

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE BILL NO. 1359

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

5286S.03P

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 374.190, RSMo, and to enact in lieu thereof five new sections relating to reinsurance and examinations of insurance companies.

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

Section A. Section 374.190, RSMo, is repealed and five
2 new sections enacted in lieu thereof, to be known as sections
3 374.190, 374.192, 375.1183, 380.621, and 380.631, to read as
4 follows:

374.190. 1. The director shall examine and inquire
2 into all violations of the insurance laws of the state, and
3 inquire into and investigate the business of insurance
4 transacted in this state by any insurance agent, broker,
5 agency or insurance company.

6 2. He or any of his duly appointed agents may compel
7 the attendance before him, and may examine, under oath, the
8 directors, officers, agents, employees, solicitors,
9 attorneys or any other person, in reference to the
10 condition, affairs, management of the business, or any
11 matters relating thereto. He may administer oaths or
12 affirmations, and shall have power to summon and compel the
13 attendance of witnesses, and to require and compel the

14 production of records, books, papers, contracts or other
15 documents, if necessary.

16 3. The director may make and conduct the investigation
17 in person, or he may appoint one or more persons to make and
18 conduct the same for him. If made by another than the
19 director in person, the person duly appointed by the
20 director shall have the same powers as above granted to the
21 director. A certificate of appointment, under the official
22 seal of the director, shall be sufficient authority and
23 evidence thereof for the person or persons to act. For the
24 purpose of making the investigations, or having the same
25 made, the director may employ the necessary clerical,
26 actuarial and other assistance.

27 **4. Notwithstanding any provision of law to the**
28 **contrary, the confidentiality provisions of section 374.205,**
29 **including subdivision (5) of subsection 3 of section**
30 **374.205, and subsection 4 of section 374.205, shall apply to**
31 **all reports, working papers, recorded information,**
32 **documents, and copies thereof, produced by, obtained by, or**
33 **disclosed to the director or any other person in the course**
34 **of any market conduct investigation or market conduct action.**

374.192. 1. Notwithstanding any provision of law to
2 the contrary, a regulated entity shall have not less than
3 thirty calendar days to submit any record or material
4 requested by the department. This subsection shall not
5 apply to requests for records or materials by the division
6 of consumer affairs.

7 2. Notwithstanding any provision of law to the
8 contrary, any record or document, regardless of physical
9 form or characteristic, maintained beyond the record
10 retention period specified in section 374.205 shall not be
11 subject to request or review by the director unless the

12 director has substantial and competent evidence that the
13 regulated entity has willfully engaged in an act or omission
14 constituting a level four or five violation of the laws of
15 this state relating to insurance, including this chapter,
16 chapter 354, and chapters 375 to 385, or has been convicted
17 of any felony related to the business of insurance, in which
18 case the director may request or review records or documents
19 maintained beyond the record retention period specified in
20 section 374.205 that directly relate to the violation or
21 conviction.

375.1183. 1. Contracts reinsuring policies of life or
2 health insurance or annuities referred to in section
3 375.1178 issued by a ceding insurer that has been placed in
4 conservation or rehabilitation proceedings under sections
5 375.1150 to 375.1246 shall be continued or terminated under
6 the terms and conditions of each contract and the provisions
7 of this section.

8 2. Contracts reinsuring policies of life or health
9 insurance or annuities referred to in section 375.1178
10 issued by a ceding insurer that has been placed into
11 liquidation under sections 375.1150 to 375.1246 shall be
12 continued, subject to the provisions of this section, unless:

13 (1) The contracts were terminated pursuant to their
14 terms prior to the date of the order of liquidation; or

15 (2) The contracts were terminated pursuant to the
16 order of liquidation, in which case the provisions of
17 subsection 9 of this section shall apply.

18 3. (1) At any time within one hundred eighty days of
19 the date of the order of liquidation, a guaranty association
20 covering policies of life or health insurance or annuities
21 referred to in section 375.1178, in whole or in part, may
22 elect to assume the rights and obligations of the ceding

23 insurer that relate to the policies or annuities under any
24 one or more reinsurance contracts between the ceding insurer
25 and its reinsurers. Any such assumption shall be effective
26 as of the date of the order of liquidation. The election
27 shall be made by the guaranty association or the national
28 organization of life and health insurance guaranty
29 associations on its behalf by sending written notice, return
30 receipt requested, to the affected reinsurers.

31 (2) To facilitate the decision, the receiver and each
32 affected reinsurer shall make available upon request to the
33 guaranty association or to the national organization of life
34 and health insurance guaranty associations on its behalf:

35 (a) Copies of in-force reinsurance contracts and all
36 related files and records relevant to the determination of
37 whether such contracts should be assumed; and

38 (b) Notices of any defaults under the reinsurance
39 contracts or any known event or condition which with the
40 passage of time could become a default under the reinsurance
41 contracts.

42 (3) Paragraphs (a) through (d) of this subdivision
43 shall apply to reinsurance contracts so assumed by a
44 guaranty association:

45 (a) The guaranty association shall be responsible for
46 all unpaid premiums due under the reinsurance contracts, for
47 periods both before and after the date of the order of
48 liquidation, and shall be responsible for the performance of
49 all other obligations to be performed after the date of the
50 order of liquidation.

51 (b) The guaranty association shall be entitled to any
52 amounts payable by the reinsurer under the reinsurance
53 contracts with respect to losses or events that occur in
54 periods on or after the date of the order of liquidation.

55 (c) Within thirty days following the date of the
56 guaranty association's election to assume a reinsurance
57 contract, the guaranty association and the reinsurer shall
58 calculate the balance due to or from the guaranty
59 association under each reinsurance contract as of the date
60 of such election, and the guaranty association or reinsurer
61 shall pay any remaining balance due the other within thirty-
62 five days of the date of such election. Any disputes over
63 the amounts due to either the guaranty association or the
64 reinsurer shall be resolved by arbitration pursuant to the
65 terms of the affected reinsurance contract or, if the
66 contract contains no arbitration clause, pursuant to the
67 provisions of subdivision (3) of subsection 9 of this
68 section.

69 (d) If the guaranty association, or receiver on behalf
70 of such guaranty association, within sixty days of the date
71 of the guaranty association's election to assume a
72 reinsurance contract, pays the unpaid premiums due for
73 periods both before and after the date of such election that
74 are due pursuant to the reinsurance contract, the reinsurer
75 shall not be entitled to terminate the reinsurance contract
76 for failure to pay premiums, and shall not be entitled to
77 set off any unpaid amounts due under other contracts, or
78 unpaid amounts due from parties other than the guaranty
79 association, against amounts due such guaranty association.

80 4. If a receiver continues policies of life or health
81 insurance or annuities referred to in section 375.1178 in
82 force following an order of liquidation, and the policies or
83 annuities are not covered in whole or in part by one or more
84 guaranty associations, the receiver may, within one hundred
85 eighty days of the date of the order of liquidation, elect
86 to assume the rights and obligations of the ceding insurer

87 under any one or more of the reinsurance contracts that
88 relate to the policies or annuities, provided the contracts
89 have not been terminated as set forth in subsection 2 of
90 this section. The election shall be made by sending written
91 notice, return receipt requested, to the affected
92 reinsurers. In that event, payment of premiums on the
93 reinsurance contracts for the policies and annuities, for
94 periods both before and after the date of the order of
95 liquidation, shall be chargeable against the estate as a
96 class 1 administrative expense. Amounts paid by the
97 reinsurer on account of losses on the policies and annuities
98 shall be to the estate of the ceding insurer.

99 5. During the period from the date of the order of
100 liquidation until the date the guaranty association or the
101 receiver elects to assume the rights and obligations of the
102 ceding insurer under any one or more of the reinsurance
103 contracts that relate to the policies or annuities as
104 provided for in subsection 3 or 4 of this section, the
105 guaranty association, the receiver, and the reinsurer shall
106 not have any rights or obligations under any reinsurance
107 contract that is eligible for assumption by such association
108 or the receiver.

109 6. (1) If the guaranty association or the receiver,
110 as the case may be, has timely elected to assume a
111 reinsurance contract pursuant to subsection 3 or 4 of this
112 section, as applicable, the parties' rights and obligations
113 shall be governed by the provisions of subsection 3 or 4 of
114 this section, as applicable.

115 (2) Where the guaranty association covering policies
116 of life or health insurance or annuities referred to in
117 section 375.1178 or the receiver, as the case may be, does
118 not timely elect to assume a reinsurance contract pursuant

119 to subsection 3 or 4 of this section, as applicable, the
120 reinsurance contract shall be terminated retroactively
121 effective on the date of the order of liquidation and
122 subsection 9 of this section shall apply.

123 7. When policies of life or health insurance or
124 annuities referred to in section 375.1178, or the
125 obligations of the guaranty association with respect
126 thereto, are transferred to an assuming insurer, reinsurance
127 on the policies or annuities may also be transferred by the
128 guaranty association, in the case of contracts assumed under
129 subsection 3 of this section, or the receiver, in the case
130 of contracts assumed under subsection 4 of this section,
131 subject to the following:

132 (1) Unless the reinsurer and the assuming insurer
133 agree otherwise, the reinsurance contract transferred shall
134 not cover any new policies or annuities in addition to those
135 transferred;

136 (2) The obligations described in subsections 3 and 4
137 of this section shall no longer apply with respect to
138 matters arising after the effective date of the transfer; and

139 (3) Notice shall be given in writing, return receipt
140 requested, by the transferring party to the affected
141 reinsurer not less than thirty days prior to the effective
142 date of the transfer.

143 8. The provisions of this section shall, to the extent
144 provided in sections 375.1150 to 375.1246, supersede the
145 provisions of any law or of any affected reinsurance
146 contract that provides for or requires any payment of
147 reinsurance proceeds, on account of losses or events that
148 occur in periods after the date of the order of liquidation,
149 to the receiver of the ceding insurer or any other person.
150 The receiver shall remain entitled to any amounts payable by

151 the reinsurer under the reinsurance contracts with respect
152 to losses or events that occur in periods prior to the date
153 of the order of liquidation, subject to provisions of
154 sections 375.1150 to 375.1246 including applicable setoff
155 provisions.

156 9. When a reinsurance contract is terminated pursuant
157 to sections 375.1150 to 375.1246, the reinsurer and the
158 receiver shall commence a mandatory negotiation procedure in
159 accordance with this subsection:

160 (1) No later than thirty days after the date of
161 termination, each party shall appoint an actuary to
162 determine an estimated sum due as a result of the
163 termination of the reinsurance contract calculated in a way
164 expected to make the parties economically indifferent as to
165 whether the reinsurance contract continues or terminates,
166 giving due regard to the economic effects of the
167 insolvency. The sum shall take into account the present
168 value of future cash flows expected under the reinsurance
169 contract and be based on a gross premium valuation of net
170 liability using current assumptions that reflect post-
171 insolvency experience expectations, with no additional
172 margins, net of any amounts payable and receivable, with a
173 market value adjustment to reflect premature sale of assets
174 to fund the settlement;

175 (2) Within ninety days of the date of termination,
176 each party shall provide the other party with its estimate
177 of the sum due as a result of the termination of the
178 reinsurance contract, together with all relevant documents
179 and other information supporting the estimate. The parties
180 shall make a good faith effort to reach agreement on the sum
181 due;

182 (3) If the parties are unable to reach agreement
183 within ninety days following the submission of materials
184 required in subdivision (2) of this subsection, either party
185 may initiate arbitration proceedings as provided in the
186 reinsurance contract. In the event that the reinsurance
187 contract does not contain an arbitration clause, either
188 party may initiate arbitration pursuant to this subdivision
189 by providing the other party with a written demand for
190 arbitration. The arbitration shall be conducted pursuant to
191 the following procedures:

192 (a) Venue for the arbitration shall be within the
193 county of the court's jurisdiction pursuant to section
194 375.1154, or another location agreed to by the parties;

195 (b) Within thirty days of the responding party's
196 receipt of the arbitration demand, each party shall appoint
197 an arbitrator who is a disinterested active or retired
198 officer or executive of a life or health insurance or
199 reinsurance company, or other professional with no less than
200 ten years' experience in or relating to the field of life or
201 health insurance or reinsurance. The two arbitrators shall
202 appoint an independent, impartial, disinterested umpire who
203 is an active or retired officer or executive of a life or
204 health insurance or reinsurance company, or other
205 professional with no less than ten years' experience in the
206 field of life or health insurance or reinsurance. If the
207 arbitrators are unable to agree on an umpire, each
208 arbitrator shall provide the other with the names of three
209 qualified individuals, each arbitrator shall strike two
210 names from the other's list, and the umpire shall be chosen
211 by drawing lots from the remaining individuals;

212 (c) Within sixty days following the appointment of the
213 umpire, the parties shall, unless otherwise ordered by the

214 panel, submit to the arbitration panel their estimates of
215 the sum due as a result of the termination of the
216 reinsurance contract, together with all relevant documents
217 and other information supporting the estimate;

218 (d) The time periods set forth in these paragraphs may
219 be extended upon mutual agreement of the parties;

220 (e) The panel shall have all powers necessary to
221 conduct the arbitration proceedings in a fair and
222 appropriate manner, including the power to request
223 additional information from the parties, authorize
224 discovery, hold hearings, and hear testimony. The panel
225 also may appoint independent actuarial experts, the expense
226 of which shall be shared equally between the parties;

227 (4) An arbitration panel considering the matters set
228 forth in this subsection shall apply the standards set forth
229 in this subsection and shall issue a written award
230 specifying a net settlement amount due from one party or the
231 other as a result of the termination of the reinsurance
232 contract. The receivership court shall confirm that award
233 absent proof of statutory grounds for vacating or modifying
234 arbitration awards under the Federal Arbitration Act;

235 (5) If the net settlement amount agreed or awarded
236 pursuant to this subsection is payable by the reinsurer, the
237 reinsurer shall pay the amount due to the estate subject to
238 any applicable set-off under section 375.1198. If the net
239 settlement amount agreed or awarded pursuant to this
240 subsection is payable by the ceding insurer, the reinsurer
241 shall be deemed to have a timely filed claim against the
242 estate for that amount, which claim shall be paid pursuant
243 to the priority established in subsection 5 of section
244 375.1218. The affected guaranty associations shall not be
245 entitled to receive the net settlement amount, except to the

246 extent they are entitled to share in the estate assets as
247 creditors of the estate, and shall have no responsibility
248 for the net settlement amount.

249 10. Except as otherwise provided in this section,
250 nothing in this section shall alter or modify the terms and
251 conditions of any reinsurance contract. Nothing in this
252 section shall abrogate or limit any rights of any reinsurer
253 to claim that it is entitled to rescind a reinsurance
254 contract. Nothing in this section shall give a policyholder
255 or beneficiary an independent cause of action against a
256 reinsurer that is not otherwise set forth in the reinsurance
257 contract. Nothing in this section shall limit or affect any
258 guaranty association's rights as a creditor of the estate
259 against the assets of the estate. Nothing in this section
260 shall apply to reinsurance contracts covering property or
261 casualty risks.

262 11. This section and subdivision (10) of subsection 1
263 of section 376.734 shall be construed together in a manner
264 that is consistent with each other and with the purpose
265 provided for in section 376.715.

380.621. 1. This section shall be known as the
2 "Protecting Missouri's Mutual Insurance Companies Act".

3 2. As used in this section, the following terms shall
4 mean:

5 (1) "Adequate reinsurance", commercially available
6 reinsurance as deemed appropriate by the board of directors
7 of the company;

8 (2) "Unlimited aggregate reinsurance", aggregate
9 reinsurance coverage where the losses covered by the
10 reinsurer are not limited, including but not limited to the
11 annual aggregate reinsurance amount set forth in subdivision
12 (1) of 20 CSR 200-12.030.

13 3. Notwithstanding any provision of law to the
14 contrary, the authority expressly granted in this chapter
15 shall be the sole authority granted to the department over
16 any Missouri mutual insurance company operating under the
17 provisions of this chapter, provided however that any
18 provisions regarding premium taxation set forth in chapter
19 148 that are applicable to Missouri mutual insurance
20 companies shall remain applicable to Missouri mutual
21 insurance companies and further provided however that
22 chapter 382, as amended, shall remain applicable to any
23 Missouri mutual insurance company which is a member of, or
24 is seeking to become a member of, an "insurance holding
25 company system", as that term is defined in section 382.010,
26 as amended, provided however that any examination authorized
27 by chapter 382 shall comply with subsection 6 below where a
28 Missouri mutual insurance company owns, in whole or part, an
29 affiliate subject to examination. The department shall not
30 require any company operating under the provisions of this
31 chapter to waive any rights, benefits, or requirements
32 specified in this chapter, nor shall it confer favorable
33 treatment in exchange for, nor condition the granting of any
34 exception upon, any company conceding additional regulatory
35 oversight by the department. If the department and any
36 company operating under the provisions of this chapter have
37 entered into any agreement in which the department has
38 received concessions, including but not limited to
39 additional regulatory oversight beyond the authority
40 expressly granted in this chapter, then such agreement as it
41 relates to the department's authority is void upon the
42 enactment of this section, but such agreement shall remain
43 in full force and effect for the stated duration of the

44 agreement as it relates to any benefits, allowances, or
45 exemptions granted to the company by the agreement.

46 4. Notwithstanding any provision of law to the
47 contrary, nothing in this chapter nor any regulation
48 promulgated by the department, including but not limited to
49 any regulation promulgated pursuant to sections 374.045,
50 380.021, 380.271, and 380.561, shall require or be construed
51 to require any company operating under the provisions of
52 this chapter to acquire or carry reinsurance greater than
53 adequate reinsurance, including but not limited to unlimited
54 aggregate reinsurance. Nothing in this section shall be
55 construed to limit the option of an offer of unlimited
56 aggregate reinsurance.

57 5. Notwithstanding any provision of law to the
58 contrary, including but not limited to the provisions of
59 section 380.321, the director shall not have the authority
60 to hold a hearing regarding a proposed merger of companies
61 operating pursuant to the provisions of this chapter, unless
62 the director has substantial and competent evidence to
63 believe the proposed merger will prejudice the interests of
64 the policyholders of the companies. The director shall have
65 fifteen business days to review the petition for merger and,
66 upon substantial and competent evidence to believe the
67 proposed merger will prejudice the interests of the
68 policyholders of the companies, send a written notice of a
69 hearing regarding the proposed merger. The written notice
70 of hearing shall itemize the reasons why the director
71 believes the proposed merger will prejudice the
72 policyholders of the companies and shall include the date of
73 a hearing regarding the proposed merger no earlier than
74 thirty days and no later than sixty days after the notice of

75 hearing is received by the companies involved in the
76 proposed merger.

77 6. Notwithstanding the provisions of section 380.491,
78 the department shall not charge a rate for examinations in
79 excess of a reasonable fee. A reasonable fee is determined
80 by the average market rate typically charged by third party
81 vendors for such services. All working papers, recorded
82 information, documents, and copies thereof, produced by,
83 obtained by, or disclosed to the department or any other
84 person in the course of an examination made under this
85 chapter shall be confidential and not subject to subpoena,
86 and shall not be made public by the department or shared
87 with any other person, except as follows:

88 (1) Upon adoption, the director may open the final
89 examination report for public inspection;

90 (2) The director may disclose the content of an
91 examination report, preliminary examination report or
92 results, or any matter relating thereto, to the insurance
93 department of this or any other state or country, or to law
94 enforcement officials of this or any other state or agency
95 of the federal government at any time, so long as such
96 agency or office receiving the report or matters relating
97 thereto agrees in writing to hold it confidential and in a
98 manner consistent with this section; and

99 (3) In the event the director determines that legal or
100 regulatory action is appropriate as a result of any
101 examination, he or she may initiate any proceedings or
102 actions as provided by law.

103 7. (1) At any time after notification of the
104 commencement of an examination and through its completion, a
105 company may request a scheduling conference with the
106 department to discuss the following:

107 (a) The purpose and scope of the examination;
108 (b) The estimated costs of the examination;
109 (c) The types of information that the company will be
110 asked to produce;

111 (d) The most efficient means of conducting the
112 examination; and

113 (e) Any alternative approaches in conducting the
114 examination that would be more convenient, less burdensome,
115 or less expensive for the company while still providing for
116 an effective examination by the department.

117 (2) (a) No more than thirty days after the scheduling
118 conference, the department shall provide the company with a
119 detailed written budget estimate for the examination that
120 shall, for each forthcoming phase of the examination:

121 a. Identify the individuals or firms performing the
122 examination and their daily or hourly rates;

123 b. Provide an estimate of travel, lodging, meal, and
124 other administrative or supply costs; and

125 c. Estimate the length of time necessary to conduct on-
126 site and off-site examination activities.

127 (b) Within fifteen days of receipt of a budget
128 estimate under paragraph (a) of this subdivision, the
129 company and the department shall have an additional
130 discussion regarding the most efficient means of conducting
131 the examination and producing information. If necessary,
132 revisions of the budget estimate shall be made.

133 (c) The time periods under paragraphs (a) and (b) of
134 this subdivision may be extended if the company and the
135 department mutually agree to the extension.

136 (d) At any time during the examination, the department
137 shall hold another scheduling conference with the company in
138 accordance with the provisions of this subsection and

139 provide a revised budget estimate as set forth in paragraph
140 (a) of this subdivision if:

141 a. The department determines that the cost of the
142 examination will exceed the stated estimated budget by more
143 than ten percent; or

144 b. There is a material change in staffing.

380.631. 1. This section applies to any company
2 operating under the provisions of this chapter.

3 2. A company operating under the provisions of chapter
4 380 is "insolvent" if it is unable to pay its obligations
5 when they are due, or if its admitted assets do not exceed
6 its liabilities plus the reserve fund or adequate guaranty
7 fund required by section 380.021 or 380.271, as applicable.

8 3. Notwithstanding any provision of law to the
9 contrary, including but not limited to the specific
10 exception in subdivision (1) of subsection 2 of section
11 375.1150, as amended, the proceedings authorized by sections
12 375.1150 to 375.1246 may be applied to all companies
13 operating under the provisions of chapter 380, except that
14 such companies shall not be subject to sections 375.1160 to
15 375.1164. Sections 375.570 to 375.750, as amended, shall
16 apply to such proceedings.

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