

FIRST REGULAR SESSION

SENATE BILL NO. 347

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURLISON.

Read 1st time February 5, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1828S.011

AN ACT

To repeal sections 382.010 and 382.230, RSMo, and to enact in lieu thereof three new sections relating to insurance holding companies.

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

Section A. Sections 382.010 and 382.230, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 382.010, 382.227,
3 and 382.230, to read as follows:

382.010. As used in sections 382.010 to 382.300, the following words and
2 terms have the meanings indicated unless the context clearly requires otherwise:

3 (1) An "affiliate" of, or person "affiliated" with, a specific person, is a
4 person that directly, or indirectly through one or more intermediaries, controls,
5 or is controlled by, or is under common control with, the person specified;

6 (2) "Control", "controlling", "controlled by", or "under common control
7 with", the possession, direct or indirect, of the power to direct or cause the
8 direction of the management and policies of a person, whether through the
9 ownership of voting securities, by contract other than a commercial contract for
10 goods or nonmanagement services, or otherwise, unless the power is the result of
11 an official position with or corporate office held by the person. Control shall be
12 presumed to exist if any person, directly or indirectly, owns, controls, holds with
13 power to vote, or holds proxies representing, ten percent or more of the voting
14 securities of any other person. This presumption may be rebutted by a showing
15 made in the manner provided by section 382.170 that control does not exist in
16 fact. The director may determine, after furnishing all persons in interest notice
17 and opportunity to be heard and making specific findings of fact to support such
18 determination, that control exists in fact, notwithstanding the absence of a

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

19 presumption to that effect;

20 (3) "Director", the director of the department of insurance, financial
21 institutions and professional registration, his or her deputies, or the department
22 of insurance, financial institutions and professional registration, as appropriate;

23 (4) "Enterprise risk", any activity, circumstance, event, or series of events
24 involving one or more affiliates of an insurer that, if not remedied promptly, is
25 likely to have a material adverse effect upon the financial condition or liquidity
26 of the insurer or its insurance holding company system as a whole including, but
27 not limited to, anything that would cause the insurer's risk-based capital to fall
28 into company action level as set forth in section 375.1255 or would cause the
29 insurer to be in hazardous financial condition as set forth in section 375.539;

30 (5) **"Group-wide supervisor", the regulatory official authorized to**
31 **engage in conducting and coordinating group-wide supervision**
32 **activities who is determined or acknowledged by the director under**
33 **section 382.227 to have sufficient significant contacts with the**
34 **internationally active insurance group;**

35 (6) "Insurance holding company system", two or more affiliated persons,
36 one or more of which is an insurer;

37 [(6)] (7) "Insurer", an insurance company as defined in section 375.012,
38 including a reciprocal or interinsurance exchange, and which is qualified and
39 licensed by the department of insurance, financial institutions and professional
40 registration of Missouri to transact the business of insurance in this state; but it
41 shall not include any company organized and doing business under chapter 377,
42 378, or 380, agencies, authorities, or instrumentalities of the United States, its
43 possessions and territories, the Commonwealth of Puerto Rico, the District of
44 Columbia, or a state or political subdivision of a state;

45 (8) **"Internationally active insurance group", an insurance**
46 **holding company system that includes an insurer registered under**
47 **sections 382.100 to 382.180, and meets the following criteria:**

48 (a) **Premiums written in at least three countries;**

49 (b) **The percentage of gross premiums written outside the United**
50 **States is at least ten percent of the insurance holding company system's**
51 **total gross written premiums; and**

52 (c) **Based on a three-year rolling average, the total assets of the**
53 **insurance holding company system are at least fifty billion dollars, or**
54 **the total gross written premiums of the insurance holding company**

55 **system are at least ten billion dollars;**

56 ~~[(7)]~~ **(9)** "Person", an individual, corporation, limited liability company,
57 partnership, association, joint stock company, trust, unincorporated organization,
58 or any similar entity, or any combination of the foregoing acting in concert, but
59 shall not include any joint venture partnership exclusively engaged in owning,
60 managing, leasing, or developing real or tangible personal property;

61 ~~[(8)]~~ **(10)** A "securityholder" of a specified person is one who owns any
62 security of that person, including common stock, preferred stock, debt obligations,
63 and any other security convertible into or evidencing the right to acquire any of
64 the foregoing;

65 ~~[(9)]~~ **(11)** A "subsidiary" of a specified person is an affiliate controlled by
66 that person directly, or indirectly through one or more intermediaries;

67 ~~[(10)]~~ **(12)** The term "voting security" includes any security convertible
68 into or evidencing a right to acquire a voting security.

**382.227. 1. The director is authorized to act as the group-wide
2 supervisor for any internationally active insurance group in
3 accordance with the provisions of this section. However, the director
4 may otherwise acknowledge another regulatory official as the group-
5 wide supervisor if the internationally active insurance group:**

6 **(1) Does not have substantial insurance operations in the United
7 States;**

8 **(2) Has substantial insurance operations in the United States,
9 but not in this state; or**

10 **(3) Has substantial insurance operations in the United States and
11 in this state, but the director has determined pursuant to the factors
12 set forth in subsections 3 and 9 of this section that another regulatory
13 official is the appropriate group-wide supervisor.**

14 **2. An insurance holding company system that does not otherwise
15 qualify as an internationally active insurance group may request that
16 the director make a determination or acknowledgment as to a
17 group-wide supervisor pursuant to this section.**

18 **3. In cooperation with other state, federal, and international
19 regulatory agencies, the director shall identify a single group-wide
20 supervisor for an internationally active insurance group. The director
21 may determine that the director is the appropriate group-wide
22 supervisor for an internationally active insurance group that conducts**

23 substantial insurance operations concentrated in this state. However,
24 the director may acknowledge that a regulatory official from another
25 jurisdiction is the appropriate group-wide supervisor for the
26 internationally active insurance group. The director shall consider the
27 following factors when making a determination or acknowledgment
28 under this subsection:

29 (1) The place of domicile of the insurers within the
30 internationally active insurance group that hold the largest share of
31 the internationally active insurance group's written premiums, assets,
32 or liabilities;

33 (2) The place of domicile of the top-tiered insurers in the
34 insurance holding company system of the internationally active
35 insurance group;

36 (3) The location of the executive offices or largest operational
37 offices of the internationally active insurance group;

38 (4) Whether another regulatory official is acting or is seeking to
39 act as the group-wide supervisor under a regulatory system that the
40 director determines to be:

41 (a) Substantially similar to the system of regulation provided
42 under the laws of this state; or

43 (b) Otherwise sufficient in terms of providing for group-wide
44 supervision, enterprise risk analysis, and cooperation with other
45 regulatory officials; and

46 (5) Whether another regulatory official acting or seeking to act
47 as the group-wide supervisor provides the director with reasonably
48 reciprocal recognition and cooperation.

49 4. A director identified under this section as the group-wide
50 supervisor may determine that it is appropriate to acknowledge
51 another regulatory official to serve as the group-wide supervisor. The
52 acknowledgment of the group-wide supervisor shall be made after
53 consideration of the factors listed in subdivisions (1) to (5) of
54 subsection 3 of this section, and shall be made in cooperation with and
55 subject to the acknowledgment of other regulatory officials involved
56 with supervision of members of the internationally active insurance
57 group, and in consultation with the internationally active insurance
58 group.

59 5. Notwithstanding any other provision of the law, when another

60 regulatory official is acting as the group-wide supervisor of an
61 internationally active insurance group, the director shall acknowledge
62 that regulatory official as the group-wide supervisor, subject to
63 subsection 6 of this section. However, in the event of a material change
64 in the internationally active insurance group that results in either the
65 internationally active insurance group's insurers domiciled in this state
66 holding the largest share of the internationally active insurance
67 group's premiums, assets, or liabilities, or this state being the place of
68 domicile of the top-tiered insurers in the insurance holding company
69 system of the internationally active insurance group, the director shall
70 make a determination or acknowledgment as to the appropriate
71 group-wide supervisor for such an internationally active insurance
72 group pursuant to subsections 3 and 4 of this section.

73 6. In the event of a dispute as to the proper regulatory official
74 to act as group-wide supervisor, a determination by the director not to
75 acknowledge the current group-wide supervisor shall be made only
76 after notice and a public hearing, and such determination shall be
77 accompanied by specific findings of fact and conclusions of law
78 including, but not limited to, application of the factors listed in
79 subdivisions (1) to (5) of subsection 3 of this section.

80 7. Pursuant to section 382.220, the director is authorized to
81 collect from any insurer registered pursuant to sections 382.100 to
82 382.180 all information necessary to determine whether the director
83 may act as the group-wide supervisor of an internationally active
84 insurance group or if the director may acknowledge another regulatory
85 official to act as the group-wide supervisor. Prior to issuing a
86 determination that an internationally active insurance group is subject
87 to group-wide supervision by the director, the director shall notify the
88 insurer registered pursuant to sections 382.100 to 382.180 and the
89 ultimate controlling person within the internationally active insurance
90 group. The internationally active insurance group shall have not less
91 than thirty days to provide the director with additional information
92 pertinent to the pending determination. The director shall publish on
93 the department's website the identity of internationally active
94 insurance groups that the director has determined are subject to
95 group-wide supervision by the director.

96 8. If the director is the group-wide supervisor for an

97 internationally active insurance group, the director is authorized to
98 engage in any of the following group-wide supervision activities:

99 (1) Assess the enterprise risks within the internationally active
100 insurance group to ensure that:

101 (a) The material financial condition and liquidity risks to the
102 members of the internationally active insurance group that are engaged
103 in the business of insurance are identified by management; and

104 (b) Reasonable and effective mitigation measures are in place;

105 (2) Request, from any member of an internationally active
106 insurance group subject to the director's supervision, information
107 necessary and appropriate to assess enterprise risk including, but not
108 limited to, information about the members of the internationally active
109 insurance group regarding:

110 (a) Governance, risk assessment, and management;

111 (b) Capital adequacy; and

112 (c) Material intercompany transactions;

113 (3) Coordinate and, through the authority of the regulatory
114 officials of the jurisdictions where members of the internationally
115 active insurance group are domiciled, compel development and
116 implementation of reasonable measures designed to ensure that the
117 internationally active insurance group is able to timely recognize and
118 mitigate enterprise risks to members of such internationally active
119 insurance group that are engaged in the business of insurance;

120 (4) Communicate with other state, federal, and international
121 regulatory agencies for members within the internationally active
122 insurance group and share relevant information subject to the
123 confidentiality provisions of section 382.230, through supervisory
124 colleges as set forth in section 382.226 or otherwise;

125 (5) Enter into agreements with or obtain documentation from
126 any insurer registered under sections 382.100 to 382.180, any member
127 of the internationally active insurance group, and any other state,
128 federal, and international regulatory agencies for members of the
129 internationally active insurance group, providing the basis for or
130 otherwise clarifying the director's role as group-wide supervisor,
131 including provisions for resolving disputes with other regulatory
132 officials. Such agreements or documentation shall not serve as
133 evidence in any proceeding that any insurer or person within an

134 insurance holding company system not domiciled or incorporated in
135 this state is doing business in this state or is otherwise subject to
136 jurisdiction in this state;

137 (6) Other group-wide supervision activities, consistent with the
138 authorities and purposes enumerated in this subsection, as considered
139 necessary by the director.

140 9. If the director acknowledges that another regulatory official
141 from a jurisdiction that is not accredited by the National Association
142 of Insurance Commissioners is the group-wide supervisor, the director
143 is authorized to reasonably cooperate, through supervisory colleges or
144 otherwise, with group-wide supervision undertaken by the group-wide
145 supervisor, provided that:

146 (1) The director's cooperation is in compliance with the laws of
147 this state; and

148 (2) The regulatory official acknowledged as the group-wide
149 supervisor also recognizes and cooperates with the director's activities
150 as a group-wide supervisor for other internationally active insurance
151 groups where applicable. Where such recognition and cooperation is
152 not reasonably reciprocal, the director is authorized to refuse
153 recognition and cooperation.

154 10. The director is authorized to enter into agreements with, or
155 obtain documentation from, any insurer registered under sections
156 382.100 to 382.180, any affiliate of the insurer, and other state, federal,
157 and international regulatory agencies, regarding members of the
158 internationally active insurance group, which provides the basis for or
159 otherwise clarify a regulatory official's role as group-wide supervisor.

160 11. The director may promulgate regulations necessary for the
161 administration of this section. Any rule or portion of a rule, as that
162 term is defined in section 536.010 that is created under the authority
163 delegated in this section shall become effective only if it complies with
164 and is subject to all of the provisions of chapter 536, and, if applicable,
165 section 536.028. This section and chapter 536 are nonseverable and if
166 any of the powers vested with the general assembly pursuant to chapter
167 536, to review, to delay the effective date, or to disapprove and annul
168 a rule are subsequently held unconstitutional, then the grant of
169 rulemaking authority and any rule proposed or adopted after August
170 28, 2019, shall be invalid and void.

171 **12. An insurer registered under sections 382.100 to 382.180 and**
172 **subject to this section shall be liable for and shall pay the reasonable**
173 **expenses of the director's participation in the administration of this**
174 **section, including the engagements of attorneys, actuaries, and any**
175 **other professionals and all reasonable travel expenses.**

 382.230. 1. All information, documents and copies thereof in the
2 possession or control of the director that are obtained by or disclosed to the
3 director or any other person in the course of an examination or investigation
4 made under section 382.220 and all information reported **or provided to the**
5 **director** under subdivisions (13) and (14) of subsection 1 of section 382.050
6 [and], sections 382.100 to 382.210, **and section 382.227** shall be given
7 confidential treatment and privileges; shall not be subject to the provisions of
8 chapter 610; shall not be subject to subpoena; shall not be made public by the
9 director, the National Association of Insurance Commissioners, or any other
10 person, except to the chief insurance regulatory official of other states; and shall
11 not be subject to discovery or admissible as evidence in any private civil
12 action. However, the director is authorized to use the documents, materials, or
13 other information in furtherance of any regulatory or legal action brought as a
14 part of the director's official duties. The director shall not otherwise make the
15 documents, materials, or other information public without the prior written
16 consent of the insurer to which it pertains unless the director, after giving the
17 insurer and its affiliates who would be affected thereby, notice and opportunity
18 to be heard, determines that the interests of policyholders, shareholders or the
19 public will be served by the publication thereof, in which event the director may
20 publish all or any part thereof in such manner as he or she may deem
21 appropriate.

22 2. Neither the director nor any person who receives documents, materials,
23 or other information while acting under the authority of the director or with
24 whom such documents, materials, or other information is shared under sections
25 382.010 to 382.300 shall be permitted or required to testify in any private civil
26 action concerning any confidential documents, materials, or other information
27 subject to subsection 1 of this section.

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

30 (1) May share documents, materials, or other information including the
31 confidential and privileged documents, materials, or other information subject to

32 subsection 1 of this section with other state, federal, and international financial
33 regulatory agencies, with the National Association of Insurance Commissioners
34 and its affiliates and subsidiaries, and with state, federal, and international law
35 enforcement authorities including members of any supervisory college described
36 in section 382.225; provided that the recipient agrees in writing to maintain the
37 confidentiality and privileged status of such documents, materials, or other
38 information, and has verified in writing the legal authority to maintain
39 confidentiality;

40 (2) Notwithstanding the provisions of subsection 1 of this section and
41 subdivision (1) of this subsection, may share confidential and privileged
42 documents, materials, or other information reported under section 382.175 only
43 with the directors of states having statutes or regulations substantially similar
44 to subsection 1 of this section and who have agreed in writing not to disclose such
45 information;

46 (3) May receive documents, materials, or other information including
47 otherwise confidential and privileged documents, materials, or information from
48 the National Association of Insurance Commissioners and its affiliates and
49 subsidiaries and from regulatory and law enforcement officials of other foreign or
50 domestic jurisdictions, and shall maintain as confidential or privileged any
51 documents, materials, or other information received with notice or the
52 understanding that it is confidential or privileged under the laws of the
53 jurisdiction that is the source of the document, material, or other information;
54 and

55 (4) Shall enter into a written agreement with the National Association of
56 Insurance Commissioners governing sharing and use of information provided
57 under sections 382.010 to 382.300 consistent with this subsection that shall:

58 (a) Specify procedures and protocols regarding the confidentiality and
59 security of information shared with the National Association of Insurance
60 Commissioners and its affiliates and subsidiaries under sections 382.010 to
61 382.300 including procedures and protocols for sharing by the National
62 Association of Insurance Commissioners with other state, federal, and
63 international regulators;

64 (b) Specify that ownership of information shared with the National
65 Association of Insurance Commissioners and its affiliates and subsidiaries under
66 sections 382.010 to 382.300 remains with the director and that the National
67 Association of Insurance Commissioners' use of such information is subject to the

68 direction of the director;

69 (c) Require prompt notice to be given to an insurer whose confidential
70 information in the possession of the National Association of Insurance
71 Commissioners under sections 382.010 to 382.300 is subject to a request or
72 subpoena to the National Association of Insurance Commissioners for disclosure
73 or production; and

74 (d) Require the National Association of Insurance Commissioners and its
75 affiliates and subsidiaries to consent to intervention by an insurer in any judicial
76 or administrative action in which the National Association of Insurance
77 Commissioners and its affiliates and subsidiaries may be required to disclose
78 confidential information about the insurer shared with the National Association
79 of Insurance Commissioners and its affiliates and subsidiaries under sections
80 382.010 to 382.300.

81 4. The sharing of information by the director under sections 382.010 to
82 382.300 shall not constitute a delegation of regulatory or rulemaking authority,
83 and the director is solely responsible for the administration, execution, and
84 enforcement of the provisions of sections 382.010 to 382.300.

85 5. No waiver of any applicable privilege or claim of confidentiality in the
86 documents, materials, or other information shall occur as a result of disclosure
87 of such documents, materials, or other information to the director under this
88 section or as a result of sharing as authorized in sections 382.010 to 382.300.

89 6. Documents, materials, or other information in the possession or control
90 of the National Association of Insurance Commissioners under sections 382.010
91 to 382.300 shall be confidential by law and privileged, shall not be subject to
92 disclosure under chapter 610, shall not be subject to subpoena, and shall not be
93 subject to discovery or admissible in evidence in any private civil action.

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