

SECOND REGULAR SESSION

[PERFECTED]

SENATE SUBSTITUTE FOR

SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 834

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

3270S.05P

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Section A. Section 374.190, RSMo, is repealed and five  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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