

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 593

99TH GENERAL ASSEMBLY

2018

4837S.04T

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:

Section A. Sections 375.1025, 375.1052, 375.1053, 375.1056, and 382.278, RSMo, are repealed and fourteen new sections enacted in lieu thereof, to be known as sections 375.1025, 375.1052, 375.1053, 375.1056, 375.1058, 382.600, 382.605, 382.610,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

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

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

(2) "Affiliate" or "affiliated", a 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) "AICPA", the American Institute of Certified Public Accountants;

(4) "Audit committee", a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and

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

14 financial reporting processes of an insurer or group of insurers, **the internal**
15 **audit function of any insurer or group of insurers, if applicable,** and
16 **external** audits of financial statements of the insurer or group of insurers. The
17 audit committee of any entity that controls a group of insurers may be deemed
18 to be the audit committee for one or more of such controlled insurers solely for
19 the purposes of sections 375.1025 to 375.1062 at the election of the controlling
20 person. Such election shall be exercised under subsection [5] 7 of section
21 375.1053. If an audit committee is not designated by the insurer, the insurer's
22 entire board of directors shall constitute the audit committee;

23 (5) "Audited financial report", includes those items specified in section
24 375.1032;

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

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

29 (8) "Group of insurers", those licensed insurers included in the reporting
30 requirements of sections 382.010 to 382.300, or a set of insurers as identified by
31 management, for the purpose of assessing the effectiveness of internal control
32 over financial reporting;

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

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

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

43 (12) **"Internal audit function", a person or persons that provide**
44 **independent, objective, and reasonable assurance regarding an**
45 **insurer's governance, risk management, and internal controls, designed**
46 **to add value and improve an organization's operations and accomplish**
47 **its objectives by bringing a systematic, disciplined approach to**
48 **evaluate and improve the effectiveness of risk management control and**
49 **governance processes;**

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

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

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

63 (c) Provide reasonable assurance regarding prevention or timely detection
64 of unauthorized acquisition, use or disposition of assets that could have a
65 material effect on the financial statements, i.e., those items specified in
66 [subsections 2 to 7] **subdivisions (2) to (6) of subsection 2 and subsection**
67 **3** of section 375.1032;

68 [(13)] **(14)** "NAIC", the National Association of Insurance Commissioners;
69 [(14)] **(15)** "SEC", the United States Securities and Exchange
70 Commission;

71 [(15)] **(16)** "Section 404", Section 404 of the Sarbanes-Oxley Act of 2002,
72 as amended, and the SEC's rules and regulations promulgated thereunder;

73 [(16)] **(17)** "Section 404 report", management's report on internal control
74 over financial reporting, as defined by the SEC and the related attestation report
75 of the independent certified public accountant as described in subsection 1 of
76 section 375.1030;

77 [(17)] **(18)** "SOX compliant entity", an entity that either is required to be
78 or voluntarily is compliant with all of the following provisions of the
79 Sarbanes-Oxley Act of 2002, as amended:

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

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

84 (c) The internal control over financial reporting requirements of Section
85 404.

375.1052. 1. Upon written application of any insurer, the director may
2 grant a temporary exemption from compliance with sections 375.1025 to 375.1062
3 if the director finds, upon review of the application, that compliance with sections
4 375.1025 to 375.1062 would constitute a financial or organizational hardship
5 upon the insurer. An exemption may be granted at any time and from time to
6 time for a specified period or periods. Within ten days from a denial of an
7 insurer's written request for an exemption from sections 375.1025 to 375.1062,
8 such insurer may request in writing a hearing on its application for an
9 exemption. Such hearing shall be held in accordance with the provisions of
10 chapter 536 pertaining to administrative hearing procedures and shall be a public
11 meeting as provided by subdivision (3) of section 610.010.

12 2. Domestic insurers:

13 (1) Retaining a certified public accountant on August 28, 2009, who
14 qualifies as independent shall comply with sections 375.1025 to 375.1062 for the
15 year ending December 31, 2009, and each year thereafter unless the director
16 permits otherwise;

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

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

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

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

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

31 5. The requirements of section 375.1053 are to be in effect January 1,
32 2010. An insurer or group of insurers that is not required to have independent
33 audit committee members or only a majority but not a supermajority of
34 independent audit committee members, because the total written and assumed
35 premium is below the threshold and subsequently becomes subject to one of the
36 independence requirements due to changes in premium shall have one year

37 following the year the threshold is exceeded, but not earlier than January 1,
38 2010, to comply with the independence requirements. Likewise, an insurer that
39 becomes subject to one of the independence requirements as a result of a business
40 combination shall have one calendar year following the date of acquisition or
41 combination to comply with the independence requirements.

42 6. The requirements of sections 375.1038, 375.1054, and 375.1056 are
43 effective beginning with the reporting period ending December 31, 2010, and each
44 year thereafter. An insurer or group of insurers that is not required to file a
45 report because the total written premium is below the threshold and subsequently
46 becomes subject to the reporting requirements shall have two years following the
47 year the threshold is exceeded to file a report. Likewise, an insurer acquired in
48 a business combination shall have two calendar years following the date of
49 acquisition or combination to comply with the reporting requirements.

50 **7. The requirements of section 375.1058 are effective beginning**
51 **January 1, 2019. If an insurer or group of insurers that is exempt from**
52 **section 375.1058 requirements subsequently no longer qualifies for that**
53 **exemption, such insurer or group of insurers shall have one year after**
54 **the year the threshold is exceeded to comply with the requirements of**
55 **section 375.1058.**

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

4 2. The audit committee shall be directly responsible for the appointment,
5 compensation, and oversight of the work of any accountant, including resolution
6 of disagreements between management and the accountant regarding financial
7 reporting, for the purpose of preparing or issuing the audited financial report or
8 related work under sections 375.1025 to 375.1062. Each accountant shall report
9 directly to the audit committee.

10 **3. The audit committee of an insurer or group of insurers shall**
11 **be responsible for overseeing the insurer's internal audit function and**
12 **granting the person or persons performing the internal audit function**
13 **suitable authority and resources to fulfill their responsibilities if**
14 **required by section 375.1058.**

15 4. Each member of the audit committee shall be a member of the board
16 of directors of the insurer or a member of the board of directors of an entity
17 elected under subsection [6] 7 of this section and subdivision [(6)] (4) of section

18 375.1025.

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

28 [5.] 6. If a member of the audit committee ceases to be independent for
29 reasons outside the member's reasonable control, that person, with notice by the
30 responsible entity to the state, may remain an audit committee member of the
31 responsible entity until the earlier of the next annual meeting of the responsible
32 entity or one year from the occurrence of the event that caused the member to be
33 no longer independent.

34 [6.] 7. To exercise the election of the controlling person to designate the
35 audit committee for purposes of sections 375.1025 to 375.1062, the ultimate
36 controlling person shall provide written notice to the chief state insurance
37 regulatory officials of the affected insurers. Notification shall be made timely
38 prior to the issuance of the statutory audit report and include a description of the
39 basis for the election. The election can be changed through notice to the director
40 by the insurer, which shall include a description of the basis for the change. The
41 election shall remain in effect for perpetuity, until rescinded.

42 [7.] 8. (1) The audit committee shall require the accountant that
43 performs for an insurer any audit required by sections 375.1025 to 375.1062 to
44 timely report to the audit committee in accordance with the requirements of the
45 auditing profession, including:

- 46 (a) All significant accounting policies and material permitted practices;
47 (b) All material alternative treatments of financial information within
48 statutory accounting principles that have been discussed with management
49 officials of the insurer, ramifications of the use of the alternative disclosures and
50 treatments, and the treatment preferred by the accountant; and
51 (c) Other material written communications between the accountant and
52 the management of the insurer, such as any management letter or schedule of
53 unadjusted differences.

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

59 [8.] 9. The proportion of independent audit committee members shall
60 meet or exceed the following criteria:

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

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

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

71 [9.] 10. An insurer with direct written and assumed premium, excluding
72 premiums reinsured with the Federal Crop Insurance Corporation and Federal
73 Flood Program, less than five hundred million dollars may make application to
74 the director for a waiver from the requirements of this section based upon
75 hardship. The insurer shall file, with its annual statement filing, the approval
76 for relief from this section with the states that it is licensed in or doing business
77 in and the NAIC. If the nondomestic state accepts electronic filing with the
78 NAIC, the insurer shall file the approval in an electronic format acceptable to the
79 NAIC.

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

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

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

17 (1) Directly subject to Section 404;

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

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

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

23 may file its or its parent's Section 404 report and an addendum in satisfaction of
24 the requirement of this section, provided that those internal controls of the
25 insurer or group of insurers having a material impact on the preparation of the
26 insurer's or group of insurers' audited statutory financial statements, namely
27 those items included in subdivisions (2) to (6) of subsection 2 **and subsection**
28 **3** of section 375.1032, were included in the scope of the Section 404 report. The
29 addendum shall be a positive statement by management that there are no
30 material processes with respect to the preparation of the insurer's or group of
31 insurers' audited statutory financial statements excluded from the Section 404
32 report. If there are internal controls of the insurer or group of insurers that have
33 a material impact on the preparation of the insurer's or group of insurers' audited
34 statutory financial statements and those internal controls were not included in
35 the scope of the Section 404 report, the insurer or group of insurers may either
36 file a report under this section, or the Section 404 report and a report under this
37 section for those internal controls that have a material impact on the preparation
38 of the insurer's or group of insurers' audited statutory financial statements not
39 covered by the Section 404 report.

40 4. Management's report of internal control over financial reporting shall
41 include:

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

44 (2) A statement that management has established internal control over
45 financial reporting and an assertion, to the best of management's knowledge and
46 belief, after diligent inquiry, as to whether its internal control over financial

47 reporting is effective to provide reasonable assurance regarding the reliability of
48 financial statements in accordance with statutory accounting principles;

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

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

54 (5) Disclosure of any unremediated material weaknesses in the internal
55 control over financial reporting identified by management as of December
56 thirty-first immediately preceding. Management is not permitted to conclude that
57 the internal control over financial reporting is effective to provide reasonable
58 assurance regarding the reliability of financial statements in accordance with
59 statutory accounting principles if there is one or more unremediated material
60 weaknesses in its internal control over financial reporting;

61 (6) A statement regarding the inherent limitations of internal control
62 systems; and

63 (7) Signatures of the chief executive officer and the chief financial officer,
64 or the equivalent position or title.

65 5. Management shall document and make available upon financial
66 condition examination the basis upon which its assertions required in subsection
67 4 of this section are made. Management may base its assertions, in part, upon
68 its review, monitoring and testing of internal controls undertaken in the normal
69 course of its activities. Management shall have discretion as to the nature of the
70 internal control framework used, and the nature and extent of documentation, in
71 order to make its assertion in a cost-effective manner and, as such, may include
72 assembly of or reference to existing documentation. Management's report on
73 internal control over financial reporting, required by subsection 1 of this section,
74 and any documentation provided in support thereof during the course of a
75 financial condition examination, shall be kept confidential by the department.

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

**375.1058. 1. An insurer is exempt from the requirements of this
2 section if:**

3 **(1) The insurer has annual direct written and unaffiliated**
4 **assumed premium, including international direct and assumed**
5 **premium but excluding premiums reinsured with the Federal Crop**

6 Insurance Corporation and Federal Flood Program, totaling less than
7 five hundred million dollars; and

8 (2) The insurer is a member of a group of insurers that has
9 annual direct written and unaffiliated assumed premium, including
10 international direct and assumed premium but excluding premiums
11 reinsured with the Federal Crop Insurance Corporation and Federal
12 Flood Program, totaling less than one billion dollars.

13 2. An insurer or group of insurers shall establish an internal
14 audit function providing independent, objective, and reasonable
15 assurance to the audit committee and insurer management regarding
16 the insurer's governance, risk management, and internal controls. This
17 assurance shall be provided by performing general and specific audits,
18 reviews, and tests and by employing other techniques deemed
19 necessary to protect assets, evaluate control effectiveness and
20 efficiency, and evaluate compliance with policies and regulations.

21 3. In order to ensure that internal auditors remain objective, the
22 internal audit function shall be organizationally
23 independent. Specifically, the internal audit function shall not defer
24 ultimate judgment on audit matters to others and shall appoint an
25 individual to head the internal audit function who will have direct and
26 unrestricted access to the board of directors. Organizational
27 independence does not preclude dual-reporting relationships.

28 4. The head of the internal audit function shall report to the
29 audit committee regularly, but no less than annually, on the periodic
30 audit plan, factors that may adversely impact the internal audit
31 function's independence or effectiveness, material findings from
32 completed audits, and the appropriateness of corrective actions
33 implemented by management as a result of audit findings.

34 5. If an insurer is a member of an insurance holding company
35 system or included in a group of insurers, the insurer may satisfy the
36 internal audit function requirements set forth in this section at the
37 ultimate controlling parent level, an intermediate holding company
38 level, or the individual legal entity level.

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

2 (1) Provide the director a summary of an insurer or insurance
3 group's corporate governance structure, policies, and practices to

4 permit the director to gain and maintain an understanding of the
5 insurer or insurance group's corporate governance framework;

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

8 (3) Provide for the confidential treatment of the corporate
9 governance annual disclosure and related information that will contain
10 confidential and sensitive information related to an insurer or
11 insurance group's internal operations and proprietary and trade secret
12 information which if made public could potentially cause the insurer
13 or insurance group competitive harm or disadvantage.

14 2. Nothing in sections 382.600 to 382.640 shall be construed to
15 prescribe or impose corporate governance standards and internal
16 procedures beyond that which are required under applicable state
17 corporate law. Notwithstanding the foregoing, nothing in sections
18 382.600 to 382.640 shall be construed to limit the director's authority or
19 the rights or obligations of third parties under chapter 374 relating to
20 the examination of insurers.

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

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

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

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

10 (3) "Insurance group", those insurers and affiliates included
11 within an insurance holding company system as defined in section
12 382.010;

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

- 18 (5) "NAIC", the National Association of Insurance Commissioners;
19 (6) "ORSA summary report", the report filed in accordance with
20 sections 382.500 to 382.550.

382.610. 1. An insurer, or the insurance group of which the
2 insurer is a member, shall, before June first of each calendar year,
3 submit to the director a CGAD that contains the information described
4 in subsection 2 of section 382.615. Notwithstanding any request from
5 the director made under subsection 3 of this section, if the insurer is
6 a member of an insurance group, the insurer shall submit the report
7 required by this section to the director or commissioner of the lead
8 state for the insurance group, in accordance with the laws of the lead
9 state, as determined by the procedures outlined in the most recent
10 Financial Analysis Handbook adopted by the NAIC. An insurer that is
11 a member of an insurance group, however, shall not be required to
12 submit the report required by this section to the director until the
13 earlier of the adoption of the National Association of Insurance
14 Commissioners Corporate Governance Annual Disclosure Model Act and
15 National Association of Insurance Commissioners Corporate
16 Governance Annual Disclosure Model Regulations by the lead state of
17 such insurance group, or June 1, 2020.

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

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

26 4. For purposes of completing the CGAD, the insurer or
27 insurance group may provide information regarding corporate
28 governance at the ultimate controlling person level, an intermediate
29 holding company level, or the individual legal entity level depending
30 upon how the insurer or insurance group has structured its system of
31 corporate governance. The insurer or insurance group is encouraged
32 to make the CGAD disclosures at the level at which the insurer or
33 insurance group's risk appetite is determined; or at which the earnings,

34 capital, liquidity, operations, and reputation of the insurer are
35 overseen collectively and at which the supervision of those factors is
36 coordinated and exercised; or the level at which legal liability for
37 failure of general corporate governance duties would be placed. If the
38 insurer or insurance group determines the level of reporting based on
39 these criteria, it shall indicate which of the three criteria was used to
40 determine the level of reporting and explain any subsequent changes
41 in level of reporting.

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

46 6. Insurers providing information substantially similar to the
47 information required by sections 382.600 to 382.640 in other documents
48 provided to the director, including proxy statements filed in
49 conjunction with annual registration requirements or other state or
50 federal filings provided to the department of insurance, financial
51 institutions and professional registration, shall not be required to
52 duplicate that information in the CGAD but shall only be required to
53 cross-reference the document in which the information is included.

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

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

382.620. 1. Documents, materials, or other information, including
2 the CGAD, in the possession or control of the department of insurance,

3 financial institutions and professional registration that are obtained
4 by, created by, or disclosed to the director or any other person under
5 sections 382.600 to 382.640 are recognized by this state as being
6 proprietary and containing trade secrets. All such documents, material,
7 or other information shall be confidential by law and privileged, shall
8 not be subject to disclosure under chapter 610, shall not be subject to
9 subpoena, and shall not be subject to discovery or admissible in
10 evidence in any private civil action. However, the director is
11 authorized to use the documents, materials, or other information in the
12 furtherance of any regulatory or legal action brought as a part of the
13 director's official duties. The director shall not otherwise make the
14 documents, materials, or other information public without the prior
15 written consent of the insurer. Nothing in this section shall be
16 construed to require written consent of the insurer before the director
17 may share or receive confidential documents, materials, or other CGAD-
18 related information under subsection 3 of this section to assist in the
19 performance of the director's regular duties.

20 2. Neither the director nor any person who receives documents,
21 materials, or other CGAD-related information through examination or
22 otherwise while acting under the authority of the director or with
23 whom such documents, materials, or other information are shared
24 under sections 382.600 to 382.640 shall be permitted or required to
25 testify in any private civil action concerning any confidential
26 documents, materials, or information subject to subsection 1 of this
27 section.

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

30 (1) May, upon request, share documents, materials, or other
31 CGAD-related information, including the confidential and privileged
32 documents, materials, or information subject to subsection 1 of this
33 section, including proprietary and trade secret documents and
34 materials, with other state, federal, and international financial
35 regulatory agencies, including members of any supervisory college as
36 described in section 382.225, with the NAIC, and with third-party
37 consultants under section 382.625; provided that, the recipient agrees
38 in writing to maintain the confidentiality and privileged status of the

39 CGAD-related documents, materials, or other information and has
40 verified in writing the legal authority to maintain confidentiality; and

41 (2) May receive documents, materials, or other CGAD-related
42 information, including otherwise confidential and privileged
43 documents, materials, or information, including proprietary and trade
44 secret information or documents, from regulatory officials of other
45 state, federal, and international financial regulatory agencies,
46 including members of any supervisory college as described in section
47 382.225, and from the NAIC, and shall maintain as confidential or
48 privileged any documents, materials, or information received with
49 notice or the understanding that it is confidential or privileged under
50 the laws of the jurisdiction that is the source of the documents,
51 material, or information.

52 4. The sharing of information and documents by the director
53 under sections 382.600 to 382.640 shall not constitute a delegation of
54 regulatory authority or rulemaking, and the director is solely
55 responsible for the administration, execution, and enforcement of the
56 provisions of sections 382.600 to 382.640.

57 5. No waiver of any applicable privilege or claim of
58 confidentiality in the documents, proprietary and trade secret
59 materials, or other CGAD-related information shall occur as a result of
60 disclosure of such CGAD-related information or documents to the
61 director under this section or as a result of sharing as authorized
62 under sections 382.600 to 382.640.

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

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

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

12 4. As part of the retention process, a third-party consultant shall

13 verify to the director, with notice to the insurer, that it is free of a
14 conflict of interest and that it has internal procedures in place to
15 monitor compliance with a conflict and to comply with the
16 confidentiality standards and requirements of sections 382.600 to
17 382.640.

18 5. A written agreement with the NAIC or a third-party consultant
19 governing sharing and use of information provided under sections
20 382.600 to 382.640 shall contain the following provisions and expressly
21 require the written consent of the insurer prior to making public
22 information provided under sections 382.600 to 382.640:

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

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

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

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

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

45 (6) A provision requiring the NAIC or a third-party consultant to
46 consent to intervention by an insurer in any judicial or administrative
47 action in which the NAIC or a third-party consultant may be required
48 to disclose confidential information about the insurer shared with the

49 **NAIC or a third-party consultant under sections 382.600 to 382.640.**

382.630. 1. Any insurer failing without just cause to timely file
2 a CGAD as required under sections 382.600 to 382.640 commits a level
3 two violation under section 374.049 for each day's delay; provided that,
4 the total maximum fine under this section is five thousand dollars. The
5 director may reduce the penalty if the insurer demonstrates to the
6 director that the imposition of the penalty would constitute a financial
7 hardship to the insurer.

8 2. The director may enforce the provisions of sections 382.600 to
9 382.640 under sections 374.046 to 374.049.

382.635. The director may, upon notice and opportunity for all
2 interested persons to be heard, issue such rules, regulations, and orders
3 as shall be necessary to carry out the provisions of sections 382.600 to
4 382.640. Any rule or portion of a rule, as that term is defined in section
5 536.010 that is created under the authority delegated in this section
6 shall become effective only if it complies with and is subject to all of
7 the provisions of chapter 536, and, if applicable, section 536.028. This
8 section and chapter 536 are nonseverable and if any of the powers
9 vested with the general assembly pursuant to chapter 536, to review, to
10 delay the effective date, or to disapprove and annul a rule are
11 subsequently held unconstitutional, then the grant of rulemaking
12 authority and any rule proposed or adopted after August 28, 2018, shall
13 be invalid and void.

382.640. If any provision of sections 382.600 to 382.640 or the
2 application thereof to any person or circumstance is held invalid under
3 the Constitution of the United States or the Constitution of the state of
4 Missouri, such determination shall not affect the provisions or
5 applications of sections 382.600 to 382.640, which may be given effect
6 without the invalid provision or application, and to that end the
7 provisions of sections 382.600 to 382.640, with the exception of section
8 382.620, are severable.

[382.278. The provisions of subdivisions (13) and (14) of
2 subsection 1 of section 382.050, subdivision (5) of subsection 1 of
3 section 382.110, and sections 382.175 and 382.220 shall not apply
4 to an insurance holding company or its affiliates if the insurance
5 company affiliates of such insurance holding company had total

6 premiums, direct and ceded, of less than one hundred fifty million
7 dollars in the preceding year and such insurance holding company
8 certifies in writing to the director that more than twenty-five
9 percent of the employees of its affiliates, not including insurance
10 affiliates or the holding company itself, are engaged
11 in agricultural operations.]

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

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Unofficial

Bill

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