions regulated by sections 385.200 to 385.212.

2. An administrator's, provider's, or other intermediary's accounts, books, and records shall include:

(1) Copies of each type of motor vehicle extended service contract issued;

(2) The name and address of each service holder to the extent that the name and address have been furnished by the service contract holder;

(3) A list of the provider locations where motor vehicle extended service contracts are marketed, sold, or offered for sale; and

(4) Claims files that shall contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the motor vehicle extended service contracts.

3. Except as provided in this section, an administrator shall retain all records pertaining to each motor vehicle extended service contract holder for at least three years after the specified period of coverage has expired.

4. An administrator, provider, or other intermediary may keep all records required under sections 385.200 to 385.212 on a computer disk or other similar technology. If an administrator, provider, or other intermediary maintains records in other than hard copy, records shall be accessible from a computer terminal available to the director and be capable of duplication to legible hard copy.

5. An administrator, provider, or other intermediary discontinuing business in this state shall maintain its records until it furnishes the director satisfactory proof that it has discharged all obligations to contract holders in this state.

6. An administrator, provider, or other intermediary shall make all accounts, books, and records concerning transactions regulated pursuant to sections 385.200 to 385.212 or other pertinent laws available to the director upon request.

385.208. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination, in a form and time frame prescribed by the director, has been mailed or delivered to the director. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for motor vehicle extended service contracts issued by providers prior to the date of the termination.

385.209. 1. Providers are considered to be the agent of the insurer that issued the reimbursement insurance policy. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers.

2. The provisions of sections 385.200 to 385.212 shall not prevent or limit the right of an insurer that issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay under the provisions of the motor vehicle extended service contract or under a contractual agreement.

385.210. 1. The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of sections 385.200 to 385.212 and protect service contract holders in this state.

2. If the director determines that a person has engaged, is engaging, or is about to engage in a violation of sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission or course of business constituting a violation of sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

3. If the director believes that a person has engaged, is engaging, or is about to engage in a violation of sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission or course of business constituting a violation of sections 385.200 to 385.212 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

4. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

385.211. The director may promulgate rules to effectuate sections 385.200 to 385.212. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 385.200 to 385.212 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule

are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

385.212. 1. The provisions of sections 385.200 to 385.212 shall not apply to:

(1) Warranties;

(2) Maintenance agreements;

(3) Commercial transactions; and

(4) Service contracts sold or offered for sale to persons other than consumers.

2. Manufacturer's contracts on the manufacturer's products need only comply with the provisions of sections 385.204, 385.205, and 385.210.

385.300. 1. As used in sections 385.300 to 385.312, the terms "consumer", "director", "maintenance agreement", "manufacturer", "nonoriginal manufacturer's parts", "person", "premium", and "warranty" shall have the same meaning as provided in section 385.200.

2. As used in sections 385.300 to 385.312, the following terms mean:

(1) "Administrator", the person who is responsible for the handling and adjudication of claims under the product service agreements;

(2) "Contract holder", a person who is the purchaser or holder of a service contract;

(3) "Property", all forms of property;

(4) "Provider", a person who issues, makes, or directly underwrites a service contract, or is contractually obligated to the service contract holder under the terms of the service contract;

(5) "Provider fee", the consideration paid for a service contract, if any, by a service contract holder;

(6) "Reimbursement insurance policy", a policy of insurance issued to a provider to either provide reimbursement to the provider under the terms of the insured service contract issued or sold by the provider, or alternatively, in the event of nonperformance by the provider, to pay to service contract holders on behalf of the provider all covered contractual obligations incurred by the provider under the terms of the insured service contract issued or sold by the provider; and

(7) "Service contract", a contract for a specific duration and consideration to perform the repair, replacement, or maintenance of property or indemnification for repair, replacement, or maintenance, for the operational or structural failure of any residential or other property due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, unavailability of parts, obsolescence, food

spoilage, rental, and shipping. Service contracts may provide for the repair, replacement or maintenance of property for damage resulting from power surges or accidental damage. Service contract providers and administrators are not deemed to be engaged in the business of insurance in this state.

385.301. 1. It is unlawful for any person to issue, sell or offer for sale in this state any service contract, unless each provider has registered with the director on a form prescribed by the director. Each provider shall pay to the director a fee established by the director by rule, but not to exceed three hundred dollars annually.

2. A provider may, but is not required to, appoint an administrator or other designee to be responsible for any or all of the administration of service contracts and compliance with sections 385.300 to 385.312.

3. A provider or its designee shall provide a copy of the service contract to the service contract holder within a reasonable period of time following the date of purchase.

4. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who contractually is obligated to provide service under a service contract shall comply with one of the following subdivisions:

(1) (a) Maintain a funded reserve account for its obligations under its contracts issues and outstanding in this state. The reserve shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

a. A surety bond issued by an authorized surety;

b. Securities of the type eligible for deposit by authorized insurers in this state;

c. Cash;

d. A letter of credit issued by a qualified financial institution; or

e. Another form of security prescribed by regulations issued by the director; or

(2) (a) Maintain a net worth of one hundred million dollars; and

(b) Provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed or Form 20-F with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the

provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K, Form 20-F, or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state; or

(3) Obtain a reimbursement insurance policy that demonstrates to the satisfaction of the director that one hundred percent of its service contract obligations to contract holders is covered by such policy and satisfies the requirements of this section. For the purposes of this subsection, the reimbursement insurance policy shall contain the following provisions:

(a) In the event that the provider is unable to fulfill its obligation under contracts issued in this state for any reason, including insolvency, bankruptcy, or dissolution, the insurer will pay losses and unearned fees under such plans directly to the contract holder making a claim under the contract;

(b) The insurer issuing the contractual liability policy shall assume full responsibility for the administration of claims in the event of the inability of the provider to do so; and

(c) The policy may be canceled or not renewed by either the insurer or the provider not less than sixty days after written notice thereof has been given to the director and provider by the insurer;

(4) The reimbursement insurance referenced in subdivision (3) above shall be obtained from an insurer that is authorized, registered or otherwise permitted to transact insurance in this state or a surplus lines insurer authorized pursuant to the laws of this state and which insurer meets one of the following requirements:

(a) Maintain, at the time the policy is filed with the director and continuously thereafter:

a. Surplus as to policyholders and paid-in capital of at least fifteen million dollars; and

b. Annually file copies of the insurer's financial statements, its National Association of Insurance Commissioners annual statement, and the actuarial certification if required and filed in the insurer's state of domicile; or

(b) Maintain, at the time the policy is filed with the director and continuously thereafter:

a. Surplus as to policyholders and paid-in capital of less than fifteen million dollars but at least equal to ten million dollars;

b. Demonstrate to the satisfaction of the director that the insurer maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one; and

c. Annually file copies of the insurer's financial statements, its National Association of Insurance Commissioners annual statement, and the actuarial certification if required and filed in the insurer's state of domicile.

5. Provider fees collected on service agreements shall not be subject to premium taxes. Premiums for reimbursement insurance policies shall be subject to applicable taxes.

6. Except for compliance with the provider's registration requirement in subsection 1 of this section, a person marketing, selling, or offering to sell service contracts for a provider that is registered under this section is exempt from licensing as a producer under the insurance laws of this state.

385.302. Reimbursement insurance policies insuring service contracts issued, sold or offered for sale in this state shall state that, upon failure of the provider to perform under the contract, including the failure to return the unearned provider fee, the insurer that issued the policy shall pay or perform according to the provider's contractual obligations under the service contracts insured by the insurer.

385.303. 1. Service contracts marketed, issued, sold, or offered for sale in this state shall be written in clear, conspicuous, and understandable language, and the entire contract shall be printed or typed in easy-to-read, type and conspicuously disclose the requirements in this section, as applicable.

2. Service contracts insured under a reimbursement insurance policy under subdivision (3) of subsection 4 of section 385.301 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company." A claim against the provider may also include a claim for return of the unearned provider fee. The service contract also shall state the name and address of the insurer.

3. Service contracts not insured under a reimbursement insurance policy under subdivision (3) of subsection 4 of section 385.301 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a reimbursement insurance policy." A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also state the name and address of the provider.

4. Service contracts shall identify any administrator, the provider obligated to perform under the contract, and the service contract seller, if different than the provider or administrator. The identities of such parties are not required to be preprinted on the service contract and may be added to the service contract prior to delivery to the contract holder.

5. Service contracts shall state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be pre-printed on the service contract and may be negotiated at the time of sale with the service contract holder.

6. If prior approval of repair work is required, the service contracts shall state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

7. Service contracts shall state the existence of any deductible amount.

8. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, or exclusions.

9. Service contracts shall state the conditions upon which the use of non-original manufacturers' parts, refurbished merchandise, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

10. Service contracts shall state any terms, restrictions, or conditions governing the transferability of the service contract.

11. Service contracts shall state any terms, restrictions, or conditions governing termination of the service agreement by the service contract holder and provider.

12. Service contracts for which the service contract holder pays a separate, identified consideration shall require every provider to permit the service contract holder to return the contract within at least twenty days of the date of mailing of the service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within forty-five days of return of the contract to the provider. The applicable free-look time periods on service contracts shall apply only to the original service contract purchaser, and only if no claim has been made prior to its return to the provider.

13. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

14. Service contracts shall state clearly whether or not the service contract provides for or excludes consequential damages, preexisting conditions, or events covered under the original manufacturer's warranty.

15. Service contracts shall state any limitations on the number or value of repairs, replacements, or monetary settlements, as applicable, that will be provided during the term of coverage.

385.304. 1. It is unlawful for any provider to use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business, or any name deceptively similar to the name or description of any insurance or surety corporation, or other provider.

2. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2006. However, a company using the prohibited language in its name shall disclose in its service contracts a statement in substantially the following: "This contract is not an insurance contract.".

3. It is unlawful for a provider or its representative in its service contracts or literature to make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a product service contract.

4. It is unlawful for a person, such as a bank, savings and loan association, or lending institution, to require the purchase of a service contract as a condition of a loan or other financing transaction.

5. It is unlawful for a person, such as a manufacturer or retailer, to require the purchase of a service contract as a condition to the sale of goods or services, unless consideration for the service contract is paid directly by such person and a service contract is furnished without separate consideration to all similarly situated purchasers of the related goods or services.

385.305. 1. A provider or administrator shall keep accurate accounts, books, and records concerning transactions regulated under sections 385.300 to 385.312. However, only one set of such accounts, books, and records is required to be maintained and may be maintained by third parties provided the provisions of this section are met.

2. An administrator's or provider's accounts, books, and records shall include:

(1) Copies of each type of service contract issued;

(2) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;

(3) A list of the provider locations where service contracts are marketed, sold, or offered for sale; and

(4) Claims files that shall contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the service contracts.

3. Except as provided in subsection 5 of this section, an administrator or provider shall retain or arrange for the retention of all records pertaining to each service contract holder for at least three years after the specified period of coverage had expired.

4. An administrator or provider may keep all records required under sections 385.300 to 385.312 on a computer disk or other similar technology. If an administrator or provider maintains records in other than hard copy, records shall be accessible from a computer terminal available to the director and be capable of duplication to legible hard copy.

5. An administrator or provider discontinuing business in this state shall maintain or arrange for the maintenance of its records until it furnishes the director satisfactory proof that it has discharged all obligations to contract holders in this state.

6. An administrator or provider shall make all accounts, books, and records concerning transactions regulated under sections 385.300 to 385.312 or other pertinent laws available to the director upon request.

385.306. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate or non-renew the policy until a notice of termination has been mailed or delivered to the director. The termination or non-renewal of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.

385.307. 1. Providers are considered to be the agent of the insurer which issued the reimbursement insurance policy for purposes of obligating the insurer to contract holders under service contracts associated with the insurer's reimbursement policy, and the payment of premium by the provider is not a condition to the insurer's obligations for otherwise validly issued service contracts.

2. Sections 385.300 to 385.312 shall not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the issuer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the product service contract.

385.310. 1. The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of sections 385.300 to 385.312 and protect service contract holders in this state.

2. If the director determines that a person has engaged, is engaging, or is about to engage in a violation of sections 385.300 to 385.312 or a rule adopted or order issued

pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of sections 385.300 to 385.312 or a rule adopted or order issued pursuant thereto, the director may issue such administrative orders as authorized under section 374.046, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

3. If the director believes that a person has engaged, is engaging, or is about to engage in a violation of sections 385.300 to 385.312 or a rule adopted or order issued pursuant thereto, or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, omission, or course of business constituting a violation of sections 385.300 to 385.312 or a rule adopted or order issued pursuant thereto, the director may maintain a civil action for relief authorized under section 374.048, RSMo. A violation of this section is a level two violation under section 374.049, RSMo.

4. The enforcement authority of the director under this section is cumulative to any other statutory authority of the director.

385.311. The director may promulgate rules to effectuate sections 385.300 to 385.312. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. Sections 385.300 to 385.312 and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid and void.

385.312. 1. Sections 385.300 to 385.312 shall not apply to:

(1) Warranties;

(2) Maintenance agreements;

(3) Warranties, service contracts, or maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated under the laws of this state;

(4) Service contracts sold or offered for sale to persons other than consumers;

(5) Service contracts sold or offered to nonresidents of this state regardless of whether the entity selling or offering such contracts is located or doing business in this state;

(6) Motor vehicle extended service contracts, as defined in section 385.200; and

(7) Agreements or warranties which provide for the service, repair, replacement, or maintenance of the systems, appliances, and structural components of residential or commercial real property.

2. Manufacturer's service contracts on the manufacturer's products need only comply with the provisions of sections 385.301, 385.304, 385.307, and 385.310.

[381.003. 1. Sections 381.003 to 381.125 shall be known and may be cited as the "Missouri Title Insurance Act".

2. Sections 381.009 to 381.048 shall apply to all persons engaged in the business of title insurance in this state. Sections 381.052 to 381.112 shall apply to all title insurers engaged in the business of title insurance in this state. Sections 381.115 to 381.125 shall apply to all title agencies engaged in the business of title insurance in this state.

3. Except as otherwise expressly provided in this chapter and except where the context otherwise requires, all provisions of the insurance code applying to insurance and insurance companies generally shall apply to title insurance, title insurers and title agents.**]**

[381.009. As used in this chapter, the following terms mean:

(1) "Abstract of title" or "abstract", a written history, synopsis or summary of the recorded instruments affecting the title to real property;

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

(3) "Affiliated business", any portion of a title insurance agency's business written in this state that was referred to it by a producer of title insurance business or by an associate of the producer, where the producer or associate, or both, have a financial interest in the title agency;

(4) "Associate", any:

(a) Business organized for profit in which a producer of title business is a director, officer, partner, employee or an owner of a financial interest;

(b) Employee of a producer of title business;

(c) Franchisor or franchisee of a producer of title business;

(d) Spouse, parent or child of a producer of title insurance business who is a natural person;

(e) Person, other than a natural person, that controls, is controlled by, or is under common control with, a producer of title business;

(f) Person with whom a producer of title insurance business or any associate of the producer has an agreement, arrangement or understanding, or pursues a course of conduct, the purpose or effect of which is to provide financial benefits to that producer or associate for the referral of business;

(5) "Bona fide employee of the title insurer", an individual who devotes substantially all of his or her time to performing services on behalf of a title

insurer and whose compensation for those services is in the form of salary or its equivalent paid by the title insurer;

(6) "Control", including the terms "controlling", "controlled by" and "under common control with", 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 or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote or holds proxies representing ten percent or more of the voting securities of another person. This presumption may be rebutted by showing that control does not exist in fact. The director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(7) "County" or "counties" includes any city not within a county;

(8) "Direct operations", that portion of a title insurer's operations which are attributable to business written by a bona fide employee;

(9) "Director", the director of the department of insurance, or the director's representatives;

(10) "Escrow", written instruments, money or other items deposited by one party with a depository, escrow agent or escrowee for delivery to another party upon the performance of a specified condition or the happening of a certain event;

(11) "Escrow, settlement or closing fee", the consideration for supervising or handling the actual execution, delivery or recording of transfer and lien documents and for disbursing funds;

(12) "Financial interest", a direct or indirect legal or beneficial interest, where the holder is or will be entitled to five percent or more of the net profits or net worth of the entity in which the interest is held;

(13) "Foreign title insurer", any title insurer incorporated or organized pursuant to the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(14) "Geographically indexed or retrievable", a system of keeping recorded documents which includes as a component a method for discovery of the documents by:

(a) Searching an index arranged according to the description of the affected land; or

(b) An electronic search by description of the affected land;

(15) "Net retained liability", the total liability retained by a title insurer for a single risk, after taking into account any ceded liability and collateral, acceptable to the director, and maintained by the insurer;

(16) "Non-United States title insurer", any title insurer incorporated or organized pursuant to the laws of any foreign nation or any province or territory;

(17) "Premium", the consideration paid by or on behalf of the insured for the issuance of a title insurance policy or any endorsement or special coverage. It does not include consideration paid for settlement or escrow services or noninsurance-related information services;

(18) "Producer", any person, including any officer, director or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with the interest as security;

(19) "Qualified depository institution", an institution that is:

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

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

(c) Insured by the appropriate federal entity; and

(d) Qualified under any additional rules established by the director;

(20) "Referral", the directing or the exercising of any power or influence over the direction of title insurance business, whether or not the consent or approval of any other person is sought or obtained with respect to the referral;

(21) "Search", "search of the public records" or "search of title", a search of those records established by the laws of this state for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge;

(22) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(23) "Subsidiary", an affiliate controlled by a person directly or indirectly through one or more intermediaries;

(24) "Title agency" means an authorized person who issues title insurance on behalf of a title insurer. An attorney licensed to practice law in this state who issues title insurance as a part of his or her law practice, but does not maintain or operate a title insurance business separate from such law practice is not a title agency;

(25) "Title agent" or "agent", an attorney licensed to practice law in this state who issues title insurance as part of his or her law practice, but who is not affiliated with or acting on behalf of a title agency, or an authorized person who, on behalf of a title agency or on behalf of a title agent not affiliated with a title agency, performs one or more of the following acts in conjunction with the issuance of a title insurance commitment or policy:

(a) Determines insurability, based upon a review of a search of title;

(b) Performs searches;

(c) Handles escrows, settlements or closings; or

(d) Solicits or negotiates title insurance business;

(26) "Title insurance business" or "business of title insurance":

(a) Issuing as insurer or offering to issue as insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of and in conjunction with the issuance of a title insurance policy:

a. Soliciting or negotiating the issuance of a title insurance policy;

b. Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;

c. Handling of escrows, settlements or closings;

d. Executing title insurance policies;

e. Effecting contracts of reinsurance; or

f. Abstracting, searching or examining titles;

(c) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Promising to purchase or repurchase for consideration an indebtedness because of a title defect, whether or not involving a transfer of risk to a third person; or

(f) Promising to indemnify the holder of a mortgage or deed of trust against loss from the failure of the borrower to pay the mortgage or deed of trust when due if the property fails to yield sufficient proceeds upon foreclosure to satisfy the debt, when one or both of the following conditions exist:

a. The security has been impaired by the discovery of a previously unknown property interest in favor of one who is not liable for the payment of the mortgage or deed of trust; or

b. Perfection of the position of the mortgage or deed of trust which was assured to exist cannot be obtained, notwithstanding timely recordation with the recorder of deeds of the county in which the property is located; or

(g) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of this chapter;

(27) "Title insurance commitment" or "commitment", a preliminary report, commitment or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions and other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy. A title insurance commitment is not an abstract of title;

(28) "Title insurance policy" or "policy", a contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(a) Title to the estate or interest in land being otherwise than as stated in the policy;

(b) Defects in or liens or encumbrances on the insured title;

(c) Unmarketability of the insured title;

(d) Lack of legal right of access to the land;

(e) Invalidity or unenforceability of the lien of an insured mortgage;

(f) The priority of a lien or encumbrance over the lien of any insured mortgage;

(g) The lack of priority of the lien of an insured mortgage over a statutory lien for services, labor or material;

(h) The invalidity or unenforceability of an assignment of the insured mortgage; or

(i) Rights or claims relating to the use of or title to the land;

(29) "Title insurer" or "insurer", a company organized pursuant to laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United States title insurer licensed in this state to transact the business of title insurance;

(30) "Title plant", a set of records encompassing at least the most recent forty-five years, consisting of documents, maps, surveys or entries affecting title to real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained. The records in the title plant shall be geographically indexed or retrievable as to those records containing a legal description of affected land, and otherwise by name of affected person;

(31) "Underwrite", the authority to accept or reject risk on behalf of the title insurer.**]**

[381.011. 1. Sections 381.011 to 381.241 shall be known and may be cited as the "Missouri Title Insurance Act".

2. The purpose of sections 381.011 to 381.241 is to provide the state of Missouri with a comprehensive body of law for the effective regulation and supervision of title insurance business transacted within this state in response to the McCarran-Ferguson Act, Sections 1011-1015, Title 15, United States Code.**]**

[381.015. 1. When a title insurance commitment issued by a title insurer, title agency or title agent includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the commitment shall incorporate the following statement in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered."

2. A title insurer, title agency or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.

3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and

accurate representation of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the date the agency's or agent's federal income tax return for the same year is filed. Attorneys actively engaged in the practice of law, in addition to that related to title insurance business, are exempt from the requirements of this subsection.

3. The title insurer shall conduct reviews of the underwriting, claims and escrow practices of its agencies and agents which shall include a review of the agency's or agent's policy blank inventory and processing operations. If any such title agency or title agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or title agent not affiliated with a title agency. The title insurer shall conduct a review of each of its agencies and agents at least triennially commencing January first of the year first following January 1, 2001.

4. Within thirty days of executing or terminating a contract with a title agency or title agent not affiliated with a title agency, the insurer shall provide notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title agency or title agent shall be made on a form promulgated by the director.

5. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

6. The title insurer shall have on file proof that the title agency or title agent is licensed by this state.

7. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

8. Each violation of any provision of this section is a class B violation as that term is defined in section 381.045.**]**

[381.021. 1. Sections 381.011 to 381.241 shall apply to all persons engaged in the business of title insurance in this state.

2. Except as otherwise expressly provided in sections 381.011 to 381.241, and except where the context otherwise requires, all provisions of the insurance laws of this state applying to insurance and insurance companies generally shall apply to title insurance and title insurance companies. No law of this state enacted after September 28, 1987, that is inconsistent with the provisions of such sections shall be applicable to the business of title insurance unless such law specifically states that it is to be applicable to the business of title insurance.

3. Nothing in sections 381.011 to 381.241 shall be construed to authorize the practice of law by any person who is not duly admitted to practice law in this state nor shall it be construed to authorize the director to regulate the practice of law or the sale of real estate.**]**

[381.022. 1. A title insurer, title agency or title agent not affiliated with a title agency may operate as an escrow, security, settlement or closing agent, provided that:

(1) All funds deposited with the title insurer, title agency or title agent not affiliated with a title agency in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(a) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer, title agency or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual instructions or agreements under which the funds were accepted; and

(b) The funds shall be applied only in accordance with the terms of the individual instructions or agreements under which the funds were accepted;

(2) Funds held in an escrow account shall be disbursed only pursuant to a written instruction or agreement specifying under what conditions and to whom such funds may be disbursed or pursuant to an order of a court of competent jurisdiction;

(3) Funds held in a security deposit account shall be disbursed only pursuant to a written agreement specifying:

(a) What actions the indemnitor shall take to satisfy his or her obligation under the agreement;

(b) The duties of the title insurer, title agency or title agent not affiliated with a title agency with respect to disposition of the funds held, including a requirement to maintain evidence of the disposition of the title exception before any balance may be paid over to the depositing party or his or her designee; and

(c) Any other provisions the director may require;

(4) Any interest received on funds deposited in connection with any escrow, settlement, security deposit or closing may be retained by the title insurer, title agency or title agent not affiliated with a title agency as compensation for administration of the escrow or security deposit, unless the instructions for the funds or a governing statute provides otherwise;

(5) Each violation of this subsection is a class A violation as that term is defined in section 381.045.

2. The title agency or title agent not affiliated with an agency shall cooperate with its underwriters in the conduct by the underwriters of reviews of the agency's or agent's escrow, settlement, closing and security deposit accounts. The title insurer shall provide a copy of the report of each such review it performs to the director. The director may promulgate rules setting forth the minimum

threshold level at which a review would be required, the standards thereof and the form of report required.

3. If the title agency or title agent not affiliated with an agency is appointed by two or more title insurers and maintains fiduciary trust accounts in connection with providing escrow or closing settlement services, the title agency or title agent shall allow each title insurer reasonable access to the accounts and any or all of the supporting account information in order to ascertain the safety and security of the funds held by the title agency or title agent.

4. (1) Nothing in this chapter shall be deemed to prohibit the recording of documents prior to the time funds are available for disbursement with respect to a transaction in which a title insurer, title agency or title agent not affiliated with a title agency is the settlement agent, provided all parties to whom payment will become due upon such recording consent thereto in writing.

(2) The settlement agent shall record all deeds and security instruments for real estate closings handled by it within three business days after completion of all conditions precedent thereto.

(3) Each violation of this subsection is a class C violation as that term is defined in section 381.045.**]**

[381.025. 1. A title insurer, title agency, title agent or other person shall not give or receive, directly or indirectly, any consideration for the referral of title insurance business or escrow or other service provided by a title insurer, title agency or title agent. Each violation of this subsection is a class A violation as that term is defined in section 381.045.

2. Any title insurer, title agency or title agent doing business in the same county as a title insurer, title agency or title agent who may be in violation of the prohibitions or limitations of this section shall have standing to seek injunctive relief against the violating title insurer, title agency or title agent in the event the department declines or fails to enforce this section within forty-five days following receipt of written notice of such violation. In any action pursuant to this subsection, the court may award to the successful party the court costs of the action together with reasonable attorney fees.**]**

[381.028. No title insurer, title agency or title agent shall participate in any transaction in which it knows that a producer or other person requires, directly or indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a condition, agreement or understanding to selling or furnishing any other person a loan, or loan extension, credit, sale, property, contract, lease or service, that the other person shall place a title insurance policy of any kind with the title insurer or through a particular title agency or agent. Each violation of this section is a class A violation as that term is defined in section 381.045.**]**

[381.031. As used in sections 381.011 to 381.241, the following terms mean:

(1) "Alien title insurer", any title insurer incorporated or organized under the laws of any foreign nation or any province or territory thereof;

(2) "Applicant", a person, whether or not a prospective insured, who applies to a title insurer or title agent, or agency for a title insurance policy and who, at the time of the application, is not a title agent or agency;

(3) "Approved attorney", an attorney at law who is not an agent or employee of a title insurer, and whose certification as to status of title a title insurer is willing to accept as the basis for issuance of its title insurance policy;

(4) "Charge", any fee billed by a title agent, agency, or title insurer for the performance of services other than fees that fall within the definition of premium in this section. "Charge" includes, but is not limited to, fees for document preparation, fees for the handling of escrows, settlements, or closing, and fees for services commenced but not completed. "Charge" does not include fees collected by a title insurer, title agency, or title agent in an escrow, settlement or closing when the fees are limited to the amount billed for services rendered by an entity independent of the title insurer, title agent, or agency;

(5) "Controlled business", any portion of a title insurer's, title agency's or title agent's business of title insurance in this state, referred to it by any producer of title business or by any associate of such producer, where the producer of title business, the associate, or both, have a financial interest in the title insurer, title agency, or title agent to which business is referred;

(6) "Director", the director of the department of insurance;

(7) "Domestic title insurer", a title insurer organized under the laws of this state;

(8) "Escrow, settlement or closing fee", the consideration for supervising the actual execution, delivery or recording of transfer and lien documents and for disbursing funds;

(9) "Financial interest", any interest, legal or beneficial, that entitles the holder directly or indirectly to one percent or more of the net profits or net worth of the entity in which the interest is held, but does not include payments of principal or interest made to a mortgage holder of the title agency;

(10) "Foreign title insurer", any title insurer organized under the laws of any other state of the United States, the District of Columbia, or any other jurisdiction of the United States;

(11) "Gross operating revenue", all amounts received by a title insurer, title agency, or title agent from premiums and charges;

(12) "Net retained liability", the total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded reinsured liability, if any;

(13) "Person", any natural person, partnership, association, cooperative, corporation, trust, or other legal entity;

(14) "Premium", risk rates charged to the insured;

(15) "Producer of title business" or "producer", any person, including any officer, director, or owner of five percent or more of the equity or capital of any person, engaged in this state in the trade, business, occupation or profession of:

(a) Buying or selling interests in real property;

(b) Making loans secured by interests in real property; or

(c) Acting as broker, agent, representative or attorney of a person who buys or sells any interest in real property or who lends or borrows money with such interest as security;

(16) "Single risk", the insured amount of any title insurance policy, except that where two or more title insurance policies are issued simultaneously covering different estates in the same real property, "single risk" means the sum of the insured amounts of all such title insurance policies. Any title insurance policy insuring a mortgage interest, a payment under which reduces the insured amount of a fee or leasehold title insurance policy, shall be excluded in computing the amount of a single risk to the extent that the insured amount of the mortgagee title insurance policy does not exceed the insured amount of the fee or leasehold title insurance policy;

(17) "Title agent" or "title insurance agent", any authorized agent of a title insurer or representative of the title agent or agency, who acts as a title agent in the solicitation of, negotiation for, or procurement or making of any title insurance contract. The following persons are not title agents or title insurance agents:

(a) Approved attorneys;

(b) Salaried officers or employees of title insurers, title agents or title insurance agencies who do not do any of the following:

a. Establish premiums for policies of title insurance;

b. Determine insurability; or

c. Issue commitments, policies or other contracts of title insurance;

(18) "Title insurance agency" or "agency", any individual transacting or doing business under any name other than his true name, any partnership, unincorporated association or corporation, transacting or doing business with the public or title insurance companies as a title insurance agent;

(19) "Title insurance business" or "business of title insurance" means:

(a) Issuing as insurer or offering to issue as insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer, title agency, or title agent any of the following activities when conducted or performed by a title agent, title agency, or title insurer in conjunction with the issuance of its title insurance:

a. Soliciting or negotiating the issuance of a title insurance policy;

b. Guaranteeing, warranting, or otherwise insuring the correctness of title searches;

c. Handling of escrows, settlements, or closings;

d. Execution of title insurance policies, reports, commitments, binders, and endorsements;

e. Effecting contracts of reinsurance; or

f. Abstracting, searching, or examining titles;

(c) Transacting by a title insurer, title agent, or agency of matters subsequent to the issuance of a title insurance policy and arising out of it; or

(d) Doing or proposing to do any business in substance equivalent to any of the foregoing in order to evade any provision of this act;

(20) "Title insurance policy" or "policy", a contract insuring or indemnifying against loss or damage arising from any or all of the following:

(a) Defects in or liens or encumbrances on the insured title;

(b) Unmarketability of the insured title; or

(c) Invalidity or unenforceability of liens or encumbrances on the stated property.

"Title insurance policy" does not include a preliminary report, binder, commitment, or abstract;

(21) "Title insurer", a company organized under laws of this state for the purpose of transacting as insurer the business of title insurance and any foreign or alien title insurer engaged in this state in the business of title insurance as insurer;

(22) "Title plant", an index of the records of a county which imparts constructive notice to purchasers of real property, which encompasses at least the most recent forty-five years. The index shall be kept geographically as to those records containing a legal description of affected land, and otherwise by name of affected person.**]**

[381.032. 1. No title insurer, may charge any rates regulated by the state after January 1, 2001, except in accordance with the premium rate schedule and manual filed with and approved by the director in accordance with applicable statutes and regulations governing rate filings. Premium rate schedules in effect prior to January 1, 2001, may be used until new rate schedules have been approved by the director. Title insurers shall file their premium rate schedules within thirty days after January 1, 2001. Each violation of this subsection is a class C violation as that term is defined in section 381.045. Nothing in this section shall prevent an agent not affiliated with an agency from charging for services that constitute the practice of law at the customary fee charged by such person for legal services. To the extent the premium fails to compensate the agent at such rate, the agent may render an additional bill for such services on behalf of the agent's law practice or law firm. The acceptance of any part of the premium by the law firm of said agent shall not be a violation of any provision of the Missouri title insurance act or the general insurance statutes, regulations or bulletins regarding payment of commissions to nonlicensed entities.

2. The director may establish rules, including rules providing statistical plans, for use by all title insurers, title agencies and title agents in the recording and reporting of revenue, loss and expense experience in such form and detail as is necessary to aid the director in the establishment of rates and fees.

3. The director may require that the information provided pursuant to this section be verified by oath of the insurer's or agency's president or vice president or secretary or actuary, as applicable. The director may further require that the information required pursuant to this section be subject to an audit conducted at the expense of the title insurer or title agency by an independent certified public accountant. The director shall have the authority to establish a minimum threshold level at which an audit would be required.

4. Information filed with the director relating to the experience of a particular agency shall be kept confidential unless the director finds it in the public interest to disclose the information required of title insurers or title agencies pursuant to this section. Prior to any such disclosure of confidential information, the director shall provide notice and opportunity to be heard to the title insurers and title agencies who would be affected thereby.**]**

[381.035. No title insurance company, title agency or title agent shall willfully withhold information from, or knowingly give false or misleading information to the director, or to any title insurance rating organization, of which the title insurance company is a member or subscriber, which will affect the rates or fees chargeable pursuant to this chapter. Each violation of this section is a class A violation as that term is defined in section 381.045.**]**

[381.038. 1. Evidence of the examination of title and determination of insurability generated by a title insurer engaged in direct operations, title agency or title agent shall be preserved and maintained by such insurer, agency or agent for as long as appropriate to the circumstances but in no event less than fifteen years after the title insurance policy has been issued.

2. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency and title agent for as long as appropriate to the circumstances but in no event less than five years after the escrow or security deposit account has been closed.

3. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

4. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.041. 1. No person other than a domestic, foreign, or alien title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.

2. Each title insurer may engage in the title insurance business in this state if licensed to do so by the director and provide any other service related or incidental to the sale and transfer or financing of property.

3. A title insurer shall maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.**]**

[381.042. 1. The director may issue rules, regulations and orders necessary to carry out the provisions of this chapter.

2. No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.045. 1. If the director determines that the title insurer or any other person has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the director may order:

(1) For each violation a monetary penalty which shall take into account the harm the violation caused or could have caused or potential harm to the public and which shall not exceed:

(a) One thousand dollars per violation for a class A violation;

(b) Five hundred dollars per violation for a class B violation; and

(c) One hundred dollars per violation for a class C violation;

(2) Revocation or suspension of the title insurer's license; or

(3) Both monetary penalty and revocation or suspension.

2. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance code.

3. Nothing contained in this chapter is intended to or shall in any other manner limit or restrict the rights of policyholders, claimants and creditors.**]**

[381.048. The director may bring an action in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.**]**

[381.051. 1. A title insurer, before issuing any title insurance policy covering property located in this state, shall deposit with the director of the department of insurance, hereinafter referred to as the director, a sum of four hundred thousand dollars, which shall be held for the security and protection of the holders or beneficiaries under its title insurance policies.

2. Assets deposited pursuant to this section may, with the approval of the director, be exchanged from time to time for other assets that qualify under subsection 3 of this section.

3. The depositing title insurer shall receive the income, interests, and dividends on any assets deposited. The deposit required under this section may

be made in legal tender or in investments now or hereafter permitted to domestic life insurers with regard to their capital, reserve and surplus. For capital and reserve deposits, sums deposited pursuant to this section shall be valued at their market value.

4. A title insurer that has deposited assets pursuant to this section may, with the approval of the director, withdraw any part of the assets so deposited. If any such title insurer continues to engage in the business of title insurance, it shall not be permitted to withdraw assets that would reduce the amount of its deposits below the amount required by subsection 1 of this section.

5. In lieu of such a deposit maintained in this state, the director shall accept a certificate or certificates in proper form of the public officer or officers having general supervision of title insurers in its state of domicile to the effect that a deposit or total deposits, in an equal or greater amount, in classes of investment authorized in such state, are being maintained for like purposes in public custody or control pursuant to the laws of such state on behalf of the title insurer.

6. If sections 381.011 to 381.241 require a greater amount of capital and surplus or deposits than that required of a title insurer prior to September 28, 1987, such title insurer shall have three years after September 28, 1987, to comply with any such increased requirement.

7. The provisions of sections 375.950 to 375.990, RSMo, shall apply to the impairment of capital, liquidation, and rehabilitation of title insurers.**]**

[381.052. No person other than a domestic, foreign or non-United States title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.**]**

[381.055. Subject to the exceptions and restrictions contained in this chapter, a title insurer shall have the power to:

(1) Do only title insurance business;

(2) Reinsure title insurance policies; and

(3) Perform ancillary activities, unless prohibited by the director, including examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.**]**

[381.058. 1. No insurer that transacts any class, type or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other class, type or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section, and to the extent such coverage is lawful within this state, a title insurer is expressly authorized to issue closing or settlement protection to a proposed insured upon request if the title insurer issues a commitment, binder or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft of settlement funds; and

(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The director may promulgate or approve a required charge for providing the coverage.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.**]**

[381.061. 1. The net retained liability of a title insurer for a single risk on property located in this state, whether assumed directly or as reinsurance, may not exceed fifty percent of the sum of its total surplus to policyholders and unearned premium reserve, less the admitted asset value assigned to title plants, as shown in the most recent annual statement of the title insurer on file in the office of the director.

2. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.**]**

[381.062. Before being licensed to do an insurance business in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.**]**

[381.065. 1. The net retained liability of a title insurer for a single risk in regard to property located in this state, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the director.

2. For purposes of this chapter:

(1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously

covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

3. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least eight hundred thousand dollars.

4. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.**]**

[381.068. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general investment provisions of sections 376.300 to 376.305, RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed fifty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.**]**

[381.071. 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has:

(1) Caused a search of title to be made from the evidence prepared from a title plant of the county where the property is located as herein defined, or if no such title plant of the county exists, or the owner of such plant refuses to furnish the title insurer, title agent, or agency desiring to insure, such title evidence at a reasonable charge and within a reasonable period of time, then such policy of title insurance shall be based upon the best title evidence available. An attorney licensed to practice law in this state may upon personal inspection use the best evidence available in any county and is not subject to the provisions of the title plant requirement of sections 381.011 to 381.241. The records on which the title plant is based on shall show all prior matters affecting the title to the property or interest therein for a continuous period of time of at least:

(a) The past ten years, by two years after September 28, 1987;

(b) The past fifteen years, by three years after September 28, 1987;

(c) The past twenty years, by four years after September 28, 1987; and

(d) The past twenty-seven years, by five years after September 28, 1987; and

(2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

3. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent or agency for a period of not less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent or agency may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original.

4. This section shall not apply to:

(1) A title insurer assuming liability through a contract of reinsurance;

(2) A title insurer acting as coinsurer if one of the other coinsuring title insurers has complied with this section; or

(3) Policies of title insurance issued prior to the expiration of one year after September 28, 1987.**]**

[381.072. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general provisions of the insurance code requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim;

(c) Reserves required pursuant to this section may be revised from time to time and shall be redetermined at least once each year;

(2) A statutory or unearned premium reserve established and maintained as follows:

(a) A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements;

(b) The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured;

(c) The unearned premium reserve shall consist of:

a. The amount of the unearned premium reserve on January 1, 2001; and

b. A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after January 1, 2001;

(d) Amounts placed in the unearned premium reserve in any year in accordance with paragraph (c) of this subdivision shall be deducted in determining the net profit of the title insurer for that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before January 1, 2001, shall be released in accordance with the law in effect immediately before January 1, 2001;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required pursuant to section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed pursuant to this section shall include reserves for known claims, including

adverse developments on known claims, and reserves for incurred but not reported claims;

(g) a. Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision;

b. The supplemental reserve required pursuant to this section shall be phased in as follows:

i. Twenty-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the year next following January 1, 2001;

ii. Fifty percent of the otherwise applicable supplemental reserve is required until December thirty-first of the second year following January 1, 2001;

iii. Seventy-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the third year following January 1, 2001;

iv. One hundred percent of the supplemental reserve is required after December thirty-first of the fourth year following January 1, 2001.**]**

[381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to the title insurance act, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured claims as defined in section 375.1152, RSMo.

3. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

4. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon the title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

5. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of title agencies, title agents, insureds or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.**]**

[381.078. A title insurer shall only declare or distribute a dividend to shareholders with the prior written approval of the director, as would be permitted pursuant to subdivision (1) of subsection 1 of section 382.210, RSMo.**]**

[381.081. 1. A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements.

2. The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured.

3. A foreign or alien title insurer licensed to transact title insurance business in this state shall maintain at least the same reserves on title insurance policies issued on properties located in this state as are required of domestic title insurers, unless the laws of the jurisdiction of domicile of the foreign or alien title insurer require a higher amount.

4. The unearned premium reserve shall consist of:

(1) The amount of the unearned premium reserve on September 28, 1987; and

(2) A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after September 28, 1987.

5. Amounts placed in the unearned premium reserve in any year in accordance with subdivision (2) of subsection 4 of this section shall be deducted in determining the net profit of the title insurer for that year.

6. A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before September 28, 1987, shall be released in accordance with the law in effect immediately before September 28, 1987.**]**

[381.085. 1. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the director and approved by the director or thirty days have elapsed and it has not been disapproved as misleading or violative of public policy. Each violation of this subsection is a class C violation as that term is defined in section 381.045.

2. Forms covered by this section shall include:

(1) Title insurance policies, including standard form endorsements; and

(2) Title insurance commitments issued prior to the issuance of a title insurance policy.

3. After notice and opportunity to be heard are given to the insurer or rate service organization which submitted a form for approval, the director may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety days after notice of withdrawal is given.

4. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the director and approved as herein provided.**]**

[381.088. 1. A title insurer may satisfy its obligation to file premium rates, rating manuals and forms as required by this chapter by becoming a member of, or a subscriber to, a rate service organization, organized and licensed pursuant to the provisions of this chapter, where the organization makes the filings, and by authorizing the director in writing to accept the filings on the insurer's behalf.

2. Nothing in this chapter shall be construed as requiring any title insurer, title agency or title agent to become a member of, or a subscriber to, any rate service organization. Nothing in this chapter shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.**]**

[381.091. 1. If a domestic title insurer becomes insolvent, is in the process of liquidation or dissolution, or is in the possession of the director:

(1) Such amount of the assets of such title insurer equal to the unearned premium reserve then remaining may be used by or with the written approval of the director to pay for reinsurance of the liability of such title insurer upon all outstanding title insurance policies or reinsurance agreements to the extent to which claims for losses by the holders thereof are not then pending. The balance

of assets, if any, equal to the unearned premium reserve, may then be transferred to the general assets of the title insurer;

(2) The net assets of the unearned premium reserve shall be available to pay claims for losses sustained by holders of title insurance policies then pending or arising up to the time reinsurance is effected. If claims for losses exceed such other assets of the title insurer, such claims, when established, shall be paid pro rata out of the surplus assets attributable to the unearned premium reserve to the extent of such surplus, if any.

2. If reinsurance is not obtained, assets equal to the unearned premium reserve and assets constituting minimum capital, or so much as remains thereof after outstanding claims have been paid, shall constitute a trust fund to be held and invested by the director for twenty years, out of which claims of policyholders shall be paid as they arise. The balance, if any, of the trust fund shall, at the expiration of twenty years, revert to the general assets of the title insurer.**]**

[381.092. 1. Every title insurer that shall propose its own premium rates and every title insurance rating organization shall propose premium rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(1) The desirability for stability and responsiveness of rate structures;

(2) The necessity of assuring the financial solvency of title insurance companies in periods of economic depression;

(3) The necessity for paying dividends on the capital stock of title insurance companies sufficient to induce capital to be invested therein; and

(4) A reasonable level of profit for the insurer.

2. Every title insurer that shall propose its own rates and every title insurance rating organization may adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rates.**]**

[381.095. 1. If the director shall find in his review of rate filings that the filings provide for, result in, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this state involving essentially the same hazards and expense elements, the director shall approve such rates. Prior to such approval the director may conduct a public hearing with respect to a rate filing. An approval shall continue in effect until the director shall issue an order of disapproval pursuant to the requirements and procedure provided for in subsections 2 and 3 of this section.

2. Upon the review at any time by the director of a rate filing, the director shall, before issuing an order of disapproval, hold a hearing upon not less than ten

days' written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurer and title insurance rating organization which made such filing, and if, after such hearing, the director finds that such filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that it so fails, and stating when, within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. A title insurer or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 381.102, in the case of deviation filing. Copies of the order shall be sent to every title insurer and title insurance rating organization affected. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

3. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed pursuant to this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director shall find that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that such filing or a part thereof fails to meet the requirements of this chapter, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such title insurer and title insurance rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.**]**

[381.098. 1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for title insurers, and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a title insurance rating organization.

2. If the director finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business, conform to requirements of law, the director shall issue a license authorizing the applicant to act as a rating organization for title insurance. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the director or withdrawn by the licensee. The fee for such license shall be one thousand five hundred dollars. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in:

(1) Its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

3. Subject to rules and regulations which have been approved by the director as reasonable, each title insurance rating organization shall permit any title insurance company not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall at the request of any subscriber or any such title insurance company, be reviewed by the director at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber. If the director finds that such rule or regulation is unreasonable in its application to subscribers, the director shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an application of a title insurance company for subscribership within thirty days after it was made, the title insurance company may request a review by the director as if the application had been rejected. If the director finds that the title insurance company has been refused admittance to the title insurance rating organization as a subscriber without justification, the director shall order such rating organization to admit the title insurance company as a subscriber. If the director finds that the action of the title insurance rating organization was justified, the director shall make an order affirming its action.**]**

[381.101. 1. All title insurers licensed in this state shall establish and maintain reserves against unpaid losses and loss expenses.

2. Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim.

3. Reserves required under this section may be revised from time to time and shall be redetermined at least once each year.**]**

[381.102. Every member of or subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurance company which is a member of or subscriber to such a rating organization may file with the director a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the director to be a proper rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area, or otherwise deviate from the rating plans, policy forms or other matters which are the subject of filings pursuant to this chapter. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating organization. Deviation filings shall be subject to the provisions of section 381.095.**]**

[381.105. 1. Any member of or subscriber to a title insurance rating organization may appeal to the director from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the director shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within thirty days. If such appeal is from the action or decision of the title insurance rating organization in rejecting a proposed addition to its filings, the director may, in the event the director finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with the director's findings, within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, the director shall approve the action of the rating organization or such

modification thereof as shall have been suggested by the appellant if either be made in accordance with this chapter.

2. The failure of a title insurance rating organization to take action or make a decision within thirty days after submission to it of a proposal pursuant to this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense allocation which differs from the system of expense allocation included in a filing made by such rating organization, the director shall, if the director grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the director shall apply the standards set forth in section 381.032.**]**

[381.108. 1. The director shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with the department, which may be modified from time to time, and which shall be used thereafter by each title insurer in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurers may be made available, at least annually, in such form and detail as may be necessary to aid him or her in determining whether rating systems comply with the standards set forth in this chapter. Such rules and plans may also provide for the recording of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In promulgating such rules and plans, the director shall give due consideration to the rating systems on file with the department, and in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. Such rules and plans shall not place an unreasonable burden of expense on any title insurer. No title insurer shall be required to record or report its expense and loss experience on a classification basis that is inconsistent with the rating system filed by it, nor shall any title insurer be required to report the experience to any agency of which it is not a member or subscriber. The director may designate one or more rating organizations or other agencies to assist the director in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the director, to title insurers and rating organizations. The director shall give preference in such designation to entities organized by and functioning on behalf of title insurers operating in this state. If the director, in his or her judgment, determines that one or more of such organizations designated as statistical agents is unable or unwilling to perform its statistical functions according to reasonable requirements established from time to time by the director, he or she may, after consultation with such statistical agent and upon twenty days' notice to any

affected companies, designate another person to act on the director's behalf in the gathering of statistical experience. The director shall in such case establish the fee to be paid to such designated person by the affected companies in order to pay the total cost of gathering and compiling such experience. Agencies designated by the director shall assist the director in making compilations of the reported data and such compilations shall be made available, subject to reasonable rules and regulations promulgated by the director, to insurers, rating organizations and any other interested parties.

2. Reasonable rules and plans may be promulgated by the director for the interchange of data necessary for the application of rating plans.

3. In order to further uniform administration of rate regulatory laws, the director and every title insurer and rating organization may exchange information and experience data with insurance supervisory officials, title insurers and rating organizations in other states, and may consult with them with respect to rate making and the application of rating systems.

4. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.111. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least eight hundred thousand dollars.**]**

[381.112. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall mean the amount of premium actually remitted to the title insurer and shall exclude any amount of premium retained by the title agent within the definition of "premium" contained in section 381.009.**]**

[381.115. 1. A person shall not act in the capacity of a title agency or title agent and a title insurer may not contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is a licensed title agency or title agent in this state.

2. An individual employed by a licensed title agency or title agent to whom the agency or agent delegates authority to act on that agency's or agent's behalf shall be either individually licensed or be named on the employing agent's license if such employee performs any of the functions defined in paragraph (a) of subdivision (25) of section 381.009. Each person named on the license shall

possess all qualifications determined by the director to be appropriate. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of either, and persons acting on behalf of title agencies or title agents. This subsection is not intended to include persons performing clerical functions.

3. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

4. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

5. If the title agency or title agent delegates the title search to a third party, such as an abstract company, the agency or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the agency or agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period. Each violation of this subsection is a class C violation as that term is defined in section 381.045.**]**

[381.118. 1. Each title agent licensed to sell title insurance in this state, unless exempt pursuant to subsection 8 of this section, shall successfully complete courses of study as required by this section. Any person licensed to act as a title agent shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of eight hours of instruction. The initial such two-year period shall begin January first of the year next following the effective date of this chapter.

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

(1) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

(2) A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized agents' association or insurance trade association. A local agents' group may also be approved if the instructor receives no compensation for services;

(3) Courses approved for continuing legal education credit by the Missouri Bar.

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

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

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

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age and is currently licensed as a title agent.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person. A filing fee shall be paid by the person furnishing the report as determined by the director to be necessary to cover the administrative cost related to the handling of such certification reports, subject to the limitations imposed in subsection 9 of this section.

7. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

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

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

(2) Every applicant seeking approval by the director of a continuing education course pursuant to this section shall pay to the director a filing fee of

fifty dollars per course, except that such total fee shall not exceed two hundred fifty dollars per year for any single applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval;

(3) The director has the authority to determine the amount of the filing fee to be paid by title agents at the time of license renewal, which shall be set at an amount to produce revenue which shall not substantially exceed the cost of administering this section, but in no event shall such fee exceed ten dollars per biennial report filed.

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

10. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification and filing fee required by this section.

11. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.**]**

[381.121. 1. The deposit required by section 381.051 and the capital, surplus and unearned premium reserve of domestic title insurers shall be held in either cash or investments now or hereafter permitted to domestic life insurers with regard to their capital, reserve and surplus for reserve deposit.

2. A domestic title insurer may invest in title plants. For purposes of determining the financial condition of such title insurer, title plants will be treated as an asset valued at actual cost to the title insurer, not to exceed fifty percent of the surplus as to policyholders as shown on the most recent annual statement of the title insurer.

3. Any investment of a domestic title insurer acquired before September 28, 1987, and which under such sections, would be considered ineligible as an investment on that date, shall be disposed of within five years of September 28, 1987. The director, upon application and proof that forced sale of any such investment would be contrary to the best interests of the title insurer or its policyholders, may extend the period for disposal of the investment for a reasonable time.**]**

[381.122. The director may during normal business hours examine, audit and inspect any and all books and records maintained by a title agency pursuant to this chapter.**]**

[381.125. 1. Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title agency or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title agency or agent.

2. The director may establish rules for use by all title agencies in the recording and reporting of the agency's owners and of the agency's ownership interests in other persons or businesses and of material transactions between the parties.

3. The director may require each title agency to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the agency and who the agency knows or has reason to believe are producers of title insurance business or associates of producers.

4. Nothing in this chapter shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(1) The title agency, title agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(2) The person being referred is not required to use a specified title insurance agency, agent or insurer; and

(3) The only thing of value that is received by the title agency, title agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest.

For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR Section 3500, et seq.

5. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**]**

[381.131. Any person who shall be appointed or who shall act as title insurance agent or agency for any title insurance company within this state, or who shall, as title insurance agent or agency, solicit applications, deliver policies and collect premiums thereon, or who shall receive or collect moneys from any source or on any account whatsoever, as agent or agency, for a title insurance company doing business in this state, shall be held responsible in a trust or fiduciary capacity to the company for any money so collected or received by him for such company.**]**

[381.141. 1. No title insurer or title agent or agency shall:

(1) Pay, directly or indirectly, to the insured or to any other person any commission, any part of its premiums, fees, or other charges; or any other consideration as inducement or compensation for the referral of title business or for performance of any escrow or other service by the title agent or agency; or

(2) Issue any title insurance policy or perform any service in connection with any transaction in which it has paid or intends to pay any commission, rebate or inducement which it knows to be in violation of this section.

2. Nothing in this section shall be construed as prohibiting reasonable payments, other than for the referral of title insurance business, for services actually rendered to either a title insurer or a title agent or agency in connection with title insurance business.

3. Nothing in sections 381.011 to 381.241 shall prohibit any producer or any associate of a producer from referring title business to any title insurer or title insurance agent or agency of his, her or its choice, and if such producer or associate producer has any financial, franchise, or ownership interest in the title insurer, the title insurance agent or agency, from financial, franchise or ownership interest so long as the purchaser is made aware in writing of the relationship between the producer or associate producer and the title agent or agency.**]**

[381.151. Nothing in sections 381.011 to 381.241 shall be construed as prohibiting the division of premiums and charges between or among a title insurer and its title agent or agency, two or more title insurers, one or more title insurers and one or more title agents or agencies or two or more title agents or agencies, provided such division of premiums and charges does not constitute:

(1) An unlawful rebate or inducement under the provisions of sections 381.011 to 381.241; or

(2) Payment of a forwarding fee or finder's fee.**]**

[381.161. 1. No producer or other person, except the person paying the premium for the title insurance, shall require, directly or indirectly, or through any trustee, director, officer, agent, employee, or affiliate, as a condition, agreement, or understanding to selling or furnishing any other person any loan, or extension thereof, credit, sale, property, contract, lease or service, that such other person shall place, any contract of title insurance of any kind through any particular title agent, agency, or title insurer. No title agent, agency, or title insurer shall knowingly participate in any such prohibited plan or transaction. No person shall fix a price charged for such thing or service, or discount from or rebate upon price, on the condition, agreement, or understanding that any title insurance is to be obtained through a particular agent, agency, or title insurer.

2. Any person who violates the provisions of this section, or any title insurer, title agent, or agency who accepts an order for title insurance knowing that it is in violation of the provision of this section shall, in addition to any other

action which may be taken by the director, be subject to a fine in an amount equal to five times the premium for the title insurance.**]**

[381.171. 1. Premiums shall not be inadequate, excessive or unfairly discriminatory.

2. Premiums are excessive if, in the aggregate, they are likely to produce a long run profit that is unreasonably high in relation to the riskiness of the business or if expenses are unreasonably high in relation to the services rendered.

3. Premiums are inadequate if they are clearly insufficient, together with investment income attributable to them, to sustain projected losses and expenses or if continued use of such premiums will have the effect of substantially lessening competition or the effect of tending to create a monopoly.

4. Premiums are unfairly discriminatory if the premium charged for a policy of any particular face amount of liability is higher than the premium for an indentical policy within the same classification where such policy has a like face amount or a higher face amount of liability. Premiums within each premium classification may, in the discretion of the title insurer, to a reasonable degree be less than the expenses incurred and the risks assumed in the case of policies of lower face amount of liability and the excess may be charged against policies of higher face amount of liability without rendering the premiums unfairly discriminatory.

5. Premiums may be grouped by classifications into the various types of title policies and endorsements offered. The classifications may be further divided to produce premiums for individual risks or services within a classification. Those classifications or further divisions may be established based upon any one or more of the following:

(1) The size of a transaction and its effect upon the continuing solvency of the title insurer using the rate in question if a loss should occur;

(2) Expense elements, including management time that would ordinarily be expended in a typical transaction of a particular size;

(3) The geographic location of a transaction, including variation in risk and expense elements attributable thereto;

(4) The individual experience of the insurer and title insurance agent or agency using the rate in question; and

(5) Any other reasonable considerations which may include but not be limited to builder/developer quantity discounts and multiple policy discounts on an individual parcel of property. Those classifications or further divisions thereof shall apply to all risks and services in the business of title insurance under the same or under substantially the same circumstances or conditions.

6. In making or reviewing premiums due consideration shall be given to past and prospective loss experience, to exposure to loss, to underwriting practice and judgment, to past and prospective expenses including amounts paid to or retained by title agents or agencies, to a reasonable margin for profit and

contingencies taking into account the need for a reasonable return on capital committed to the enterprise, and to all other relevant factors both within and outside of this state.

7. The director may promulgate rules or regulations setting forth guidelines for the evaluation of premiums. Such regulations may include consideration of:

(1) Cost of underwriting risks assumed by the insurer;

(2) Amounts paid to or retained by title agents;

(3) Operating expenses of the insurer other than underwriting and claims expense;

(4) Payment of claims and claim related expenses;

(5) Investment income;

(6) Reasonable profit;

(7) Premium taxes; and

(8) Any other factors the director deems relevant.**]**

[381.181. 1. Every title insurer shall file with the director its premium schedules it proposes to use in any county of this state. Every filing shall set forth its effective date, which shall not be earlier than the thirtieth day following its receipt by the director, and shall indicate the character and extent of the coverages and services contemplated. Filings that the director has not disapproved within thirty days of filing shall be deemed effective.

2. No title insurer or title agent or agency may use or collect any premium after September 28, 1987, except in accordance with the premium schedules filed with the director as required by subsections 1 and 2 of this section. The director may provide by regulation for interim use of premium schedules in effect prior to September 28, 1987.

3. Every title insurer shall establish basic classifications of coverages to be used as the basis for determining premiums.**]**

[381.191. In order to further uniform administration of rate regulatory laws, the director and every title insurer, title agent, or agency in the state may exchange information and experience data with insurance supervisory officials of this and other states and rating organizations in other states and may consult with them with respect to such information and data.**]**

[381.201. 1. No title insurer, title agent, or agency shall use any premium in the business of title insurance prior to its effective date nor prior to the filing with respect to such premium having been publicly displayed and made readily available to the public for a period of not less than thirty days in each office of the title insurer, title agent, or agency in the county to which such rates apply, and no premium increase shall apply to title policies which have been contracted for prior to such effective date.

2. Premium charges in excess of those set forth in a premium filing which has become effective may be made when such filing includes a statement that such premiums may be made in the event unusual insurance risks are assumed or unusual services performed in the transaction of the business of title insurance, provided that such premiums are reasonably commensurate with the risks assumed for the costs of the services performed.

3. Copies of the schedules of premiums which are required to be filed with the director under the provisions of sections 381.011 to 381.241, showing their effective date or dates, shall be kept at all times available to the public and prominently displayed in a public place in each office of a title insurer, title agent, or agency in the county to which such rates apply while such rates are effective.**]**

[381.211. Every title insurer shall file with the director copies of the following forms it proposes to use in this state, including:

(1) Title insurance polices;

(2) Standard form endorsements; and

(3) Preliminary reports, commitments, binders, or any other reports issued prior to the issuance of a title insurance policy.**]**

[381.221. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall be one hundred percent of the amounts paid by or on behalf of the insured as "premiums" within the definition of that term contained in sections 381.011 to 381.241.**]**

[381.231. In addition to any other powers granted under sections 381.011 to 381.241, the director may adopt rules or regulations to protect the interests of the public including, but not limited to, regulations governing sales practices, escrow, collection, settlement, closing procedures, policy coverage standards, rebates and inducements, controlled business, the approval of agency contracts, unfair trade practices and fraud, statistical plans for data collection, consumer education, any other consumer matters, the business of title insurance, or any regulations otherwise implementing or interpreting the provisions of sections 381.011 to 381.241. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.**]**

[381.241. 1. The director of insurance or his duly authorized representative may at any time and from time to time, inspect and examine the records, books and accounts of any title insurer, and may require such periodic and special reports from any title insurer, as may be reasonably necessary to enable the director to satisfy himself that such title insurer is complying with the requirements of sections 381.011 to 381.241. No person shall be authorized to

inspect and examine the records, books and accounts of any title insurer unless such person has five years experience in the title insurance business. It shall be the duty of the director at least once every four years to make or cause to be made an examination of every title insurer. The reasonable expense of any examination shall be paid by the title insurer.

2. The purpose of such examination is to enable the director to ascertain whether there is compliance with the provisions of sections 381.011 to 381.241. If as a result of such examination the director has reason to believe that any rate, rating plan or rating system made or used by an insurer does not meet the standards and provisions of sections 381.011 to 381.241, applicable to it, the director may hold a public hearing. Within a reasonable period of time, which shall be not less than ten days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to every person, insurer or organization believed by him not to be in compliance with the provisions of sections 381.011 to 381.241.

3. If the director, after such hearing, for good cause finds that such rate, rating plan or rating system does not meet the provisions of sections 381.011 to 381.241, he shall issue an order specifying in what respects any such rate, rating plan or rating system fails to meet such provisions, and stating when, within a reasonable period of time, the further use of such rate, rating plan or rating system by the title insurer which is the subject of the examination shall be prohibited. A copy of such order shall be sent to such title insurer.**]**

[381.410. As used in sections 381.410 and 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", U.S. currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over sections 381.410 and 381.412;

(4) "Financial institution":

(a) A person or entity doing business under the laws of this state or the United States relating to banks, trust companies, savings and loan associations, credit unions, commercial and consumer finance companies, industrial loan companies, insurance companies, small business investment corporations licensed pursuant to the Small Business Investment Act of 1958 (15 U.S.C.

Section 661, et seq.), as amended, or real estate investment trusts as defined in 26 U.S.C. Section 856, as amended, or institutions constituting the Farm Credit System pursuant to the Farm Credit Act of 1971 (12 U.S.C. Section 2000, et seq.), as amended, or any person which services loans secured by liens or mortgages on real property, which person may or may not maintain a servicing portfolio for such loans; or

(b) The following persons or entities if their principal place of business is in Missouri or a state which is contiguous to Missouri:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer; or

b. A person or entity acting as a mortgage loan company pursuant to court order;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar Association, or a person licensed under chapter 339, RSMo.**]**

[381.410. As used in this section and section 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business pursuant to the laws of this state or the United States relating to banks, trust companies, savings and loan associations or credit unions; or

(b) The following persons or entities if their principal place of business is in Missouri or outside Missouri, but within the St. Louis or Kansas City standard metropolitan statistical area:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar , or a person licensed under chapter 339, RSMo.**]**

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars, but less than two million dollars, for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. The settlement agent shall record all security instruments for such real estate closing within three business days of such closing after receipt of such certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.031, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the

director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by the settlement agent to ensure that the violation will not be repeated, and the record of the settlement agent in complying with the provisions of this section.**]**

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.009, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall consider the extent to which the violation was a knowing and willful violation, the corrective action taken by the settlement agent to ensure that the violation will not be repeated, and the record of the settlement agent in complying with the provisions of this section.**]**

[407.1200. As used in sections 407.1200 to 407.1227, the following terms shall mean:

(1) "Administrator", the person who is responsible for the administration of the service contracts or the service contracts plan and who is responsible for any filings required by sections 407.1200 to 407.1227;

(2) "Consumer", a natural person who buys other than for purposes of resale any motor vehicle that is distributed in commerce and that is normally used for personal, family, or household purposes and not for business or research purposes;

(3) "Director", the director of the department of insurance;

(4) "Maintenance agreement", a contract of limited duration that provides for scheduled maintenance only;

(5) "Manufacturer", a person that:

(a) Manufactures or produces the property and sells the property under its own name or label;

(b) Is a wholly owned subsidiary of the person who manufactures or produces the property;

(c) Is a corporation which owns one hundred percent of the person who manufactures or produces the property;

(d) Does not manufacture or produce the property, but the property is sold under its trade name label;

(e) Manufactures or produces the property and the property is sold under the trade name or label of another person; or

(f) Does not manufacture or produce the property but, pursuant to a written contract, licenses the use of its trade name or label to another person that sells the property under the licensor's trade name or label;

(6) "Mechanical breakdown insurance", a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and tear;

(7) "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;

(8) "Nonoriginal manufacturer's parts", replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts";

(9) "Person", an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert;

(10) "Premium", the consideration paid to an insurer for a reimbursement insurance policy;

(11) "Provider", a person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is contractually obligated to provide service under a motor vehicle extended service contract such as sellers, administrators, and other intermediaries;

(12) "Provider fee", the consideration paid for a service contract in excess of the premium;

(13) "Reimbursement insurance policy", a policy of insurance issued to a provider and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of nonperformance by the provider. All obligations and liabilities include, but are not limited to, failure of the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract;

(14) "Service contract holder" or "contract holder", a person who is the purchaser or holder of a service contract;

(15) "Warranty", a warranty made solely by the manufacturer, importer, or seller of property or services without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor, or other remedial measures, such as repair or replacement of the property or repetition of services.**]**

[407.1203. 1. Service contracts shall not be issued, sold, or offered for sale in this state unless the administrator or its designee has:

(1) Provided a receipt for the purchase of the service contract to the contract holder at the date of purchase;

(2) Provided a copy of the service contract to the service contract holder within a reasonable period of time from the date of purchase; and

(3) Complied with the provisions of sections 407.1200 to 407.1227.

2. All administrators of service contracts sold in this state shall file a registration with the director on a form, at a fee and at a frequency prescribed by the director.

3. In order to assure the faithful performance of a provider's obligations to its contract holders, each provider who is contractually obligated to provide service under a service contract shall:

(1) Insure all service contracts under a reimbursement insurance policy issued by an insurer authorized to transact insurance in this state; or

(2) (a) Maintain a funded reserve account for its obligation under its contracts issued and outstanding in this state. The reserves shall not be less than forty percent of gross consideration received, less claims paid, on the sale of the service contract for all in-force contracts. The reserve account shall be subject to examination and review by the director; and

(b) Place in trust with the director a financial security deposit, having a value of not less than five percent of the gross consideration received, less claims paid, on the sale of the service contract for all service contracts issued and in force, but not less than twenty-five thousand dollars, consisting of one of the following:

a. A surety bond issued by an authorized surety;

b. Securities of the type eligible for deposit by authorized insurers in this state;

c. Cash;

d. A letter of credit issued by a qualified financial institution; or

e. Another form of security prescribed by regulations issued by the director; or

(3) (a) Maintain a net worth of one hundred million dollars; and

(b) Upon request, provide the director with a copy of the provider's or, if the provider's financial statements are consolidated with those of its parent company, the provider's parent company's most recent Form 10-K filed with the Securities and Exchange Commission (SEC) within the last calendar year, or if the company does not file with the SEC, a copy of the company's audited financial statements, which shows a net worth of the provider or its parent company of at least one hundred million dollars. If the provider's parent company's Form 10-K or audited financial statements are filed to meet the provider's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the provider in this state.

4. Provider fees collected on service contracts shall not be subject to premium taxes. Premiums for reimbursement insurance policies shall be subject to applicable premium taxes.

5. Except for the registration requirement in subsection 2 of this section, persons marketing, selling, or offering to sell service contracts for providers that comply with sections 407.1200 to 407.1227 are exempt from this state's licensing requirements.

6. Providers complying with the provisions of sections 407.1200 to 407.1227 are not required to comply with other provisions of chapter 374 or 375, or any other provisions governing insurance companies, except as specifically provided.**]**

[407.1206. Reimbursement insurance policies insuring service contracts issued, sold, or offered for sale in this state shall conspicuously state that, upon

failure of the provider to perform under the contract, such as failure to return the unearned provider fee, the insurer that issued the policy shall pay on behalf of the provider any sums the provider is legally obligated to pay or shall provide the service which the provider is legally obligated to perform according to the provider's contractual obligations under the service contracts issued or sold by the provider.**]**

[407.1209. 1. Service contracts issued, sold, or offered for sale in this state shall be written in clear, understandable language and the entire contract shall be printed or typed in easy to read ten-point type or larger and conspicuously disclose the requirements in this section, as applicable.

2. Service contracts insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are guaranteed under a service contract reimbursement insurance policy. If the provider fails to pay or provide service on a claim within sixty days after proof of loss has been filed, the contract holder is entitled to make a claim directly against the insurance company.". A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the insurer.

3. Service contracts not insured under a reimbursement insurance policy pursuant to subsection 3 of section 407.1203 shall contain a statement in substantially the following form: "Obligations of the provider under this service contract are backed only by the full faith and credit of the provider (issuer) and are not guaranteed under a service contract reimbursement insurance policy.". A claim against the provider shall also include a claim for return of the unearned provider fee. The service contract shall also conspicuously state the name and address of the provider.

4. Service contracts shall identify any administrator, the provider obligated to perform the service under the contract, the service contract seller, and the service contract holder to the extent that the name and address of the service contract holder has been furnished by the service contract holder.

5. Service contracts shall conspicuously state the total purchase price and the terms under which the service contract is sold. The purchase price is not required to be preprinted on the service contract and may be negotiated at the time of sale with the service contract holder.

6. If prior approval of repair work is required, the service contracts shall conspicuously state the procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining emergency repairs performed outside of normal business hours.

7. Service contracts shall conspicuously state the existence of any deductible amount.

8. Service contracts shall specify the merchandise and services to be provided and any limitations, exceptions, and exclusions.

9. Service contracts shall state the conditions upon which the use of nonoriginal manufacturer's parts, or substitute service, may be allowed. Conditions stated shall comply with applicable state and federal laws.

10. Service contracts shall state any terms, restrictions, or conditions governing the transferability of the service contract.

11. Service contracts shall state the terms, restrictions, or conditions governing termination of the service contract by the service contract holder. The provider of the service contract shall mail a written notice to the contract holder within fifteen days of the date of termination.

12. Service contracts shall require every provider to permit the service contract holder to return the contract within at least twenty business days of the date of mailing of the service contract or within at least ten days if the service contract is delivered at the time of sale or within a longer time period permitted under the contract. If no claim has been made under the contract, the contract is void and the provider shall refund to the contract holder the full purchase price of the contract. A ten percent penalty per month shall be added to a refund that is not paid within thirty days of return of the contract to the provider. The applicable free-look time periods on service contracts shall only apply to the original service contract purchaser.

13. Service contracts shall set forth all of the obligations and duties of the service contract holder, such as the duty to protect against any further damage and the requirement for certain service and maintenance.

14. Service contracts shall clearly state whether or not the service contract provides for or excludes consequential damages or preexisting conditions.**]**

[407.1212. 1. A provider shall not use in its name the words insurance, casualty, guaranty, surety, mutual, or any other words descriptive of the insurance, casualty, guaranty, or surety business; or a name deceptively similar to the name or description of any insurance or surety corporation, or any other provider. This section shall not apply to a company that was using any of the prohibited language in its name prior to August 28, 2004. However, a company using the prohibited language in its name shall conspicuously disclose in its service contract the following statement: "This agreement is not an insurance contract.".

2. A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted, in connection with the sale, offer to sell or advertisement of a service contract.

3. A person, such as a bank, savings and loan association, lending institution, manufacturer or seller of any product, shall not require the purchase of a service contract as a condition of a loan or a condition for the sale of any property.**]**

[407.1215. 1. An administrator, provider, or other intermediary shall keep accurate accounts, books, and records concerning transactions regulated by sections 407.1200 to 407.1227.

2. An administrator's, provider's, or other intermediary's accounts, books, and records shall include:

(1) Copies of each type of service contract issued;

(2) The name and address of each service contract holder to the extent that the name and address have been furnished by the service contract holder;

(3) A list of the provider locations where service contracts are marketed, sold, or offered for sale; and

(4) Claims files which shall contain at least the dates, amounts, and description of all receipts, claims, and expenditures related to the service contracts.

3. Except as provided in this section, an administrator shall retain all records pertaining to each service contract holder for at least three years after the specified period of coverage has expired.

4. An administrator, provider, or other intermediary may keep all records required pursuant to sections 407.1200 to 407.1227 on a computer disk or other similar technology. If an administrator, provider, or other intermediary maintains records in other than hard copy, records shall be accessible from a computer terminal available to the director and be capable of duplication to legible hard copy.

5. An administrator, provider, or other intermediary discontinuing business in this state shall maintain its records until it furnishes the director satisfactory proof that it has discharged all obligations to contract holders in this state.

6. An administrator, provider, or other intermediary shall make all accounts, books, and records concerning transactions regulated pursuant to sections 407.1200 to 407.1227 or other pertinent laws available to the director upon request.**]**

[407.1218. As applicable, an insurer that issued a reimbursement insurance policy shall not terminate the policy until a notice of termination, in a form and time frame prescribed by the director, has been mailed or delivered to the director. The termination of a reimbursement insurance policy shall not reduce the issuer's responsibility for service contracts issued by providers prior to the date of the termination.**]**

[407.1221. 1. Providers are considered to be the agent of the insurer that issued the reimbursement insurance policy. In cases where a provider is acting as an administrator and enlists other providers, the provider acting as the administrator shall notify the insurer of the existence and identities of the other providers.

2. The provisions of sections 407.1200 to 407.1227 shall not prevent or limit the right of an insurer which issued a reimbursement insurance policy to seek indemnification or subrogation against a provider if the insurer pays or is obligated to pay the service contract holder sums that the provider was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement.**]**

[407.1224. 1. The director may conduct investigations or examinations of providers, administrators, insurers, or other persons to enforce the provisions of sections 407.1200 to 407.1227 and protect service contract holders in this state.

2. The director may take action that is necessary or appropriate to enforce the provisions of sections 407.1200 to 407.1227 and the director's regulations and orders, and to protect service contract holders in this state.

3. The director may order a service contract provider to cease and desist from committing violations of sections 407.1200 to 407.1227 or the director's regulations or orders, may issue an order prohibiting a service contract provider from selling or offering for sale service contracts, or may issue an order imposing a civil penalty, or any combination of these, if the provider has violated the provisions of sections 407.1200 to 407.1227 or the director's regulations or orders.

4. A person aggrieved by an order pursuant to this section may request a hearing before the director. The hearing request shall be filed with the director within twenty days of the date the director's order is effective.

5. Pending the hearing and the decision by the director, the director shall suspend the effective date of the order. At the hearing, the burden shall be on the director to show why the order issued pursuant to this section is justified. Such hearing shall be held in accordance with the provisions of chapter 536, RSMo.

6. The director may bring an action in the circuit court of Cole County for an injunction or other appropriate relief to enjoin threatened or existing violations of sections 407.1200 to 407.1227 or of the director's orders or regulations. An action filed pursuant to this section may also seek restitution on behalf of persons aggrieved by a violation of sections 407.1200 to 407.1227 or orders or regulations of the director.

7. A person in violation of sections 407.1200 to 407.1227 or orders or regulations of the director may be assessed a civil penalty not to exceed one thousand dollars per violation.

8. The authority of the director pursuant to this section is in addition to other authority of the director.**]**

[407.1225. The director may promulgate rules to effectuate sections 407.1200 to 407.1227. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.**]**

[407.1227. 1. The provisions of sections 407.1200 to 407.1224 shall not apply to:

(1) Warranties;

(2) Maintenance agreements;

(3) Commercial transactions; and

(4) Service contracts sold or offered for sale to persons other than consumers.

2. Manufacturer's contracts on the manufacturer's products need only comply with the provisions of sections 407.1209, 407.1212, and 407.1224.**]**

Section B. The repeal of sections 381.011, 381.021, 381.031, 381.035, 381.041, 381.051, 381.061, 381.071, 381.078, 381.081, 381.088, 381.091, 381.092, 381.095, 381.098, 381.101, 381.102, 381.105, 381.108, 381.111, 381.121, 381.125, 381.131, 381.141, 381.151, 381.161, 381.171, 381.181, 381.191, 381.201, 381.211, 381.221, 381.231, 381.241, section 381.410 as enacted by conference committee substitute for senate bill no. 664, eighty-eighth general assembly, second regular session, and section 381.412 as enacted by house committee substitute for senate bill no. 148, eighty-ninth general assembly, first regular session, and sections 381.410 and 381.412 as enacted by conference committee substitute for house substitute for house committee substitute for senate committee substitute for senate bill no. 894, ninetieth general assembly, second regular session, the repeal and reenactment of sections 381.003, 381.009, 381.015, 381.018, 381.022, 381.025, 381.028, 381.032, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.072, 381.075, 381.085, 381.112, 381.115, 381.118, 381.122, 381.410, and 381.412, and the enactment of sections 381.005, 381.008, 381.019, 381.023, 381.024, 381.026, 381.029, 381.033, 381.034, 381.076, and 381.113 shall become effective January 1, 2007.

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