

FIRST REGULAR SESSION

SENATE BILL NO. 430

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR HOUSE.

Read 1st time February 9, 1999, and 1,000 copies ordered printed.

S1844.011

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 375.147, RSMo 1994, and section 376.1075, RSMo Supp. 1998, relating to administration of insurance, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Section 375.147, RSMo 1994, and section 376.1075, RSMo Supp. 1998, are repealed and two new sections enacted in lieu thereof, to be known as sections 375.147 and 376.1075, to read as follows:

375.147. 1. Sections 375.147 to 375.153 may be cited as the "Managing General Agents Act".

2. Sections 375.147 to 375.153 shall take effect on July 1, 1991. No insurer may continue to utilize the services of a managing general agent after June 30, 1991, unless such utilization is in compliance with sections 375.147 to 375.153.

3. As used in sections 375.147 to 375.153, the following words and phrases shall mean:

(1) "Actuary", a person who is a member in good standing of the American Academy of Actuaries;

(2) "Director", the director of the department of insurance;

(3) "Insurer", any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to section 375.161 or 375.791;

(4) "Managing general agent" or "MGA", any person, firm, association or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer

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

whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premiums equal to or more than five percent of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with one or more of the following:

(a) Adjusts or pays claims in excess of an amount determined by the director. **The threshold amount set by the director pursuant to this paragraph shall be applied equally to both domestic and foreign insurers;** or

(b) Negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as managing general agents for the purposes of sections 375.147 to 375.153:

a. An employee of the insurer;

b. A manager of the United States branch of an alien insurer;

c. An underwriting manager which, pursuant to contract, manages all the insurance operation of the insurer, is under common ownership or control with the insurer, subject to the provisions of chapter 382, RSMo;

d. A person holding a valid certificate of registration as an administrator and acting solely as an "administrator" as defined in section 376.1075; or

e. The attorney authorized by and acting for the subscribers of a reciprocal insurer or interinsurance exchange under powers of attorney;

(5) "Underwrite", the authority to accept or reject risk on behalf of the insurer.

376.1075. As used in sections 376.1075 to 376.1095, the following terms mean:

(1) "Administrator", "third-party administrator" or "TPA", a person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state[, or residents of another state from offices in this state,] in connection with life or health insurance coverage[, or annuities[, or workers' compensation] except any of the following:

(a) An employer on behalf of its employees or the employees of one or more subsidiary or affiliated corporations of such employer;

(b) A union on behalf of its members;

(c) An insurance company which is either licensed in this state pursuant to the requirements of this chapter or chapter 379, RSMo;

(d) An insurer authorized to do insurance business in another state pursuant to similar laws, with respect to a policy lawfully issued and delivered in a state other than this state, when engaged in transacting the business of insurance as defined by this chapter and chapter 379, RSMo;

(e) A health service corporation, health maintenance organization or prepaid dental plan

operating pursuant to the requirements of chapter 354, RSMo, when engaged in its duties of providing health care or dental services and indemnifying its members;

(f) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance;

(g) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;

(h) A trust, its trustees, agents and employees acting thereunder, established in conformity with 29 U.S.C. 186;

(i) A trust exempt from taxation [under] **pursuant to** Section 501(a) of the Internal Revenue Code, its trustees, and employees acting thereunder;

(j) A custodian, its agents and employees acting pursuant to a custodian account which meets the requirements of Section 401(f) of the Internal Revenue Code;

(k) A bank, credit union or other financial institution which is subject to supervision or examination by federal or state banking authorities;

(l) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims;

(m) A person who adjusts or settles claims in the normal course of his or her practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities;

(n) An adjuster whose activities are limited to adjustment of claims and who is [either] licensed by this state [or working on behalf of a licensed workers' compensation insurer];

(o) A person licensed as an insurance agent in this state, whose activities are limited exclusively to the activities of a managing general agent;

(2) "Affiliate" or "affiliated", any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person;

(3) "Control", as defined in chapter 382, RSMo;

(4) "Director", the director of the department of insurance;

(5) "Insurance" or "insurance coverage", any coverage offered or provided by an insurer;

(6) "Insurer", any person undertaking to provide life or health insurance coverage[,] **or** annuities [or workers' compensation coverage] in this state. For the purposes of sections 376.1075 to 376.1095, insurer includes a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer self-insured health plan, a self-insured multiple employer welfare arrangement, or any other person providing a plan of insurance subject to state insurance regulation. Insurer does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the

insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act of 1974;

(7) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the overall planning and coordinating of an insurance program, and the ability to procure bonds and excess insurance.

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