

SECOND REGULAR SESSION

# SENATE BILL NO. 943

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT

Read 1st time February 24, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3971.011

## AN ACT

To repeal section 375.786, RSMo 1994, relating to certificates of authority to transact insurance, and to enact in lieu thereof one new section relating to the same subject.

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

Section A. Section 375.786, RSMo 1994, is repealed and one new section enacted in lieu thereof, to be known as section 375.786, to read as follows:

375.786. 1. It shall be unlawful for any insurance company to transact insurance business in this state, as set forth in subsection 2, without a certificate of authority from the director; provided, however, that this section shall not apply to:

- (1) The lawful transaction of insurance as provided in chapter 384, RSMo;
- (2) The lawful transaction of reinsurance by insurance companies;
- (3) Transactions in this state involving a policy lawfully solicited, written and delivered outside of this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurance company was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide

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

situs;

(6) Transactions in this state involving any policy of insurance or annuity contract issued prior to August 13, 1972;

(7) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy;

(8) Except as provided in chapter 384, RSMo, transactions in this state involving contracts of insurance issued to one or more industrial insureds; provided that nothing herein shall relieve an industrial insured from taxation imposed upon independently procured insurance. An "industrial insured" is hereby defined as an insured:

(a) Which procures the insurance of any risk or risks other than life, health and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant;

(b) Whose aggregate annual premiums for insurance excluding workers' compensation insurance premiums total at least twenty-five thousand dollars; and

(c) Which has at least twenty-five full-time employees;

(9) Transactions in this state involving life insurance, health insurance or annuities provided to educational or religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions, provided that any company issuing such contracts **[under] pursuant to this paragraph shall not be subject to any guarantee fund assessments by its state of domicile, and** shall:

(a) File a copy of any policy or contract issued to Missouri residents with the director;

(b) File a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the director; and

(c) Provide, in such form as may be acceptable to the director, for the appointment of the director as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Missouri citizen, and process so served against such company shall have the same form and validity as if served upon the company.

2. Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurance company is deemed to constitute the transaction of an insurance business in this state: (The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurance company" as used in sections 375.786 to 375.790 includes all corporations, associations, partnerships and individuals engaged as principals in the business of insurance and also includes

interinsurance exchanges and mutual benefit societies.)

- (1) The making of or proposing to make an insurance contract;
  - (2) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety;
  - (3) The taking or receiving of any application for insurance;
  - (4) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof;
  - (5) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
  - (6) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurance company in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurance company in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer;
  - (7) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance;
  - (8) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.
3. (1) The failure of an insurance company transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurance company and shall not prevent such insurance company from defending any action at law or suit in equity in any court of this state, but no insurance company transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurance company shall have obtained a certificate of authority.
- (2) In the event of failure of any such unauthorized insurance company to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

4. Any person who transacts insurance business without a certificate of authority, as provided in this section, is guilty of a class C felony.

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Unofficial

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