

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
CONFERENCE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 54

100TH GENERAL ASSEMBLY

2019

0295S.03T

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## AN ACT

To repeal sections 374.191, 382.010, and 382.230, RSMo, and to enact in lieu thereof four new sections relating to insurance companies.

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

Section A. Sections 374.191, 382.010, and 382.230, RSMo, are repealed  
2 and four new sections enacted in lieu thereof, to be known as sections 374.191,  
3 382.010, 382.227, and 382.230, to read as follows:

374.191. 1. If an insurance company is required to pay interest on any  
2 claims, refunds, penalties, or payments under a market conduct examination,  
3 investigation, stipulation of settlement agreement, voluntary forfeiture  
4 agreement, or any other legal or remedial action ordered by the department under  
5 any law of this state in which the interest rate is not provided for by law, **or**  
6 **voluntarily pays interest on any claims, refunds, penalties, or payments**  
7 **in which the interest rate is not provided for by law**, such claims, refunds,  
8 penalties, or payments shall bear interest at the annual adjusted prime rate of  
9 interest as determined by section 32.065, but under no circumstance shall such  
10 interest rate exceed nine percent per annum.

11 2. The provisions of this section shall not apply to payments subject to the  
12 provisions of section 376.383 nor any other statute in which the interest rate is  
13 specified.

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

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

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  
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 supervisory**  
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 but**  
9 **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 group-**  
17 **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 domicile of the insurers within the internationally active**  
30 **insurance group that hold the largest share of the internationally**  
31 **active insurance group's written premiums, assets, or liabilities;**

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

34           **(3) The location of the executive offices or largest operational**  
35 **offices of the internationally active insurance group;**

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

39           **(a) Substantially similar to the system of regulation provided**  
40 **under the laws of this state; or**

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

44           **(5) Whether another regulatory official acting or seeking to act**

45 as the group-wide supervisor provides the director with reasonably  
46 reciprocal recognition and cooperation.

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

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

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

78 7. Under section 382.220, the director is authorized to collect  
79 from any insurer registered under sections 382.100 to 382.180 all  
80 information necessary to determine whether the director may act as the  
81 group-wide supervisor of an internationally active insurance group or

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

94 8. If the director is the group-wide supervisor for an  
95 internationally active insurance group, the director is authorized to  
96 engage in any of the following group-wide supervisory activities:

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

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

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

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

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

109 (b) Capital adequacy; and

110 (c) Material intercompany transactions;

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

118 (4) Communicate with other state, federal, and international

119 regulatory agencies for members within the internationally active  
120 insurance group and share relevant information, subject to the  
121 confidentiality provisions of section 382.230, through supervisory  
122 colleges as set forth in section 382.225 or otherwise;

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

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

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

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

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

152 10. The director is authorized to enter into agreements with, or  
153 obtain documentation from, any insurer registered under sections  
154 382.100 to 382.180, any affiliate of the insurer, and other state, federal,  
155 and international regulatory agencies, regarding members of the

156 **internationally active insurance group, which provides the basis for or**  
157 **otherwise clarifies a regulatory official's role as group-wide supervisor.**

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

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