

SENATE SUBSTITUTE

FOR

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 593

AN ACT

To repeal sections 375.1025, 375.1052, 375.1053, 375.1056, and 382.278, RSMo, and to enact in lieu thereof fourteen new sections relating to financial solvency of insurance companies, with penalty provisions and a delayed effective date.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
AS FOLLOWS:

1 Section A. Sections 375.1025, 375.1052, 375.1053, 375.1056,
2 and 382.278, RSMo, are repealed and fourteen new sections enacted
3 in lieu thereof, to be known as sections 375.1025, 375.1052,
4 375.1053, 375.1056, 375.1058, 382.600, 382.605, 382.610, 382.615,
5 382.620, 382.625, 382.630, 382.635, and 382.640, to read as
6 follows:

7 375.1025. As used in sections 375.1025 to 375.1062, the
8 following terms shall mean:

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

15 (2) "Affiliate" or "affiliated", a person that directly, or
16 indirectly through one or more intermediaries, controls, or is

1 controlled by, or is under common control with, the person
2 specified;

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

5 (4) "Audit committee", a committee (or equivalent body)
6 established by the board of directors of an entity for the
7 purpose of overseeing the accounting and financial reporting
8 processes of an insurer or group of insurers, the internal audit
9 function of any insurer or group of insurers, if applicable, and
10 external audits of financial statements of the insurer or group
11 of insurers. The audit committee of any entity that controls a
12 group of insurers may be deemed to be the audit committee for one
13 or more of such controlled insurers solely for the purposes of
14 sections 375.1025 to 375.1062 at the election of the controlling
15 person. Such election shall be exercised under subsection [5] 7
16 of section 375.1053. If an audit committee is not designated by
17 the insurer, the insurer's entire board of directors shall
18 constitute the audit committee;

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

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

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

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

1 reporting;

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

8 (10) "Independent board member", the same meaning as
9 described in subsection [3] 5 of section 375.1053;

10 (11) "Insurer", an insurer certified to do business in this
11 state pursuant to section 375.161 or 375.831, and to companies
12 authorized to transact business in this state pursuant to
13 chapters 354, 376, 377, 378, 379 and 381;

14 (12) "Internal audit function", a person or persons that
15 provide independent, objective, and reasonable assurance
16 regarding an insurer's governance, risk management, and internal
17 controls, designed to add value and improve an organization's
18 operations and accomplish its objectives by bringing a
19 systematic, disciplined approach to evaluate and improve the
20 effectiveness of risk management control and governance
21 processes;

22 (13) "Internal control over financial reporting", a process
23 effected by an entity's board of directors, management and other
24 personnel designed to provide reasonable assurance regarding the
25 reliability of the financial statements, i.e., those items
26 specified in [subsections 2 to 7] subdivisions (2) to (6) of
27 subsection 2 and subsection 3 of section 375.1032 and includes
28 those policies and procedures that:

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

4 (b) Provide reasonable assurance that transactions are
5 recorded as necessary to permit preparation of financial
6 statements, i.e., those items specified in [subsections 2 to 7]
7 subdivisions (2) to (6) of subsection 2 and subsection 3 of
8 section 375.1032, and that receipts and expenditures are being
9 made only in accordance with authorizations of management and
10 directors; and

11 (c) Provide reasonable assurance regarding prevention or
12 timely detection of unauthorized acquisition, use or disposition
13 of assets that could have a material effect on the financial
14 statements, i.e., those items specified in [subsections 2 to 7]
15 subdivisions (2) to (6) of subsection 2 and subsection 3 of
16 section 375.1032;

17 [(13)] (14) "NAIC", the National Association of Insurance
18 Commissioners;

19 [(14)] (15) "SEC", the United States Securities and
20 Exchange Commission;

21 [(15)] (16) "Section 404", Section 404 of the
22 Sarbanes-Oxley Act of 2002, as amended, and the SEC's rules and
23 regulations promulgated thereunder;

24 [(16)] (17) "Section 404 report", management's report on
25 internal control over financial reporting, as defined by the SEC
26 and the related attestation report of the independent certified
27 public accountant as described in subsection 1 of section
28 375.1030;

1 [(17)] (18) "SOX compliant entity", an entity that either
2 is required to be or voluntarily is compliant with all of the
3 following provisions of the Sarbanes-Oxley Act of 2002, as
4 amended:

5 (a) The preapproval requirements of Section 201 (Section
6 10A(i) of the federal Securities Exchange Act of 1934);

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

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

12 375.1052. 1. Upon written application of any insurer, the
13 director may grant a temporary exemption from compliance with
14 sections 375.1025 to 375.1062 if the director finds, upon review
15 of the application, that compliance with sections 375.1025 to
16 375.1062 would constitute a financial or organizational hardship
17 upon the insurer. An exemption may be granted at any time and
18 from time to time for a specified period or periods. Within ten
19 days from a denial of an insurer's written request for an
20 exemption from sections 375.1025 to 375.1062, such insurer may
21 request in writing a hearing on its application for an exemption.
22 Such hearing shall be held in accordance with the provisions of
23 chapter 536 pertaining to administrative hearing procedures and
24 shall be a public meeting as provided by subdivision (3) of
25 section 610.010.

26 2. Domestic insurers:

27 (1) Retaining a certified public accountant on August 28,
28 2009, who qualifies as independent shall comply with sections

1 375.1025 to 375.1062 for the year ending December 31, 2009, and
2 each year thereafter unless the director permits otherwise;

3 (2) Not retaining a certified public accountant on [the
4 effective date of this regulation] August 28, 2009, who qualifies
5 as independent shall meet the following schedule for compliance
6 with sections 375.1025 to 375.1062 unless the director permits
7 otherwise:

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

10 (b) For the year ending December 31, 2010, and each year
11 thereafter, such insurers shall file with the director all
12 reports and communications required by sections 375.1025 to
13 375.1062.

14 3. Foreign insurers shall comply with sections 375.1025 to
15 375.1062 for the year ending December 31, 1992, and each year
16 thereafter, unless the director permits otherwise.

17 4. The requirements of subsection 3 of section 375.1037
18 shall be in effect for audits of the year beginning January 1,
19 2010, and thereafter.

20 5. The requirements of section 375.1053 are to be in effect
21 January 1, 2010. An insurer or group of insurers that is not
22 required to have independent audit committee members or only a
23 majority but not a supermajority of independent audit committee
24 members, because the total written and assumed premium is below
25 the threshold and subsequently becomes subject to one of the
26 independence requirements due to changes in premium shall have
27 one year following the year the threshold is exceeded, but not
28 earlier than January 1, 2010, to comply with the independence

1 requirements. Likewise, an insurer that becomes subject to one
2 of the independence requirements as a result of a business
3 combination shall have one calendar year following the date of
4 acquisition or combination to comply with the independence
5 requirements.

6 6. The requirements of sections 375.1038, 375.1054, and
7 375.1056 are effective beginning with the reporting period ending
8 December 31, 2010, and each year thereafter. An insurer or group
9 of insurers that is not required to file a report because the
10 total written premium is below the threshold and subsequently
11 becomes subject to the reporting requirements shall have two
12 years following the year the threshold is exceeded to file a
13 report. Likewise, an insurer acquired in a business combination
14 shall have two calendar years following the date of acquisition
15 or combination to comply with the reporting requirements.

16 7. The requirements of section 375.1058 are effective
17 beginning January 1, 2019. If an insurer or group of insurers
18 that is exempt from section 375.1058 requirements subsequently no
19 longer qualifies for that exemption, such insurer or group of
20 insurers shall have one year after the year the threshold is
21 exceeded to comply with the requirements of section 375.1058.

22 375.1053. 1. This section shall not apply to foreign or
23 alien insurers licensed in this state or an insurer that is a SOX
24 compliant entity or a direct or indirect wholly owned subsidiary
25 of a SOX compliant entity.

26 2. The audit committee shall be directly responsible for
27 the appointment, compensation, and oversight of the work of any
28 accountant, including resolution of disagreements between

1 management and the accountant regarding financial reporting, for
2 the purpose of preparing or issuing the audited financial report
3 or related work under sections 375.1025 to 375.1062. Each
4 accountant shall report directly to the audit committee.

5 3. The audit committee of an insurer or group of insurers
6 shall be responsible for overseeing the insurer's internal audit
7 function and granting the person or persons performing the
8 internal audit function suitable authority and resources to
9 fulfill their responsibilities if required by section 375.1058.

10 4. Each member of the audit committee shall be a member of
11 the board of directors of the insurer or a member of the board of
12 directors of an entity elected under subsection ~~[6]~~ 7 of this
13 section and subdivision ~~[(6)]~~ (4) of section 375.1025.

14 ~~[4.]~~ 5. In order to be considered independent for purposes
15 of this section, a member of the audit committee shall not, other
16 than in his or her capacity as a member of the audit committee,
17 the board of directors, or any other board committee, accept any
18 consulting, advisory, or other compensatory fee from the entity
19 or be an affiliated person of the entity or any subsidiary
20 thereof. However, if law requires board participation by
21 otherwise nonindependent members, such law shall prevail and such
22 members may participate in the audit committee and be designated
23 as independent for audit committee purposes, unless they are an
24 officer or employee of the insurer or one of its affiliates.

25 ~~[5.]~~ 6. If a member of the audit committee ceases to be
26 independent for reasons outside the member's reasonable control,
27 that person, with notice by the responsible entity to the state,
28 may remain an audit committee member of the responsible entity

1 until the earlier of the next annual meeting of the responsible
2 entity or one year from the occurrence of the event that caused
3 the member to be no longer independent.

4 [6.] 7. To exercise the election of the controlling person
5 to designate the audit committee for purposes of sections
6 375.1025 to 375.1062, the ultimate controlling person shall
7 provide written notice to the chief state insurance regulatory
8 officials of the affected insurers. Notification shall be made
9 timely prior to the issuance of the statutory audit report and
10 include a description of the basis for the election. The
11 election can be changed through notice to the director by the
12 insurer, which shall include a description of the basis for the
13 change. The election shall remain in effect for perpetuity,
14 until rescinded.

15 [7.] 8. (1) The audit committee shall require the
16 accountant that performs for an insurer any audit required by
17 sections 375.1025 to 375.1062 to timely report to the audit
18 committee in accordance with the requirements of the auditing
19 profession, including:

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

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

27 (c) Other material written communications between the
28 accountant and the management of the insurer, such as any

1 management letter or schedule of unadjusted differences.

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

8 [8.] 9. The proportion of independent audit committee
9 members shall meet or exceed the following criteria:

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

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

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

23 [9.] 10. An insurer with direct written and assumed
24 premium, excluding premiums reinsured with the Federal Crop
25 Insurance Corporation and Federal Flood Program, less than five
26 hundred million dollars may make application to the director for
27 a waiver from the requirements of this section based upon
28 hardship. The insurer shall file, with its annual statement

1 filing, the approval for relief from this section with the states
2 that it is licensed in or doing business in and the NAIC. If the
3 nondomestic state accepts electronic filing with the NAIC, the
4 insurer shall file the approval in an electronic format
5 acceptable to the NAIC.

6 375.1056. 1. Every insurer required to file an audited
7 financial report under sections 375.1025 to 375.1062 that has
8 annual direct written and assumed premiums, excluding premiums
9 reinsured with the Federal Crop Insurance Corporation and Federal
10 Flood Program, of five hundred million dollars or more shall
11 prepare a report of the insurer's or group of insurers' internal
12 control over financial reporting, as such terms are defined in
13 section 375.1025. The report shall be filed with the director
14 along with the communication of internal control-related matters
15 noted in an audit described under section 375.1047. Management's
16 report of internal control over financial reporting shall be as
17 of December thirty-first immediately preceding.

18 2. Notwithstanding the premium threshold in subsection 1 of
19 this section, the director may require an insurer to file
20 management's report of internal control over financial reporting
21 if the insurer is in any RBC level event, or meets any one or
22 more of the standards of an insurer deemed to be in hazardous
23 financial condition as defined in [rules adopted by the director]
24 section 375.539.

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

26 (1) Directly subject to Section 404;

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

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

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

6
7 may file its or its parent's Section 404 report and an addendum
8 in satisfaction of the requirement of this section, provided that
9 those internal controls of the insurer or group of insurers
10 having a material impact on the preparation of the insurer's or
11 group of insurers' audited statutory financial statements, namely
12 those items included in subdivisions (2) to (6) of subsection 2
13 and subsection 3 of section 375.1032, were included in the scope
14 of the Section 404 report. The addendum shall be a positive
15 statement by management that there are no material processes with
16 respect to the preparation of the insurer's or group of insurers'
17 audited statutory financial statements excluded from the Section
18 404 report. If there are internal controls of the insurer or
19 group of insurers that have a material impact on the preparation
20 of the insurer's or group of insurers' audited statutory
21 financial statements and those internal controls were not
22 included in the scope of the Section 404 report, the insurer or
23 group of insurers may either file a report under this section, or
24 the Section 404 report and a report under this section for those
25 internal controls that have a material impact on the preparation
26 of the insurer's or group of insurers' audited statutory
27 financial statements not covered by the Section 404 report.

28 4. Management's report of internal control over financial

1 reporting shall include:

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

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

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

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

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

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

28 (7) Signatures of the chief executive officer and the chief

1 financial officer, or the equivalent position or title.

2 5. Management shall document and make available upon
3 financial condition examination the basis upon which its
4 assertions required in subsection 4 of this section are made.
5 Management may base its assertions, in part, upon its review,
6 monitoring and testing of internal controls undertaken in the
7 normal course of its activities. Management shall have
8 discretion as to the nature of the internal control framework
9 used, and the nature and extent of documentation, in order to
10 make its assertion in a cost-effective manner and, as such, may
11 include assembly of or reference to existing documentation.
12 Management's report on internal control over financial reporting,
13 required by subsection 1 of this section, and any documentation
14 provided in support thereof during the course of a financial
15 condition examination, shall be kept confidential by the
16 department.

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

19 375.1058. 1. An insurer is exempt from the requirements of
20 this section if:

21 (1) The insurer has annual direct written and unaffiliated
22 assumed premium, including international direct and assumed
23 premium but excluding premiums reinsured with the Federal Crop
24 Insurance Corporation and Federal Flood Program, totaling less
25 than five hundred million dollars; and

26 (2) The insurer is a member of a group of insurers that has
27 annual direct written and unaffiliated assumed premium, including
28 international direct and assumed premium but excluding premiums

1 reinsured with the Federal Crop Insurance Corporation and Federal
2 Flood Program, totaling less than one billion dollars.

3 2. An insurer or group of insurers shall establish an
4 internal audit function providing independent, objective, and
5 reasonable assurance to the audit committee and insurer
6 management regarding the insurer's governance, risk management,
7 and internal controls. This assurance shall be provided by
8 performing general and specific audits, reviews, and tests and by
9 employing other techniques deemed necessary to protect assets,
10 evaluate control effectiveness and efficiency, and evaluate
11 compliance with policies and regulations.

12 3. In order to ensure that internal auditors remain
13 objective, the internal audit function shall be organizationally
14 independent. Specifically, the internal audit function shall not
15 defer ultimate judgment on audit matters to others and shall
16 appoint an individual to head the internal audit function who
17 will have direct and unrestricted access to the board of
18 directors. Organizational independence does not preclude
19 dual-reporting relationships.

20 4. The head of the internal audit function shall report to
21 the audit committee regularly, but no less than annually, on the
22 periodic audit plan, factors that may adversely impact the
23 internal audit function's independence or effectiveness, material
24 findings from completed audits, and the appropriateness of
25 corrective actions implemented by management as a result of audit
26 findings.

27 5. If an insurer is a member of an insurance holding
28 company system or included in a group of insurers, the insurer

1 may satisfy the internal audit function requirements set forth in
2 this section at the ultimate controlling parent level, an
3 intermediate holding company level, or the individual legal
4 entity level.

5 382.600. 1. The purpose of sections 382.600 to 382.640 is
6 to:

7 (1) Provide the director a summary of an insurer or
8 insurance group's corporate governance structure, policies, and
9 practices to permit the director to gain and maintain an
10 understanding of the insurer or insurance group's corporate
11 governance framework;

12 (2) Outline the requirements for completing a corporate
13 governance annual disclosure with the director; and

14 (3) Provide for the confidential treatment of the corporate
15 governance annual disclosure and related information that will
16 contain confidential and sensitive information related to an
17 insurer or insurance group's internal operations and proprietary
18 and trade secret information which if made public could
19 potentially cause the insurer or insurance group competitive harm
20 or disadvantage.

21 2. Nothing in sections 382.600 to 382.640 shall be
22 construed to prescribe or impose corporate governance standards
23 and internal procedures beyond that which are required under
24 applicable state corporate law. Notwithstanding the foregoing,
25 nothing in sections 382.600 to 382.640 shall be construed to
26 limit the director's authority or the rights or obligations of
27 third parties under chapter 374 relating to the examination of
28 insurers.

1 3. The requirements of sections 382.600 to 382.640 shall
2 apply to all insurers domiciled in this state.

3 382.605. As used in sections 382.600 to 382.640, the
4 following terms shall mean:

5 (1) "Corporate governance annual disclosure" or "CGAD", a
6 confidential report filed by the insurer or insurance group made
7 in accordance with the requirements of sections 382.600 to
8 382.640;

9 (2) "Director", the director of the department of
10 insurance, financial institutions and professional registration,
11 his or her deputies, or the department of insurance, financial
12 institutions and professional registration, as applicable;

13 (3) "Insurance group", those insurers and affiliates
14 included within an insurance holding company system as defined in
15 section 382.010;

16 (4) "Insurer", an insurance company as defined in section
17 375.012; except that it shall not include agencies, authorities,
18 or instrumentalities of the United States, its possessions and
19 territories, the Commonwealth of Puerto Rico, the District of
20 Columbia, or a state or political subdivision of a state;

21 (5) "NAIC", the National Association of Insurance
22 Commissioners;

23 (6) "ORSA summary report", the report filed in accordance
24 with sections 382.500 to 382.550.

25 382.610. 1. An insurer, or the insurance group of which
26 the insurer is a member, shall, before June first of each
27 calendar year, submit to the director a CGAD that contains the
28 information described in subsection 2 of section 382.615.

1 Notwithstanding any request from the director made under
2 subsection 3 of this section, if the insurer is a member of an
3 insurance group, the insurer shall submit the report required by
4 this section to the director or commissioner of the lead state
5 for the insurance group, in accordance with the laws of the lead
6 state, as determined by the procedures outlined in the most
7 recent Financial Analysis Handbook adopted by the NAIC. An
8 insurer that is a member of an insurance group, however, shall
9 not be required to submit the report required by this section to
10 the director until the earlier of the adoption of the National
11 Association of Insurance Commissioners Corporate Governance
12 Annual Disclosure Model Act and National Association of Insurance
13 Commissioners Corporate Governance Annual Disclosure Model
14 Regulations by the lead state of such insurance group, or June 1,
15 2020.

16 2. The CGAD shall include a signature of the insurer or
17 insurance group's chief executive officer or corporate secretary,
18 attesting to the best of that individual's belief and knowledge
19 that the insurer has implemented the corporate governance
20 practices and that a copy of the disclosure has been provided to
21 the insurer's board of directors or the appropriate committee
22 thereof.

23 3. An insurer not required to submit a CGAD under this
24 section shall do so upon the director's request.

25 4. For purposes of completing the CGAD, the insurer or
26 insurance group may provide information regarding corporate
27 governance at the ultimate controlling person level, an
28 intermediate holding company level, or the individual legal

1 entity level depending upon how the insurer or insurance group
2 has structured its system of corporate governance. The insurer
3 or insurance group is encouraged to make the CGAD disclosures at
4 the level at which the insurer or insurance group's risk appetite
5 is determined; or at which the earnings, capital, liquidity,
6 operations, and reputation of the insurer are overseen
7 collectively and at which the supervision of those factors is
8 coordinated and exercised; or the level at which legal liability
9 for failure of general corporate governance duties would be
10 placed. If the insurer or insurance group determines the level
11 of reporting based on these criteria, it shall indicate which of
12 the three criteria was used to determine the level of reporting
13 and explain any subsequent changes in level of reporting.

14 5. The review of the CGAD and any additional requests for
15 information shall be made through the lead state as determined by
16 the procedures within the most recent Financial Analysis Handbook
17 referenced in subsection 1 of this section.

18 6. Insurers providing information substantially similar to
19 the information required by sections 382.600 to 382.640 in other
20 documents provided to the director, including proxy statements
21 filed in conjunction with annual registration requirements or
22 other state or federal filings provided to the department of
23 insurance, financial institutions and professional registration,
24 shall not be required to duplicate that information in the CGAD
25 but shall only be required to cross-reference the document in
26 which the information is included.

27 382.615. 1. The insurer or insurance group shall have
28 discretion over the responses to the CGAD inquiries, provided

1 that the CGAD shall contain the material information necessary to
2 permit the director to gain an understanding of the insurer or
3 insurance group's corporate governance structure, policies, and
4 practices. The director may request additional information that
5 he or she deems material and necessary to provide the director
6 with a clear understanding of the corporate governance policies
7 and the reporting or information system or controls implementing
8 those policies.

9 2. Notwithstanding subsection 1 of this section, the CGAD
10 shall be prepared consistent with regulations promulgated by the
11 director. Documentation and supporting information shall be
12 maintained and made available upon examination or upon request of
13 the director.

14 382.620. 1. Documents, materials, or other information,
15 including the CGAD, in the possession or control of the
16 department of insurance, financial institutions and professional
17 registration that are obtained by, created by, or disclosed to
18 the director or any other person under sections 382.600 to
19 382.640 are recognized by this state as being proprietary and
20 containing trade secrets. All such documents, material, or other
21 information shall be confidential by law and privileged, shall
22 not be subject to disclosure under chapter 610, shall not be
23 subject to subpoena, and shall not be subject to discovery or
24 admissible in evidence in any private civil action. However, the
25 director is authorized to use the documents, materials, or other
26 information in the furtherance of any regulatory or legal action
27 brought as a part of the director's official duties. The
28 director shall not otherwise make the documents, materials, or

1 other information public without the prior written consent of the
2 insurer. Nothing in this section shall be construed to require
3 written consent of the insurer before the director may share or
4 receive confidential documents, materials, or other CGAD-related
5 information under subsection 3 of this section to assist in the
6 performance of the director's regular duties.

7 2. Neither the director nor any person who receives
8 documents, materials, or other CGAD-related information through
9 examination or otherwise while acting under the authority of the
10 director or with whom such documents, materials, or other
11 information are shared under sections 382.600 to 382.640 shall be
12 permitted or required to testify in any private civil action
13 concerning any confidential documents, materials, or information
14 subject to subsection 1 of this section.

15 3. In order to assist in the performance of the director's
16 regulatory duties, the director:

17 (1) May, upon request, share documents, materials, or other
18 CGAD-related information, including the confidential and
19 privileged documents, materials, or information subject to
20 subsection 1 of this section, including proprietary and trade
21 secret documents and materials, with other state, federal, and
22 international financial regulatory agencies, including members of
23 any supervisory college as described in section 382.225, with the
24 NAIC, and with third-party consultants under section 382.625;
25 provided that, the recipient agrees in writing to maintain the
26 confidentiality and privileged status of the CGAD-related
27 documents, materials, or other information and has verified in
28 writing the legal authority to maintain confidentiality; and

1 (2) May receive documents, materials, or other CGAD-related
2 information, including otherwise confidential and privileged
3 documents, materials, or information, including proprietary and
4 trade secret information or documents, from regulatory officials
5 of other state, federal, and international financial regulatory
6 agencies, including members of any supervisory college as
7 described in section 382.225, and from the NAIC, and shall
8 maintain as confidential or privileged any documents, materials,
9 or information received with notice or the understanding that it
10 is confidential or privileged under the laws of the jurisdiction
11 that is the source of the documents, material, or information.

12 4. The sharing of information and documents by the director
13 under sections 382.600 to 382.640 shall not constitute a
14 delegation of regulatory authority or rulemaking, and the
15 director is solely responsible for the administration, execution,
16 and enforcement of the provisions of sections 382.600 to 382.640.

17 5. No waiver of any applicable privilege or claim of
18 confidentiality in the documents, proprietary and trade secret
19 materials, or other CGAD-related information shall occur as a
20 result of disclosure of such CGAD-related information or
21 documents to the director under this section or as a result of
22 sharing as authorized under sections 382.600 to 382.640.

23 382.625. 1. The director may retain, at the insurer's
24 expense, third-party consultants, including attorneys, actuaries,
25 accountants, and other experts not otherwise a part of the
26 director's staff, as may be reasonably necessary to assist the
27 director in reviewing the CGAD and related information or the
28 insurer's compliance with sections 382.600 to 382.640.

1 2. Any persons retained under subsection 1 of this section
2 shall be under the direction and control of the director and
3 shall act in a purely advisory capacity.

4 3. The NAIC and third-party consultants shall be subject to
5 the same confidentiality standards and requirements as the
6 director.

7 4. As part of the retention process, a third-party
8 consultant shall verify to the director, with notice to the
9 insurer, that it is free of a conflict of interest and that it
10 has internal procedures in place to monitor compliance with a
11 conflict and to comply with the confidentiality standards and
12 requirements of sections 382.600 to 382.640.

13 5. A written agreement with the NAIC or a third-party
14 consultant governing sharing and use of information provided
15 under sections 382.600 to 382.640 shall contain the following
16 provisions and expressly require the written consent of the
17 insurer prior to making public information provided under
18 sections 382.600 to 382.640:

19 (1) Specific procedures and protocols for maintaining the
20 confidentiality and security of CGAD-related information shared
21 with the NAIC or a third-party consultant under sections 382.600
22 to 382.640;

23 (2) Procedures and protocols for sharing by the NAIC only
24 with other state regulators from states in which the insurance
25 group has domiciled insurers. The agreement shall provide that
26 the recipient agrees in writing to maintain the confidentiality
27 and privileged status of the CGAD-related documents, materials,
28 or other information and has verified in writing the legal

1 authority to maintain confidentiality;

2 (3) A provision specifying that ownership of the CGAD-
3 related information shared with the NAIC or a third-party
4 consultant remains with the department of insurance, financial
5 institutions and professional registration, and the NAIC's or
6 third-party consultant's use of the information is subject to the
7 direction of the director;

8 (4) A provision that prohibits the NAIC or a third-party
9 consultant from storing the information shared under sections
10 382.600 to 382.640 in a permanent database after the underlying
11 analysis is completed;

12 (5) A provision requiring the NAIC or a third-party
13 consultant to provide prompt notice to the director and to the
14 insurer or insurance group regarding any subpoena, request for
15 disclosure, or request for production of the insurer's CGAD-
16 related information; and

17 (6) A provision requiring the NAIC or a third-party
18 consultant to consent to intervention by an insurer in any
19 judicial or administrative action in which the NAIC or a third-
20 party consultant may be required to disclose confidential
21 information about the insurer shared with the NAIC or a third-
22 party consultant under sections 382.600 to 382.640.

23 382.630. 1. Any insurer failing without just cause to
24 timely file a CGAD as required under sections 382.600 to 382.640
25 commits a level two violation under section 374.049 for each
26 day's delay; provided that, the total maximum fine under this
27 section is five thousand dollars. The director may reduce the
28 penalty if the insurer demonstrates to the director that the

1 imposition of the penalty would constitute a financial hardship
2 to the insurer.

3 2. The director may enforce the provisions of sections
4 382.600 to 382.640 under sections 374.046 to 374.049.

5 382.635. The director may, upon notice and opportunity for
6 all interested persons to be heard, issue such rules,
7 regulations, and orders as shall be necessary to carry out the
8 provisions of sections 382.600 to 382.640. Any rule or portion
9 of a rule, as that term is defined in section 536.010 that is
10 created under the authority delegated in this section shall
11 become effective only if it complies with and is subject to all
12 of the provisions of chapter 536, and, if applicable, section
13 536.028. This section and chapter 536 are nonseverable and if
14 any of the powers vested with the general assembly pursuant to
15 chapter 536, to review, to delay the effective date, or to
16 disapprove and annul a rule are subsequently held
17 unconstitutional, then the grant of rulemaking authority and any
18 rule proposed or adopted after August 28, 2018, shall be invalid
19 and void.

20 382.640. If any provision of sections 382.600 to 382.640 or
21 the application thereof to any person or circumstance is held
22 invalid under the Constitution of the United States or the
23 Constitution of the state of Missouri, such determination shall
24 not affect the provisions or applications of sections 382.600 to
25 382.640, which may be given effect without the invalid provision
26 or application, and to that end the provisions of sections
27 382.600 to 382.640, with the exception of section 382.620, are
28 severable.

1 [382.278. The provisions of subdivisions (13) and
2 (14) of subsection 1 of section 382.050, subdivision
3 (5) of subsection 1 of section 382.110, and sections
4 382.175 and 382.220 shall not apply to an insurance
5 holding company or its affiliates if the insurance
6 company affiliates of such insurance holding company
7 had total premiums, direct and ceded, of less than one
8 hundred fifty million dollars in the preceding year and
9 such insurance holding company certifies in writing to
10 the director that more than twenty-five percent of the
11 employees of its affiliates, not including insurance
12 affiliates or the holding company itself, are engaged
13 in agricultural operations.]

14 Section B. This act shall become effective on January 1,
15 2019.
16