

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 895
93RD GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 16, 2006, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

4180S.06C

AN ACT

To repeal sections 354.180, 354.210, 354.350, 354.444, 354.722, 374.046, 374.210, 374.215, 374.280, 374.512, 374.755, 374.787, 374.789, 375.012, 375.020, 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, and 384.071, RSMo, and to enact in lieu thereof fifty-seven new sections relating to various enforcement powers of the department of insurance, with penalty provisions.

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

Section A. Sections 354.180, 354.210, 354.350, 354.444, 354.722, 374.046, 2 374.210, 374.215, 374.280, 374.512, 374.755, 374.787, 374.789, 375.012, 375.020, 3 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 4 375.787, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1012, 5 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1204, 375.1306, 375.1309, 6 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, and 7 384.071, RSMo, are repealed and fifty-seven new sections enacted in lieu thereof, 8 to be known as sections 354.180, 354.210, 354.350, 354.444, 354.722, 374.046, 9 374.047, 374.048, 374.049, 374.051, 374.055, 374.185, 374.210, 374.215, 374.280, 10 374.512, 374.755, 374.780, 374.787, 374.789, 375.012, 375.020, 375.143, 375.145, 11 375.152, 375.236, 375.306, 375.310, 375.445, 375.720, 375.777, 375.780, 375.786, 12 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 375.1014, 375.1016, 13 375.1135, 375.1156, 375.1160, 375.1161, 375.1204, 375.1306, 375.1309, 376.309, 14 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, and 384.071, to

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

15 read as follows:

354.180. 1. [(1) The director may issue cease and desist orders whenever
2 it appears to him upon competent and substantial evidence that any person is
3 acting in violation of any law, rule or regulation relating to corporations subject
4 to the provisions of sections 354.010 to 354.380, or whenever the director has
5 reason to believe that any health services corporation is in such financial
6 condition that the assumption of additional obligations would be hazardous to its
7 members or the general public. Before any cease and desist order shall be issued,
8 a copy of the proposed order together with an order to show cause why such cease
9 and desist order should not be issued shall be served either personally or by
10 certified mail on any person named therein.

11 (2) (a) Upon issuing any order to show cause, the director shall notify the
12 person named therein that the person is entitled to a public hearing before the
13 director if a request for a hearing is made in writing to the director within fifteen
14 days from the day of the service of the order to show cause why the cease and
15 desist order should not be issued.

16 (b) The cease and desist order shall be issued fifteen days after the service
17 of the order to show cause if no request for a public hearing is made as above
18 provided.

19 (c) Upon receipt of a request for a hearing, the director shall set a time
20 and place for the hearing which shall not be less than ten days or more than
21 fifteen days from the receipt of the request or as otherwise agreed upon by the
22 parties. Notice of the time and place shall be given by the director not less than
23 five days before the hearing.

24 (d) At the hearing the person may be represented by counsel and shall be
25 entitled to be advised of the nature and source of any adverse evidence procured
26 by the director and shall be given the opportunity to submit any relevant written
27 or oral evidence in his behalf to show cause why the cease and desist order should
28 not be issued.

29 (e) At the hearing the director shall have such powers as are conferred
30 upon him in section 354.190.

31 (f) At the conclusion of the hearing, or within ten days thereafter, the
32 director shall issue the cease and desist order as proposed or as subsequently
33 modified or notify the person or corporation subject to the provisions of sections
34 354.010 to 354.380 that no order shall be issued, provided that where the director
35 finds that the corporation is in such financial condition that the assumption of

36 additional obligations would be hazardous to its members or the general public,
37 he may order the corporation to cease and desist from making contracts for new
38 members or for the provision of new benefits until the corporation's financial
39 condition is no longer hazardous.

40 (g) The circuit court of Cole County shall have jurisdiction to review any
41 cease and desist order of the director under the provisions of sections 536.100 to
42 536.150, RSMo; and, if any person against whom an order is issued fails to
43 request judicial review, or if, after judicial review, the director's cease and desist
44 order is upheld, the order shall become final.

45 2. (1) Any person willfully violating any provision of any cease and desist
46 order of the director after it becomes final, while the same is in force, upon
47 conviction thereof shall be guilty of a class A misdemeanor, punishable as
48 provided by law.

49 (2) In addition to any other penalty provided, violation of any cease and
50 desist order shall subject the violator to suspension or revocation of any
51 certificate of authority or license as may be applicable under the laws of this state
52 relating to corporations subject to the provisions of sections 354.010 to 354.380.

53 3. (1) When it appears to the director that there is a violation of the law,
54 rule or regulation relating to corporations subject to the provisions of sections
55 354.010 to 354.380, and that the continuance of the acts or actions of any person
56 as herein defined would produce injury to the public or to any other person in this
57 state, or when it appears that a person is doing or threatening to do some act in
58 violation of the laws of this state relating to corporations subject to the provisions
59 of sections 354.010 to 354.380, the director may file a petition for injunction in
60 the circuit court of Cole County, Missouri, in which he may ask for a temporary
61 injunction or restraining order as well as a permanent injunction to restrain the
62 act or threatened act. In the event the temporary injunction or restraining order
63 or a permanent injunction is issued by the circuit court of Cole County, Missouri,
64 no person against whom the temporary injunction or restraining order or
65 permanent injunction is granted shall do or continue to do any of the acts or
66 actions complained of in the petition for injunction, unless and until the
67 temporary injunction or restraining order or permanent injunction is vacated,
68 dismissed or otherwise terminated.

69 (2) Any writ of injunction issued under this law may be served and
70 enforced as provided by law in injunctions issued in other cases, but the director
71 of the insurance department shall not be required to give any bond as preliminary

72 to or in the course of any proceedings to which he is a party as director.

73 4. The term "person" as used in this section shall include any individual,
74 partnership, corporation, association or trust, or any other legal entity.] **If the**
75 **director determines that a person has engaged, is engaging, or is about**
76 **to engage in a violation of sections 354.010 to 354.380 or a rule adopted**
77 **or order issued pursuant thereto, or a person has materially aided, is**
78 **materially aiding, or is about to materially aid an act, practice,**
79 **omission, or course of business constituting a violation of sections**
80 **354.010 to 354.380 or a rule adopted or order issued pursuant thereto,**
81 **the director may issue such administrative orders as authorized under**
82 **section 374.046, RSMo. A violation of these sections is a level two**
83 **violation under section 374.049, RSMo, except for any violation of**
84 **sections 354.320 and 354.350, which is a level three violation.**

85 2. **If the director believes that a person has engaged, is engaging,**
86 **or is about to engage in a violation of sections 354.010 to 354.380 or a**
87 **rule adopted or order issued pursuant thereto, or that a person has**
88 **materially aided, is materially aiding, or is about to materially aid an**
89 **act, practice, omission, or course of business constituting a violation of**
90 **sections 354.010 to 354.380 or a rule adopted or order issued pursuant**
91 **thereto, the director may maintain a civil action for relief authorized**
92 **under section 374.048, RSMo. A violation of these sections is a level two**
93 **violation under section 374.049, RSMo, except for any violation of**
94 **sections 354.320 and 354.350, which is a level three violation.**

354.210. [1. Notwithstanding any other provisions of chapter 354,] **If the**
2 **director [may, after a hearing, order as a forfeiture to the state of Missouri a sum**
3 **not to exceed one hundred dollars for each violation by any person or corporation**
4 **willfully violating any provision of sections 354.010 to 354.380 for which no**
5 **specific punishment is provided, or order of the director made in accordance with**
6 **such sections. Such forfeiture may be recovered by a civil action brought by and**
7 **in the name of the director of insurance. The civil action may be brought in the**
8 **county which has venue of an action against the person or corporation under**
9 **other provisions of law.**

10 2. Nothing contained in this section shall be construed to prohibit the
11 director and the corporation or its enrollment representative from agreeing to a
12 voluntary forfeiture of the sum mentioned herein without civil proceedings being
13 instituted. Any sum so agreed upon shall be paid into the school fund as

14 provided by law for other fines and penalties] **has reason to believe that any**
15 **health services corporation is in such financial condition that the**
16 **assumption of additional obligations would be hazardous to its**
17 **members or the general public, the director may issue orders to seek**
18 **relief to protect the public under the provisions of section 354.180.**

354.350. 1. [When upon investigation the director finds that any] **It is**
2 **unlawful for any** corporation subject to the provisions of sections 354.010 to
3 354.380 transacting business in this state [has conducted] **to:**

4 **(1) Conduct** its business fraudulently[, is not carrying];
5 **(2) Fail to carry** out its contracts in good faith[, or is]; **or**
6 **(3) Habitually and as a matter of business practice [compelling] compel**
7 claimants under policies or liability judgment creditors of its members to either
8 accept less than the amount due under the terms of the policy or resort to
9 litigation against the corporation to secure payment of the amount due[, and that
10 a proceeding in respect thereto would be in the interest of the public, he shall
11 issue and serve upon the corporation a statement of the charges in that respect
12 and a notice of a hearing thereon].

13 2. [If after the hearing the director shall determine that the corporation
14 subject to the provisions of sections 354.010 to 354.380 has fraudulently
15 conducted its business as defined in this section, he shall order the corporation
16 to cease and desist from the fraudulent practice and may suspend the
17 corporation's certificate of authority for a period not to exceed thirty days and
18 may in addition order a forfeiture to the state of Missouri of a sum not to exceed
19 one thousand dollars, which forfeiture may be recovered by a civil action brought
20 by and in the name of the director of insurance. The civil action may be brought
21 in the circuit court of Cole County or, at the option of the director of insurance,
22 in another county which has venue of an action against the corporation under
23 other provisions of law] **If the director determines that a person has**
24 **engaged, is engaging, or is about to engage in a violation of this section**
25 **or a rule adopted or order issued pursuant thereto or that a person has**
26 **materially aided, is materially aiding, or is about to materially aid an**
27 **act, practice, omission, or course of business constituting a violation of**
28 **this section or a rule adopted or order issued pursuant thereto, the**
29 **director may issue such administrative orders as authorized under**
30 **section 374.046, RSMo. A violation of this section is a level three**
31 **violation under section 374.049, RSMo.** The director of insurance may also

32 suspend or revoke the license **or certificate of authority** of a corporation
33 subject to the provisions of sections 354.010 to 354.380 or enrollment
34 representative for any such willful violation.

35 **3. If the director believes that a person has engaged, is engaging,**
36 **or is about to engage in a violation of this section or a rule adopted or**
37 **order issued pursuant thereto or that a person has materially aided, is**
38 **materially aiding, or is about to materially aid an act, practice,**
39 **omission, or course of business constituting a violation of this section**
40 **or a rule adopted or order issued pursuant thereto, the director may**
41 **maintain a civil action for relief authorized under section 374.048,**
42 **RSMo. A violation of this section is a level three violation under**
43 **section 374.049, RSMo.**

354.444. 1. [Notwithstanding any other provisions of chapter 354,] If the
2 director [may, after a hearing, order a forfeiture to the state of Missouri a sum
3 not to exceed one hundred dollars for each violation by any person knowingly
4 violating any provision] **determines that a person has engaged, is**
5 **engaging, or is about to engage in a violation** of sections 354.400 to 354.636
6 [for which no specific punishment is provided, or order a specific punishment in
7 accordance with such sections. Such forfeiture may be recovered by a civil action
8 brought by and in the name of the department of insurance. The civil action may
9 be brought in the county which has venue for an action against the person or
10 corporation], **or a rule adopted or order issued pursuant thereto or that**
11 **a person has materially aided, is materially aiding, or is about to**
12 **materially aid an act, practice, omission, or course of business**
13 **constituting a violation of sections 354.400 to 354.636 or a rule adopted**
14 **or order issued pursuant thereto, the director may issue such**
15 **administrative orders as authorized under section 374.046, RSMo. A**
16 **violation of any of these sections is a level one violation under section**
17 **374.049, RSMo.**

18 2. [Nothing contained in this section shall be construed to prohibit the
19 director and the corporation or its enrollment representative from agreeing to a
20 voluntary forfeiture of the sum mentioned herein without civil proceedings being
21 instituted. Any payment under this section shall be paid into the school fund as
22 provided by article IX, section 7 of the Missouri Constitution for fines and
23 penalties] **If the director believes that a person has engaged, is engaging,**
24 **or is about to engage in a violation of sections 354.400 to 354.636, or a**

25 rule adopted or order issued pursuant thereto or that a person has
26 materially aided, is materially aiding, or is about to materially aid an
27 act, practice, omission, or course of business constituting a violation of
28 sections 354.400 to 354.636 or a rule adopted or order issued pursuant
29 thereto, the director may maintain a civil action for relief authorized
30 under section 374.048, RSMo. A violation of any of these sections is a
31 level one violation under section 374.049, RSMo.

354.722. 1. The director may suspend or revoke any certificate of
2 authority issued to a prepaid dental plan corporation pursuant to sections
3 354.700 to 354.723 if he finds that any of the following conditions exist:

4 (1) The prepaid dental plan corporation is operating substantially in
5 contravention of its basic organizational document or is not fulfilling its contracts;

6 (2) [The prepaid dental plan corporation issues a contract, contract
7 certificate or amendment which has not been filed with the director and approved
8 or deemed approved by the director;

9 (3)] The prepaid dental plan corporation is no longer financially
10 responsible and may reasonably be expected to be unable to meet its contractual
11 obligations to enrollees, or prospective enrollees;

12 [(4)] (3) The prepaid dental plan corporation, or any person on its behalf,
13 has advertised or merchandised its prepaid dental benefits in an untrue,
14 misrepresentative, misleading, deceptive, or unfair manner; or

15 [(5)] (4) The continued operation of the prepaid dental plan corporation
16 would be hazardous to its enrollees[; or

17 (6) The prepaid dental plan corporation has failed to substantially comply
18 with the provisions of sections 354.700 to 354.723 or any rules or regulations
19 promulgated thereunder].

20 2. [When the director believes that grounds for the suspension or
21 revocation of the corporation's certificate of authority exists, he shall notify the
22 corporation in writing, stating the grounds and fixing a date and time for a
23 hearing. At least twenty days' notice of such hearing shall be given. The hearing
24 and any appeals therefrom shall be in accordance with chapter 536, RSMo.

25 3. The director may, in lieu of the suspension or revocation of the
26 corporation's certification of authority, file suit in circuit court to seek a civil
27 penalty in an amount not less than one hundred dollars nor more than one
28 thousand dollars.

29 4.] If the director determines that a person has engaged, is

30 **engaging, or is about to engage in a violation of sections 354.700 to**
31 **354.723 or a rule adopted or order issued pursuant thereto or that a**
32 **person has materially aided, is materially aiding, or is about to**
33 **materially aid an act, practice, omission, or course of business**
34 **constituting a violation of sections 354.700 to 354.723 or a rule adopted**
35 **or order issued pursuant thereto, the director may issue such**
36 **administrative orders as authorized under section 374.046, RSMo. A**
37 **violation of this section is a level two violation under section 374.049,**
38 **RSMo. The director of insurance may also suspend or revoke the**
39 **certificate of authority of a corporation for any such willful violation.**

40 **3.** When the certificate of authority of a prepaid dental plan corporation
41 is suspended, the prepaid dental plan corporation shall not, during the period of
42 such suspension, enroll any additional enrollees except newborn children or other
43 newly acquired dependent of existing enrollees and shall not engage in any
44 advertising or solicitation whatsoever.

45 **[5.] 4.** When the certificate of authority of a prepaid dental plan
46 corporation is revoked, such corporation shall proceed, immediately following the
47 effective date of the order of revocation, to wind up its affairs and shall conduct
48 no further business except as may be essential to the orderly conclusion of the
49 affairs of such corporation. It shall engage in no further advertising or
50 solicitation whatsoever.

374.046. 1. **[(1)]** The director may issue cease and desist orders whenever
2 it appears to him upon competent and substantial evidence that any person is
3 acting in violation of any law of this state or any rule or regulation promulgated
4 by the director relating to the business of insurance. Before any cease and desist
5 order shall be issued, a copy of the proposed order together with an order to show
6 cause why such cease and desist order should not be issued shall be served either
7 personally or by certified mail on any person named therein.

8 **(2) (a)** Upon issuing any order to show cause the director shall notify the
9 person named therein that the person is entitled to a public hearing before the
10 director if a request for a hearing is made in writing to the director within fifteen
11 days from the day of the service of the order to show cause why the cease and
12 desist order should not be issued.

13 **(b)** The cease and desist order shall be issued fifteen days after the service
14 of the order to show cause if no request for a public hearing is made as above
15 provided.

16 (c) Upon receipt of a request for a hearing the director shall set a time
17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 (d) At the hearing the person may be represented by counsel and shall be
22 entitled to be advised of the nature and source of any adverse evidence procured
23 by the director and shall be given the opportunity to submit any relevant written
24 or oral evidence in his behalf to show cause why the cease and desist order should
25 not be issued.

26 (e) At the hearing the director shall have such powers as are conferred
27 upon him in section 374.190.

28 (f) At the conclusion of the hearing, or within ten days thereafter, the
29 director shall issue the cease and desist order as proposed or as subsequently
30 modified or notify the person that no order shall be issued.

31 (g) The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any person against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist
35 order is upheld, the order shall become final.

36 **2.] If the director determines based upon substantial and**
37 **competent evidence that a person has engaged, is engaging, or is about**
38 **to engage in an act, practice, omission, or course of business**
39 **constituting a violation of the laws of this state relating to insurance**
40 **in this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo, or**
41 **a rule adopted or order issued pursuant thereto or that a person has**
42 **materially aided, is materially aiding, or is about to materially aid an**
43 **act, practice, omission, or course of business constituting a violation of**
44 **the laws of this state relating to insurance in this chapter, chapter 354,**
45 **RSMo, and chapters 375 to 385, RSMo, or a rule adopted or order issued**
46 **pursuant thereto, the director may order the following relief:**

47 (1) An order directing the person to cease and desist from
48 engaging in the act, practice, omission, or course of business;

49 (2) A curative order or order directing the person to take other
50 action necessary or appropriate to comply with the insurance laws of
51 this state;

52 **(3) Order a civil penalty or forfeiture as provided in section**
53 **374.049; and**

54 **(4) Award reasonable costs of the investigation.**

55 **2. In determining any relief sought, the director shall consider,**
56 **among other factors, whether:**

57 **(1) The violations are likely to continue or reoccur;**

58 **(2) Actual financial loss was sustained by consumers and**
59 **restitution has been made;**

60 **(3) The act, practice, omission, or course of business was**
61 **detected as part of a self-audit or internal compliance program and**
62 **immediately reported to the director; and**

63 **(4) The act, practice, omission, or course of business had**
64 **previously been detected, but inadequate policies and procedures were**
65 **implemented to prevent reoccurrence.**

66 **3. Unless the director determines that a summary order is**
67 **appropriate under subsection 4 of this section, the director shall**
68 **provide notice of the intent to initiate administrative enforcement by**
69 **-serving a statement of the reasons for the action upon any person**
70 **subject to the proceedings. A statement of reasons, together with an**
71 **order to show cause why a cease and desist order and other relief**
72 **should not be issued, shall be served either personally or by certified**
73 **mail on any person named therein. The director shall schedule a time**
74 **and place at least ten days thereafter, for hearing, and after notice of**
75 **and opportunity for hearing to each person subject to the order, the**
76 **director may issue a final order under subsection 6 of this section.**

77 **4. If the director determines that sections 375.014, 375.144, or**
78 **375.310, RSMo, are being violated and consumers are being aggrieved**
79 **by the violations, the order issued under subdivision (1) of subsection**
80 **1 of this section may be summary and be effective on the date of**
81 **issuance. Upon issuance of the order, the director shall promptly serve**
82 **each person subject to the order with a copy of the order and a notice**
83 **that the order has been entered.**

84 **5. A summary order issued under subsection 4 of this section**
85 **must include a statement of the reasons for the order, notice within**
86 **five days after receipt of a request in a record from the person that the**
87 **matter will be scheduled for a hearing, and a statement whether the**
88 **department is seeking a civil penalty or costs of the investigation. If**

89 a person subject to the order does not request a hearing and none is
90 ordered by the director within thirty days after the date of service of
91 the order, the order becomes final as to that person by operation of
92 law. If a hearing is requested or ordered, the director, after notice of
93 and opportunity for hearing to each person subject to the order, may
94 modify or vacate the order or extend it until final determination.

95 6. If a hearing is requested or ordered pursuant to subsection 3
96 or subsection 5 of this section, a hearing before the director or a
97 hearing officer designated by the director must be provided. A final
98 order may not be issued unless the director makes findings of fact and
99 conclusions of law in a record in accordance with the provisions of
100 chapter 536, RSMo, and procedural rules promulgated by the
101 director. The final order may make final, vacate, or modify the order
102 issued under subsection 5 of this section.

103 7. In a final order under subsection 6 of this section, the director
104 may impose a civil penalty or forfeiture as provided in section 374.049.
105 No civil penalty or forfeiture may be imposed against a person unless
106 the person has engaged in the act, practice, omission, or course of
107 business constituting the violation.

108 8. In a final order under subsection 6 of this section, the director
109 may charge the actual cost of an investigation or proceeding for a
110 violation of the insurance laws of this state or a rule adopted or order
111 issued pursuant thereto. These funds shall be paid to the director to
112 the credit of the insurance dedicated fund.

113 9. The director is authorized to issue subpoenas, compel
114 attendance of witnesses, administer oaths, hear testimony of witnesses,
115 receive evidence, and require the production of books, papers, records,
116 correspondence, and all other written instruments or documents
117 relevant to the proceeding and authorized in contested cases under the
118 provisions of chapter 536, RSMo, and procedural rules promulgated by
119 the director.

120 10. Statements of charges, notices, orders, and other processes
121 of the director may be served by anyone duly authorized by the
122 director either in the manner provided by law for service of process in
123 civil actions, or by registering or certifying and mailing a copy thereof
124 to the person affected by such statement, notice, order, or other process
125 at his or its residence or principal office or place of business. The

126 verified return by the person so serving such statement, notice, order,
127 or other process setting forth the manner of such service shall be proof
128 of the same, and the return postcard receipt for such statement, notice,
129 order, or other process, registered and mailed as aforesaid, shall be
130 proof of the service of the same.

131 11. If a petition for judicial review of a final order is not filed in
132 accordance with section 374.055, the director may file a certified copy
133 of the final order with the clerk of a court of competent
134 jurisdiction. The order so filed has the same effect as a judgment of the
135 court and may be recorded, enforced, or satisfied in the same manner
136 as a judgment of the court.

137 12. If a person violates or does not comply with an order under
138 this section, the director may under section 374.048 petition a court of
139 competent jurisdiction to enforce the order. The court may not require
140 the director to post a bond in an action or proceeding under this
141 section. If the court finds, after service and opportunity for hearing,
142 that the person was not in compliance with the order, the court may,
143 in addition to relief authorized in section 374.048, adjudge the person
144 in civil contempt of the order. A violation of or failure to comply with
145 an order under this section is a level three violation under section
146 374.049. The court may impose a further civil penalty against the
147 person for contempt in an amount not less than five thousand dollars
148 but not greater than one hundred thousand dollars for each violation
149 and may grant any other relief the court determines is just and proper
150 in the circumstances.

151 13. Until the expiration of the time allowed under section 374.055
152 for filing a petition for judicial review, if no such petition has been
153 duly filed within such time or if a petition for review has been filed
154 within such time, then until the transcript of the record in the
155 proceeding has been filed in the circuit court of Cole County, the
156 director may at any time, upon such notice and in such manner as he
157 shall deem proper, modify or set aside in whole or in part any order
158 issued by him under this section.

159 14. The enforcement authority of the director under this section
160 is cumulative to any other statutory authority of the director.

161 15. The director is authorized to issue administrative consent
162 orders in the public interest as complete or partial settlement of any

163 investigation, examination, or other proceeding, which curative orders
164 may contain any provision necessary or appropriate to assure
165 compliance with the insurance laws of this state, require payment of
166 restitution to be distributed directly or by the director to any
167 aggrieved consumers, civil penalties, or voluntary forfeiture,
168 reimbursement for costs of investigation or examination, or any other
169 relief deemed by the director to be necessary and appropriate. Any
170 remaining matters not addressed in settlement may be submitted to the
171 director through a contested proceeding under this section.

172 16. (1) Any person willfully violating any provision of any cease and
173 desist order of the director after it becomes final, while the same is in force, upon
174 conviction thereof shall be punished by a fine of not more than one **hundred**
175 thousand dollars [or one year in jail], **by imprisonment of up to ten years,**
176 or by both such fine and [jail sentence] **imprisonment.**

177 (2) In addition to any other penalty provided, violation of any cease and
178 desist order shall subject the violator to suspension or revocation of any
179 certificate of authority or license as may be applicable under the laws of this state
180 relating to the business of insurance.

181 [3. (1) When it appears to the director that there is a violation of the laws
182 of this state or any rule or regulation promulgated by the director relating to the
183 business of insurance, and that the continuance of the acts or actions of any
184 person as herein defined would produce injury to the insuring public or to any
185 other person in this state, or when it appears that a person is doing or
186 threatening to do some act in violation of the laws of this state relating to
187 insurance, the director may file a petition for injunction in the circuit court of
188 Cole County, Missouri, in which he may ask for a temporary injunction or
189 restraining order as well as a permanent injunction to restrain the act or
190 threatened act. In the event the temporary injunction or restraining order or a
191 permanent injunction is issued by the circuit court of Cole County, Missouri, no
192 person against whom the temporary injunction or restraining order or permanent
193 injunction is granted shall do or continue to do any of the acts or actions
194 complained of in the petition for injunction, unless and until the temporary
195 injunction or restraining order or permanent injunction is vacated, dismissed or
196 otherwise terminated.

197 (2) Any writ of injunction issued under this law may be served and
198 enforced as provided by law in injunctions issued in other cases, but the director

199 of the insurance department shall not be required to give any bond as preliminary
200 to or in the course of any proceedings to which he is a party as director under this
201 section, either for costs or for any injunction, or in case of appeal to either the
202 supreme court or to any appellate court.

203 4.] **17.** The term "person" as used in this [section] **chapter** shall include
204 any individual, partnership, corporation, association or trust, or any other legal
205 entity.

206 **18.** The term "order" as used in this chapter shall include a
207 formal administrative direction or command of the director issued
208 under this section or in any contested case subject to the provisions of
209 section 536.063, RSMo, or any lawful administrative proceeding subject
210 to judicial review, but shall not include department bulletins, no-action
211 letters, advisory opinions, or any other statement of general
212 applicability that should be adopted by rule.

374.047. 1. If the director determines, based on substantial and
2 competent evidence, that a corporation or insurer with a certificate of
3 authority under the laws relating to insurance willfully has engaged in
4 an act, practice, omission, or course of business constituting a level
5 three, four, or five violation of the laws of this state relating to
6 insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,
7 or been convicted of any felony or misdemeanor under any state or
8 federal law, the director may, after hearing, issue an order suspending
9 or revoking the certificate of authority.

10 **2.** Prior to issuance of the order under this section, the director
11 shall give at least thirty days' notice with a statement of reasons for the
12 action and afford such corporation or insurer the opportunity for a
13 hearing upon written request. If such corporation or insurer requests
14 a hearing in writing, a final order of suspension or revocation may not
15 be issued unless the director makes findings of fact and conclusions of
16 law in a record in accordance with the contested case provisions of
17 chapter 536, RSMo, and procedural rules promulgated by the director.

18 **3.** The enforcement authority of the director under this section
19 is cumulative to any other statutory authority of the director.

374.048. 1. If the director believes that a person has engaged, is
2 engaging, or is about to engage in an act, practice, omission, or course
3 of business constituting a violation of the laws of this state relating to
4 insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,

5 or a rule adopted or order issued pursuant thereto or that a person has,
6 is, or is about to engage in an act, practice, omission, or course of
7 business that materially aids a violation of the laws of this state
8 relating to insurance in this chapter, chapter 354 and chapters 375 to
9 385, RSMo, or a rule adopted or order issued pursuant thereto, the
10 director may maintain an action in the circuit court of any county of
11 the state or any city not within a county to enjoin the act, practice,
12 omission, or course of business and to enforce compliance with the laws
13 of this state relating to insurance or a rule adopted or order issued by
14 the director.

15 2. In an action under this section and on a proper showing, the
16 court may:

17 (1) Issue a permanent or temporary injunction, restraining
18 order, or declaratory judgment;

19 (2) Order other appropriate or ancillary relief, which may
20 include:

21 (a) An asset freeze, accounting, writ of attachment, writ of
22 general or specific execution, and appointment of a receiver or
23 conservator, which may be the director, for the defendant or the
24 defendant's assets;

25 (b) Ordering the director to take charge and control of a
26 defendant's property, including accounts in a depository institution,
27 rents, and profits; to collect debts; and to acquire and dispose of
28 property;

29 (c) Imposing a civil penalty or forfeiture as provided in section
30 374.049;

31 (d) Upon showing financial loss, injury, or harm to identifiable
32 consumers, imposing an order of restitution or disgorgement directed
33 to a person who has engaged in an act, practice, omission, or course of
34 business in violation of the laws or rules relating to insurance;

35 (e) Ordering the payment of prejudgment and post-judgment
36 interest;

37 (f) Ordering reasonable costs of investigation and prosecution;
38 and

39 (g) Ordering the payment to the insurance dedicated fund an
40 additional amount equal to ten percent of the total restitution or
41 disgorgement ordered, or such other amount as awarded by the court,

42 which shall be appropriated to an insurance consumer education
43 program administered by the director; or

44 (3) Order such other relief as the court considers necessary or
45 appropriate.

46 3. The director may not be required to post a bond in an action
47 or proceeding under this section.

48 4. The case may be brought in the circuit court of Cole County,
49 any county or city not within a county in which a violation has
50 occurred, or any county or city not within a county, which has venue
51 of an action against the person, partnership, or corporation under
52 other provisions of law.

53 5. The enforcement authority of the director under this section
54 is cumulative to any other authority of the director to impose orders
55 under other provisions of the insurance laws of this state.

56 6. If the director determines it to be in the public interest, the
57 director is authorized to enter into a consent injunction and judgment
58 in the settlement of any proceeding under the laws of this state relating
59 to insurance in this chapter, chapter 354 and chapters 375 to 385,
60 RSMo.

61 7. A "Consumer Restitution Fund" shall be created for the
62 purpose of preserving and distributing to aggrieved consumers
63 disgorgement or restitution funds obtained through enforcement
64 proceedings brought by the director. In addition to the equitable
65 powers of the court authorized above, the court may order that such
66 funds be paid into the consumer restitution fund for distribution to
67 aggrieved consumers. It shall be the duty of the director to distribute
68 such funds to those persons injured by the unlawful acts, practices,
69 omissions, or courses of business by the subject of the
70 proceeding. Notwithstanding the provisions of section 33.080, RSMo,
71 any funds remaining in the director's consumer restitution fund at the
72 end of any biennium shall not be transferred to the general revenue
73 fund, but if the director is unable with reasonable efforts to ascertain
74 the aggrieved consumers, then the funds may be transferred to the
75 insurance dedicated fund to be used for consumer education.

374.049. 1. Violations of the laws of this state relating to
2 insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,
3 or a rule adopted or order issued by the director, are classified for the

4 **purpose of civil penalties and forfeitures into the following five**
5 **classifications:**

- 6 (1) **Level one violations;**
- 7 (2) **Level two violations;**
- 8 (3) **Level three violations;**
- 9 (4) **Level four violations; and**
- 10 (5) **Level five violations.**

11 **2. An order to impose a civil penalty or forfeiture, when imposed**
12 **by the director in an administrative proceeding under section 374.046**
13 **on a person for any violation of the laws of this state relating to**
14 **insurance in this chapter, chapter 354 and chapters 375 to 385, RSMo,**
15 **or a rule adopted or order issued by the director, shall be an order to**
16 **pay an amount not exceeding the following:**

- 17 (1) **No civil penalty or forfeiture for a level one violation;**
- 18 (2) **One thousand dollars per each level two violation, up to an**
19 **aggregate civil penalty or forfeiture of fifty thousand dollars per**
20 **annum for multiple violations;**
- 21 (3) **Five thousand dollars per each level three violation, up to an**
22 **aggregate civil penalty or forfeiture of one hundred thousand dollars**
23 **per annum for multiple violations;**
- 24 (4) **Ten thousand dollars per each level four violation, up to an**
25 **aggregate civil penalty or forfeiture of two hundred fifty thousand**
26 **dollars per annum for multiple violations;**
- 27 (5) **Fifty thousand dollars per each level five violation, up to an**
28 **aggregate civil penalty or forfeiture of two hundred fifty thousand**
29 **dollars per annum for multiple violations.**

30 **3. An order to impose a civil penalty or forfeiture, when imposed**
31 **by the court in an enforcement proceeding under section 374.048 on a**
32 **person for any violation of the laws of this state relating to insurance**
33 **in this chapter, chapter 354 and chapters 375 to 385, RSMo, or a rule**
34 **adopted or order issued by the director, shall be an order to pay an**
35 **amount not exceeding the following:**

- 36 (1) **No civil penalty or forfeiture for a level one violation;**
- 37 (2) **One thousand dollars per each level two violation, up to an**
38 **aggregate civil penalty or forfeiture of fifty thousand dollars per**
39 **annum for multiple violations;**
- 40 (3) **Five thousand dollars per each level three violation, up to an**

41 aggregate civil penalty or forfeiture of two hundred thousand dollars
42 per annum for multiple violations;

43 (4) Twenty thousand dollars per each level four violation, up to
44 an aggregate civil penalty or forfeiture of one million dollars per
45 annum for multiple violations;

46 (5) One million dollars per each level five violation, with no limit
47 to civil penalties or forfeitures for multiple violations;

48 4. No civil penalty or forfeiture may be imposed against a person,
49 unless the person has engaged in the act, practice, omission or course
50 of business constituting the violation.

51 5. Any violation of the laws of this state relating to insurance in
52 this chapter, chapter 354 and chapters 375 to 385, RSMo, which is not
53 classified or does not authorize a specific range for a civil penalty or
54 forfeiture for violations, shall be classified as a level one violation. In
55 bringing an action to enforce a rule adopted by the director, unless the
56 conduct that violates the rule also violates the enabling statute, the
57 violation shall be classified as a level one violation and shall not be
58 subject to any provision in this section regarding the enhancement of
59 a civil penalty or forfeiture.

60 6. The civil penalties or forfeitures set forth in this section
61 establish a maximum range. The court, or the director in
62 administrative enforcement, shall consider all of the circumstances,
63 including the nature of violations to determine whether, and to any
64 extent, a civil penalty or forfeiture is justified.

65 7. In any enforcement proceeding, the court, or director in
66 administrative enforcement, may enhance the civil penalty or forfeiture
67 with a one classification step increase under this section, if the
68 violation was knowing. The court, or director in administrative
69 enforcement, may enhance the civil penalty or forfeiture with a two
70 level increase if the violation was knowingly committed in conscious
71 disregard of the law.

72 8. In any enforcement proceeding, the court, or director in
73 administrative enforcement, may, after consideration of the factors
74 specified in subsection 2 of section 374.046, enhance the civil penalty
75 or forfeiture with a one classification step increase under this section,
76 if the violations resulted in actual financial loss to consumers.

77 9. In any enforcement proceeding, the court, or director in

78 administrative enforcement, shall reduce the civil penalty or forfeiture
79 on that person with up to a two classification step reduction under this
80 section, if prior to receiving notice of the violation from the
81 department, the person detects the violation through a self-audit or
82 internal compliance program reasonably designed to detect and
83 prevent insurance law violations and immediately reports the violation
84 to the director.

85 10. Any civil penalty or forfeiture recovered by the director shall
86 be paid to the treasurer and then distributed to the public schools as
87 required by Article IX, section 7 of the Missouri Constitution.

88 11. The penalties and forfeitures authorized by this section
89 govern all actions and proceedings that are instituted on the basis of
90 conduct occurring after August 28, 2006.

374.051. 1. Any applicant refused a license or the renewal of a
2 license by order of the director under sections 374.755, 374.787, and
3 375.141 may file a petition with the administrative hearing commission
4 alleging that the director has refused the license. The administrative
5 hearing commission shall conduct hearings and make findings of fact
6 and conclusions of law in determining whether the applicant may be
7 disqualified by statute. Notwithstanding section 621.120, RSMo, the
8 director shall retain discretion in refusing a license or renewal and
9 such discretion shall not transfer to the administrative hearing
10 commission.

11 2. If a proceeding is instituted to revoke or suspend a license of
12 any person under sections 374.755, 374.787, and 375.141, the director
13 shall refer the matter to the administrative hearing commission by
14 directing the filing of a complaint. The administrative hearing
15 commission shall conduct hearings and make findings of fact and
16 conclusions of law in such cases. The director shall have the burden of
17 proving cause for discipline. If cause is found, the administrative
18 hearing commission shall submit its findings of fact and conclusions of
19 law to the director, who may determine appropriate discipline.

20 3. Hearing procedures before the director or the administrative
21 hearing commission and judicial review of the decisions and orders of
22 the director and of the administrative hearing commission, and all
23 other procedural matters under this chapter, shall be governed by the
24 provisions of chapter 536, RSMo. Hearings before the administrative

25 hearing commission shall also be governed by the provisions of chapter
26 621, RSMo.

374.055. 1. Except as otherwise provided, any interested person
2 aggrieved by any order of the director under the laws of this state
3 relating to insurance in this chapter, chapter 354 and chapters 375 to
4 385, RSMo, or a rule adopted by the director, or by any refusal or
5 failure of the director to make an order pursuant to any of said
6 provisions, shall be entitled to a hearing before the director in
7 accordance with the provisions of chapter 536, RSMo. A final order
8 issued by the director is subject to judicial review in accordance with
9 the provisions of chapter 536, RSMo. However, any findings of fact or
10 conclusions of law in any order regarding the actual costs of the
11 investigation or proceedings under section 374.046, or the classification
12 of any violation under section 374.049, shall be subject to de novo
13 review.

14 2. A rule adopted by the director is subject to judicial review in
15 accordance with the provisions of chapter 536, RSMo.

374.185. 1. The director may cooperate, coordinate, consult, and
2 subject to sections 374.070, 374.071, and 374.205, share records and
3 information with other members of the National Association of
4 Insurance Commissioners, the commissioner of securities, state
5 securities regulators, the division of finance, the attorney general,
6 federal banking and securities regulators, the National Association of
7 Securities Dealers (NASD), the United States Department of Justice, the
8 Commodity Futures Trading Commission, and the Federal Trade
9 Commission to effectuate greater uniformity in insurance and financial
10 services regulation among state and federal governments, and self-
11 regulatory organizations.

12 2. In cooperating, coordinating, consulting, and sharing records
13 and information under this section and in acting by rule, order, or
14 waiver under the laws relating to the business of insurance, the
15 director shall, at the discretion of the director, take into consideration
16 in carrying out the public interest the following general policies:

17 (1) Maximizing effectiveness of regulation for the protection of
18 insurance consumers;

19 (2) Maximizing uniformity in regulatory standards; and

20 (3) Minimizing burdens on the business of insurance, without

21 **adversely affecting essentials of consumer protection.**

22 **3. The cooperation, coordination, consultation, and sharing of**
23 **records and information authorized by this section includes:**

24 **(1) Establishing or employing one or more designees as a central**
25 **electronic depository for licensing and rate and form filings with the**
26 **director and for records required or allowed to be maintained;**

27 **(2) Encouraging insurance companies and producers to**
28 **implement electronic filing through a central electronic depository;**

29 **(3) Developing and maintaining uniform forms;**

30 **(4) Conducting joint market conduct examinations and other**
31 **investigations through collaboration and cooperation with other**
32 **insurance regulators;**

33 **(5) Holding joint administrative hearings;**

34 **(6) Instituting and prosecuting joint civil or administrative**
35 **enforcement proceedings;**

36 **(7) Sharing and exchanging personnel;**

37 **(8) Coordinating licensing under section 375.014;**

38 **(9) Formulating rules, statements of policy, guidelines, forms, no**
39 **action determinations, and bulletins; and**

40 **(10) Formulating common systems and procedures.**

374.210. 1. **It is unlawful for any person [testifying falsely in reference**
2 **to any matter material to the investigation, examination or inquiry shall be**
3 **deemed guilty of perjury.] in any investigation, examination, inquiry, or**
4 **other proceeding under the insurance laws of this state to:**

5 **[2. Any person who shall refuse to give such director full and truthful**
6 **information, and answer in writing to any inquiry or question made in writing by**
7 **the director, in regard to the business of insurance carried on by such person, or**
8 **to appear and testify under oath before the director in regard to the same, shall**
9 **be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be**
10 **punished by a fine not exceeding five hundred dollars, or imprisonment not**
11 **exceeding three months.**

12 **3. Any director, officer, manager, agent or employee of any insurance**
13 **company, or any other person, who shall]**

14 **(1) Knowingly make or cause to be made a false statement in**
15 **testimony upon oath or affirmation or in any record that is submitted**
16 **to the director or used in any proceeding under the laws of this state**

17 **relating to insurance; or**

18 **(2) Make any false certificate or entry or memorandum upon any of the**
19 **books or papers of any insurance company, or upon any statement or exhibit**
20 **offered, filed or offered to be filed in the **department of** insurance [department],**
21 **or used in the course of any examination, inquiry, or investigation[, with intent**
22 **to deceive the director or any person employed or appointed by him to make any**
23 **examination, inquiry or investigation, shall, upon conviction, be punished by a**
24 **fine not exceeding one thousand dollars, and by imprisonment not less than two**
25 **months in the county or city jail, nor more than five years in the penitentiary].**

26 **2. It is unlawful for any person to not appear or refuse to testify,**
27 **file a statement, produce records, or otherwise not comply with a**
28 **subpoena issued by the director.**

29 **3. It is unlawful for any person to fail to appear or refuse to**
30 **testify, file a statement, produce records, or otherwise not comply with**
31 **a written request as required by the director, or in response to any**
32 **specific inquiry or question made in writing by the director in regard**
33 **to the business of insurance carried on by such person, to refuse to**
34 **provide the requested information in a written answer.**

35 **4. If the director determines that a person has engaged, is**
36 **engaging, or is about to engage in a violation of this section, or a rule**
37 **adopted or order issued pursuant thereto, or that a person has**
38 **materially aided, is materially aiding, or is about to materially aid an**
39 **act, practice, omission, or course of business constituting a violation of**
40 **this section or a rule adopted or order issued pursuant thereto, the**
41 **director may issue such administrative orders as authorized under**
42 **section 374.046. A violation of subsection 1 of this section is a level four**
43 **violation under section 374.049. A violation of subsection 2 of this**
44 **section is a level three violation under section 374.049. A violation of**
45 **subsection 3 of this section is a level two violation under section**
46 **374.049. The director of insurance may also suspend or revoke the**
47 **license or certificate of authority of such person for any willful**
48 **violation.**

49 **5. If the director believes that a person has engaged, is engaging,**
50 **or is about to engage in a violation of this section or a rule adopted or**
51 **order issued pursuant thereto, or that a person has materially aided,**
52 **is materially aiding, or is about to materially aid an act, practice,**
53 **omission, or course of business constituting a violation of this section**

54 or a rule adopted or order issued pursuant thereto, the director may
55 maintain a civil action for relief authorized under section 374.048. A
56 violation of subsection 1 of this section is a level four violation under
57 section 374.049. A violation of subsection 2 of this section is a level
58 three violation under section 374.049. A violation of subsection 3 of this
59 section is a level two violation under section 374.049.

60 6. Any person who knowingly engages in any act, practice,
61 omission, or course of business in violation of subsection 1 of this
62 section is guilty of a class D felony. Any person who knowingly engages
63 in any act, practice, omission, or course of business in violation of
64 subsection 2 of this section is guilty of a class B misdemeanor. If the
65 offender holds a license or certificate of authority under the insurance
66 laws of this state, the court imposing sentence shall order the
67 department of insurance to revoke such license or certificate of
68 authority.

69 7. The director may refer such evidence as is available
70 concerning violations of this section to the proper prosecuting
71 attorney, who with or without a criminal reference, or the attorney
72 general under section 27.030, RSMo, may institute the appropriate
73 criminal proceedings.

74 8. Nothing in this section shall limit the power of the state to
75 punish any person for any conduct that constitutes a crime under any
76 other state statute.

374.215. 1. If any insurance company doing business in this state fails
2 to timely make and file any statutorily required report or statement, the
3 department of insurance shall notify such company of such failure by first class
4 mail. Any **insurance** company notified by the department of insurance pursuant
5 to this section shall **[have] file such report or statement within** fifteen days
6 **[to make and file such report. If such company fails to make and file such report**
7 **within the fifteen days, it shall forfeit one hundred dollars for each day after the**
8 **fifteen-day grace period expires] of receiving notification. After the**
9 **expiration of such fifteen days, each day in which the insurance**
10 **company fails to file such report or statement is a separate violation of**
11 **this section.**

12 2. **[Any insurance company doing business in this state which knowingly**
13 **or intentionally files or which has filed on its behalf any materially false report**
14 **or statement forfeits not more than one thousand dollars] If the director**

15 **determines that a person has engaged in a violation of this section or**
16 **a rule adopted or order issued pursuant thereto, or that a person has**
17 **materially aided an act, practice, omission, or course of business**
18 **constituting a violation of this section or a rule adopted or order issued**
19 **pursuant thereto, the director may issue such administrative orders as**
20 **authorized under section 374.046. A violation of this section is a level**
21 **two violation under section 374.049. The director of insurance may also**
22 **suspend or revoke the certificate of authority of such person for any**
23 **willful violation.**

24 3. [Any forfeiture required or permitted by this section shall be considered
25 a civil penalty which the director of the department of insurance may order
26 pursuant to the provisions of sections 374.040 and 374.280] **If the director**
27 **believes that a person has engaged in a violation of this section or a**
28 **rule adopted or order issued pursuant thereto, or that a person has**
29 **materially aided an act, practice, omission, or course of business**
30 **constituting a violation of this section or a rule adopted or order issued**
31 **pursuant thereto, the director may maintain a civil action for relief**
32 **authorized under section 374.048. A violation of this section is a level**
33 **two violation under section 374.049.**

374.280. 1. [Notwithstanding any other provisions of chapters 374, 375,
2 376, 377, 378 and 379, RSMo,] The director may, after a hearing **under**
3 **subsection 374.046**, order a **civil penalty or forfeiture** to the state of Missouri
4 a sum [not to exceed one hundred dollars for each violation by any person,
5 partnership or corporation knowingly violating any provision of chapters 374, 375,
6 376, 377, 378 and 379, RSMo, or order of the director of insurance made in
7 accordance with those chapters] **authorized by section 374.049**, which
8 **penalty or forfeiture, if unpaid within ten days**, may be recovered by a civil
9 action brought by and in the name of the director of insurance **under section**
10 **374.048**. The civil action may be brought in the county which has venue of an
11 action against the person, partnership or corporation under other provisions of
12 law. The director of insurance may also suspend or revoke the license [of an
13 insurer, agent, broker or agency] **or certificate of authority of such person**
14 **for any willful violation.**

15 2. Nothing contained in this section shall be construed to prohibit the
16 director and [the insurer, agent, broker or agency] **any person subject to an**
17 **investigation, examination, or other proceeding** from agreeing to a

18 voluntary forfeiture of the sum mentioned herein without civil proceedings being
19 instituted. Any sum so agreed upon shall be paid into the school fund as
20 provided by law for other fines and penalties.

374.512. 1. Whenever the director has reason to believe that a utilization
2 review agent subject to sections 374.500 to 374.515 has been or is engaged in
3 conduct which violates the provisions of sections 374.500 to 374.515, the director
4 shall notify the utilization review agent of the alleged violation. The utilization
5 review agent shall have thirty days from the date the notice is received to
6 respond to the alleged violation.

7 2. If the director **[believes] determines** that the utilization review agent
8 has **[violated the provisions of sections 374.500 to 374.515, or is not satisfied that**
9 **the alleged violation has been corrected, he shall conduct a hearing on the alleged**
10 **violation, in accordance with chapter 536, RSMo] engaged, is engaging, or is**
11 **about to engage in a violation of sections 374.500 to 374.515 or a rule**
12 **adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **sections 374.500 to 374.515 or a rule adopted or order issued pursuant**
16 **thereto, the director may issue such administrative orders as**
17 **authorized under section 374.046. A violation of any of these sections**
18 **is a level two violation under section 374.049. The director of insurance**
19 **may also suspend or revoke the license or certificate of authority of**
20 **such person for any willful violation.**

21 3. [If, after such hearing, the director determines that the utilization
22 review agent has engaged in violations of sections 374.500 to 374.515, he shall
23 reduce his findings to writing and shall issue and cause to be served upon the
24 utilization review agent a copy of such findings and an order requiring the
25 utilization review agent to cease and desist from engaging in such violations. The
26 director may also, at his discretion, order:

27 (1) Payment of a monetary penalty of not more than ten thousand dollars
28 for a violation which occurred if the utilization review agent consciously
29 disregarded sections 374.500 to 374.515 or which occurred with such frequency
30 as to indicate a general business practice; or

31 (2) Suspension or revocation of the authority to do business in this state
32 as a utilization review agent if the utilization review agent knew that it was in
33 violation of sections 374.500 to 374.515] **If the director believes that a**

34 **person has engaged in a violation of sections 374.500 to 374.515 or a**
35 **rule adopted or order issued pursuant thereto, or that a person has**
36 **materially aided an act, practice, omission, or course of business**
37 **constituting a violation of sections 374.500 to 374.515 or a rule adopted**
38 **or order issued pursuant thereto, the director may maintain a civil**
39 **action for relief authorized under section 374.048. A violation of any of**
40 **these sections is a level two violation under section 374.049.**

374.755. 1. The [department] **director** may [cause a complaint to be
2 filed with the administrative hearing commission as provided by chapter 621,
3 RSMo, against any holder of any license required by sections 374.695 to 374.775]
4 **suspend, revoke, refuse to issue, refuse to renew or limit a license**
5 **authorized under sections 374.695 to 374.775, or censure or bar any**
6 **person who has failed to renew or has surrendered his or her license for any [one**
7 **or any combination] of the following causes:**

8 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
9 alcoholic beverage to an extent that such use impairs a person's ability to perform
10 the work of the profession licensed under sections 374.695 to 374.775;

11 (2) Final adjudication or a plea of guilty or nolo contendere [within the
12 past fifteen years] in a criminal prosecution under any state or federal law for a
13 felony or a crime involving moral turpitude whether or not a sentence is
14 imposed[, prior to issuance of license date];

15 (3) Use of fraud, deception, misrepresentation or bribery in securing any
16 license or in obtaining permission to take any examination required pursuant to
17 sections 374.695 to 374.775;

18 (4) Obtaining or attempting to obtain any compensation as a member of
19 the profession licensed by sections 374.695 to [374.775] **374.789** by means of
20 fraud, deception or misrepresentation;

21 (5) Misappropriation of the premium, collateral, or other things of value
22 given to a bail bond agent or a general bail bond agent for the taking of bail,
23 incompetency, misconduct, gross negligence, fraud, or misrepresentation in the
24 performance of the functions or duties of the profession licensed or regulated by
25 sections 374.695 to 374.775;

26 (6) Violation of any provision of or any obligation imposed by the laws of
27 this state, department of insurance rules and regulations, or aiding or abetting
28 other persons to violate such laws, orders, rules or regulations, or subpoenas;

29 (7) Transferring a license or permitting another person to use a license

30 of the licensee;

31 (8) Disciplinary action against the holder of a license or other right to
32 practice the profession regulated by sections 374.695 to 374.789 granted by
33 another state, territory, federal agency or country upon grounds for which
34 revocation or suspension is authorized in this state;

35 (9) Being finally adjudged insane or incompetent by a court of competent
36 jurisdiction;

37 (10) Assisting or enabling any person to practice or offer to practice the
38 profession licensed or regulated by sections 374.695 to 374.789 who is not
39 currently licensed and eligible to practice pursuant to sections 374.695 to 374.789;

40 (11) Acting in the capacity of an attorney at a trial or hearing of a person
41 for whom the attorney is acting as surety; **or**

42 (12) Failing to provide a copy of the bail contract, renumbered written
43 receipt for acceptance of money, or other collateral for the taking of bail to the
44 principal, if requested by any person who is a party to the bail contract, or any
45 person providing funds or collateral for bail on the principal's behalf.

46 2. After the filing of [such] a complaint **under section 374.051**, the
47 proceedings shall be conducted in accordance with the provisions of chapter 621,
48 RSMo. Upon a finding by the administrative hearing commission that one or
49 more of the causes stated in subsection 1 of this section have been met, the
50 director may suspend or revoke the license or enter into an agreement for a
51 [monetary or other penalty pursuant to section 374.280] **consent order under**
52 **section 374.780**.

53 3. In lieu of filing a complaint at the administrative hearing commission,
54 the director and the bail bond agent or general bail bond agent may enter into an
55 agreement for a [monetary or other penalty pursuant to section 374.280] **consent**
56 **order under section 374.780**.

57 [4. In addition to any other remedies available, the director may issue a
58 cease and desist order or may seek an injunction in a court of competent
59 jurisdiction pursuant to the provisions of section 374.046 whenever it appears
60 that any person is acting as a bail bond agent or general bail bond agent without
61 a license or violating any other provisions of sections 374.695 to 374.789.]

**374.780. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of sections 374.695 to
3 374.789 or a rule adopted or order issued pursuant thereto, or that a
4 person has materially aided, is materially aiding, or is about to**

5 **materially aid an act, practice, omission, or course of business**
6 **constituting a violation of sections 374.695 to 374.789 or a rule adopted**
7 **or order issued pursuant thereto, the director may issue such**
8 **administrative orders as authorized under section 374.046. A violation**
9 **of any of these sections is a level two violation under section 374.049.**

10 **2. If the director believes that a person has engaged, is engaging,**
11 **or is about to engage in a violation of sections 374.695 to 374.789 or a**
12 **rule adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **sections 374.695 to 374.789 or a rule adopted or order issued pursuant**
16 **thereto, the director may maintain a civil action for relief authorized**
17 **under section 374.048. A violation of any of these sections is a level two**
18 **violation under section 374.049.**

374.787. 1. The director may [cause a complaint to be filed with the
2 administrative hearing commission as provided by chapter 621, RSMo, against
3 any] **suspend, revoke, refuse to issue, refuse to renew, or limit a surety**
4 **recovery agent license authorized under sections 374.783 to 374.789, or**
5 **censure or bar** any person who has failed to renew or has surrendered his or
6 her license, for any [one or any combination] of the following causes:

7 (1) Violation of any provisions of, or any obligations imposed by, the laws
8 of this state, the department of insurance rules and regulations, or aiding or
9 abetting other persons to violate such laws, orders, rules, or regulations;

10 (2) Final adjudication or a plea of guilty or nolo contendere in a criminal
11 prosecution under state or federal law for a felony or a crime involving moral
12 turpitude, whether or not a sentence is imposed;

13 (3) Using fraud, deception, misrepresentation, or bribery in securing a
14 license or in obtaining permission to take any examination required by sections
15 374.783 to 374.789;

16 (4) Obtaining or attempting to obtain any compensation as a surety
17 recovery agent by means of fraud, deception, or misrepresentation;

18 (5) Acting as a surety recovery agent or aiding or abetting another in
19 acting as a surety recovery agent without a license;

20 (6) Incompetence, misconduct, gross negligence, fraud, or
21 misrepresentation in the performance of the functions or duties of a surety
22 recovery agent;

23 (7) Having a license revoked or suspended that was issued by another
24 state.

25 2. After the filing of [the] a complaint **under section 374.051**, the
26 proceedings shall be conducted in accordance with the provisions of chapter 621,
27 RSMo. Upon a finding by the administrative hearing commission that one or
28 more of the causes stated in subsection 1 of this section have been met, the
29 director may suspend or revoke the license or enter into an agreement for a
30 [monetary or other penalty pursuant to section 374.280] **consent order under**
31 **section 374.780.**

32 3. In lieu of filing a complaint with the administrative hearing
33 commission, the director and the surety recovery agent may enter into an
34 agreement for a [monetary or other penalty pursuant to section 374.280] **consent**
35 **order under section 374.780.**

36 [4. In addition to any other remedies available, the director may issue a
37 cease and desist order or may seek an injunction in a court of law pursuant to
38 section 374.046 whenever it appears that any person is acting as a surety
39 recovery agent without a license.]

374.789. 1. [A] **It is unlawful for any person** [is guilty of a class D
2 felony if he or she does not hold a valid] **to engage in any of the following**
3 **acts unless the person is licensed by the director as a surety recovery**
4 **agent [license or], a bail bond [license and commits any of the following acts]**
5 **agent, or a general bail bond agent:**

6 (1) Holds himself or herself out to be a licensed surety recovery agent
7 within this state;

8 (2) Claims that he or she can render surety recovery agent services; or

9 (3) Engages in fugitive recovery in this state.

10 2. **If the director determines that a person has engaged, is**
11 **engaging, or is about to engage in a violation of this section or a rule**
12 **adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **this section or a rule adopted or order issued pursuant thereto, the**
16 **director may issue such administrative orders as authorized under**
17 **section 374.046. A violation of any of these sections is a level three**
18 **violation under section 374.049.**

19 3. **If the director believes that a person has engaged, is engaging,**

20 or is about to engage in a violation of this section or a rule adopted or
21 order issued pursuant thereto, or that a person has materially aided,
22 is materially aiding, or is about to materially aid an act, practice,
23 omission, or course of business constituting a violation of this section
24 or a rule adopted or order issued pursuant thereto, the director may
25 maintain a civil action for relief authorized under section 374.048. A
26 violation of any of these sections is a level three violation under section
27 374.049.

28 4. Any person who knowingly engages in any act, practice,
29 omission, or course of business in violation of this section is guilty of
30 a class D felony. If the offender holds a license or certificate of
31 authority under the insurance laws of this state, the court imposing
32 sentence shall order the department of insurance to revoke such license
33 or certificate of authority.

34 5. The director may refer such evidence as is available
35 concerning violations of this chapter to the proper prosecuting
36 attorney, who with or without a criminal reference, or the attorney
37 general under section 27.030, RSMo, may institute the appropriate
38 criminal proceedings.

39 6. Nothing in this section shall limit the power of the state to
40 punish any person for any conduct that constitutes a crime under any
41 other state statute.

42 7. Any person who engages in fugitive recovery in this state and
43 wrongfully causes damage to any person or property, including, but not limited
44 to, unlawful apprehension, unlawful detainment, or assault, shall be liable for
45 such damages and may be liable for punitive damages.

375.012. 1. Sections 375.012 to 375.146 may be cited as the
2 "Insurance Producers Act".

3 2. As used in sections 375.012 to 375.158, the following words mean:

4 (1) "Business entity", a corporation, association, partnership, limited
5 liability company, limited liability partnership or other legal entity;

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

7 (3) "Home state", the District of Columbia and any state or territory of the
8 United States in which the insurance producer maintains his or her principal
9 place of residence or principal place of business and is licensed to act as an
10 insurance producer;

11 (4) "Insurance", any line of authority, including life, accident and health
12 or sickness, property, casualty, variable life and variable annuity products,
13 personal, credit and any other line of authority permitted by state law or
14 regulation;

15 (5) "Insurance company" or "insurer", any person, reciprocal exchange,
16 interinsurer, Lloyds insurer, fraternal benefit society, and any other legal entity
17 engaged in the business of insurance, including health services corporations,
18 health maintenance organizations, prepaid limited health care service plans,
19 dental, optometric and other similar health service plans, unless their exclusion
20 from this definition can be clearly ascertained from the context of the particular
21 statutory section under consideration. Insurer shall also include all companies
22 organized, incorporated or doing business pursuant to the provisions of chapters
23 375, 376, 377, 378, 379, 381 and 384, RSMo. Trusteed pension plans and
24 profit-sharing plans qualified pursuant to the United States Internal Revenue
25 Code as now or hereafter amended shall not be considered to be insurance
26 companies or insurers within the definition of this section;

27 (6) "Insurance producer" or "producer", a person required to be licensed
28 pursuant to the laws of this state to sell, solicit or negotiate insurance;

29 (7) "License", a document issued by the director authorizing a person to
30 act as an insurance producer for the lines of authority specified in the
31 document. The license itself shall not create any authority, actual, apparent or
32 inherent, in the holder to represent or commit an insurance company;

33 (8) "Limited line credit insurance", credit life, credit disability, credit
34 property, credit unemployment, involuntary unemployment, mortgage life,
35 mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP)
36 insurance, and any other form of insurance offered in connection with an
37 extension of credit that is limited to partially or wholly extinguishing that credit
38 obligation that the director determines should be designated a form of limited line
39 credit insurance;

40 (9) "Limited line credit insurance producer", a person who sells, solicits
41 or negotiates one or more forms of limited line credit insurance coverage through
42 a master, corporate, group or individual policy;

43 (10) "Limited lines insurance", insurance involved in credit transactions,
44 insurance contracts issued primarily for covering the risk of travel or any other
45 line of insurance that the director deems necessary to recognize for the purposes
46 of complying with subsection 5 of section 375.017;

47 (11) "Limited lines producer", a person authorized by the director to sell,
48 solicit or negotiate limited lines insurance;

49 (12) "Negotiate", the act of conferring directly with or offering advice
50 directly to a purchaser or prospective purchaser of a particular contract of
51 insurance concerning any of the substantive benefits, terms or conditions of the
52 contract, provided that the person engaged in that act either sells insurance or
53 obtains insurance from insurers for purchasers;

54 (13) "Person", an individual or any business entity;

55 (14) "Personal lines insurance", property and casualty insurance coverage
56 sold to individuals and families for primarily noncommercial purposes;

57 (15) "Sell", to exchange a contract of insurance by any means, for money
58 or its equivalent, on behalf of an insurance company;

59 (16) "Solicit", attempting to sell insurance or asking or urging a person to
60 apply for a particular kind of insurance from a particular company;

61 (17) "Terminate", the cancellation of the relationship between an
62 insurance producer and the insurer or the termination of the authority of the
63 producer to transact the business of insurance;

64 (18) "Uniform business entity application", the current version of the
65 National Association of Insurance Commissioners uniform business entity
66 application for resident and nonresident business entities seeking an insurance
67 producer license;

68 (19) "Uniform application", the current version of the National Association
69 of Insurance Commissioners uniform application for resident and nonresident
70 producer licensing.

71 [2.] 3. All statutory references to "insurance agent" or "insurance broker"
72 shall mean "insurance producer", as that term is defined pursuant to subsection
73 1 of this section.

375.020. 1. Beginning January 1, [1990] **2007**, each insurance producer,
2 unless exempt pursuant to section 375.016, licensed to sell insurance in this state
3 shall successfully complete courses of study as required by this section. Any
4 person licensed to act as an insurance producer shall, during each two years,
5 attend courses or programs of instruction or attend seminars equivalent to a
6 minimum of [ten] **twenty-four** hours of instruction for a life or accident and
7 health license or both a life and an accident and health license and a minimum
8 [ten] **twenty-four** hours of instruction for a property or casualty license or both
9 a property and a casualty license. [Sixteen] **Twenty-four** hours of training will

10 suffice for those with a life, health, accident, property and casualty license. Of
11 the [sixteen] **twenty-four** hours' training required above, the hours need not be
12 divided equally. The courses or programs shall include instruction on Missouri
13 law, a **producer's duties to the department, and business ethics,**
14 **including sales suitability.** Course credit shall be given to members of the
15 general assembly as determined by the department.

16 2. Subject to approval by the director, the courses or programs of
17 instruction which shall be deemed to meet the director's standards for continuing
18 educational requirements shall include, but not be limited to, the following:

- 19 (1) American College Courses (CLU, ChFC);
- 20 (2) Life Underwriters Training Council (LUTC);
- 21 (3) Certified Insurance Counselor (CIC);
- 22 (4) Chartered Property and Casualty Underwriter (CPCU);
- 23 (5) Insurance Institute of America (IIA);
- 24 (6) **Any other professional financial designation approved by the**
25 **director;**

26 (7) An insurance-related course taught by an accredited college or
27 university or qualified instructor who has taught a course of insurance law at
28 such institution;

29 [(7)] (8) A course or program of instruction or seminar developed or
30 sponsored by any authorized insurer, recognized producer association or
31 insurance trade association. A local producer group may also be approved if the
32 instructor receives no compensation for services.

33 3. A person teaching any approved course of instruction or lecturing at
34 any approved seminar shall qualify for the same number of classroom hours as
35 would be granted to a person taking and successfully completing such course,
36 seminar or program.

37 4. Excess classroom hours accumulated during any two-year period may
38 be carried forward to the two-year period immediately following the two-year
39 period in which the course, program or seminar was held.

40 5. For good cause shown, the director may grant an extension of time
41 during which the educational requirements imposed by this section may be
42 completed, but such extension of time shall not exceed the period of one calendar
43 year. The director may grant an individual waiver of the mandatory continuing
44 education requirement upon a showing by the licensee that it is not feasible for
45 the licensee to satisfy the requirements prior to the renewal date. Waivers may

46 be granted for reasons including, but not limited to:

- 47 (1) Serious physical injury or illness;
- 48 (2) Active duty in the armed services for an extended period of time;
- 49 (3) Residence outside the United States; or
- 50 (4) The licensee is at least seventy years of age.

51 6. Every person subject to the provisions of this section shall furnish in
52 a form satisfactory to the director, written certification as to the courses,
53 programs or seminars of instruction taken and successfully completed by such
54 person. Every provider of continuing education courses authorized in this state
55 shall, within thirty working days of a licensed producer completing its approved
56 course, provide certification to the director of the completion in a format
57 prescribed by the director.

58 7. The provisions of this section shall not apply to those natural persons
59 holding licenses for any kind or kinds of insurance for which an examination is
60 not required by the law of this state, nor shall they apply to any limited lines
61 insurance producer license or restricted license as the director may exempt.

62 8. The provisions of this section shall not apply to a life insurance
63 producer who is limited by the terms of a written agreement with the insurer to
64 transact only specific life insurance policies having an initial face amount of five
65 thousand dollars or less, or annuities having an initial face amount of ten
66 thousand dollars or less, that are designated by the purchaser for the payment
67 of funeral or burial expenses. The director may require the insurer entering into
68 the written agreements with the insurance producers pursuant to this subsection
69 to certify as to the representations of the insurance producers.

70 9. Rules and regulations necessary to implement and administer this
71 section shall be promulgated by the director, including, but not limited to, rules
72 and regulations regarding the following:

73 (1) Course content and hour credits: The insurance advisory board
74 established by section 375.019 shall be utilized by the director to assist him in
75 determining acceptable content of courses, programs and seminars to include
76 classroom equivalency;

77 (2) Filing fees for course approval: Every applicant seeking approval by
78 the director of a continuing education course under this section shall pay to the
79 director a filing fee of fifty dollars per course. Fees shall be waived for state and
80 local insurance producer groups. Such fee shall accompany any application form
81 required by the director. Courses shall be approved for a period of no more than

82 one year. Applicants holding courses intended to be offered for a longer period
83 must reapply for approval. Courses approved by the director prior to August 28,
84 1993, for which continuous certification is sought should be resubmitted for
85 approval sixty days before the anniversary date of the previous approval.

86 10. All funds received pursuant to the provisions of this section shall be
87 transmitted by the director to the department of revenue for deposit in the state
88 treasury to the credit of the department of insurance dedicated fund. All
89 expenditures necessitated by this section shall be paid from funds appropriated
90 from the department of insurance dedicated fund by the legislature.

**375.143. In order to effectuate and aid in the interpretation of
2 section 375.141, the director, under section 374.045, RSMo, may adopt
3 rules and regulations codifying professional standards of producer
4 competency and trustworthiness in the handling of applications,
5 premium funds, conflicts of interest, record-keeping, supervision of
6 others, and customer suitability.**

**375.145. 1. If the director determines that a person has engaged,
2 is engaging, or is about to engage in a violation of sections 375.012 to
3 375.144 or a rule adopted or order issued pursuant thereto, or that a
4 person has materially aided, is materially aiding, or is about to
5 materially aid an act, practice, omission, or course of business
6 constituting a violation of sections 375.012 to 375.144, or a rule adopted
7 or order issued pursuant thereto, the director may issue such
8 administrative orders as authorized under section 374.046, RSMo. A
9 violation of any of sections 375.012 to 375.142 is a level two violation
10 under section 374.049, RSMo. A violation of section 375.144 is a level
11 four violation under 374.049, RSMo.**

**2. If the director believes that a person has engaged, is engaging,
13 or is about to engage in a violation of this section or a rule adopted or
14 order issued pursuant thereto, or that a person has materially aided,
15 is materially aiding, or is about to materially aid an act, practice,
16 omission, or course of business constituting a violation of this section
17 or a rule adopted or order issued pursuant thereto, the director may
18 maintain a civil action for relief authorized under section 374.048,
19 RSMo. A violation of any of sections 375.012 to 375.142 is a level two
20 violation under section 374.049, RSMo. A violation of section 375.144 is
21 a level four violation under 374.049, RSMo.**

375.152. 1. [If the director finds after a hearing conducted in accordance

2 with chapter 536, RSMo, that any person has violated the provisions of sections
3 375.147 to 375.153, the director may order:

4 (1) For each separate violation, imposition of an administrative penalty
5 in an amount of five hundred dollars. All moneys collected as a result of
6 imposition of such penalties shall be transferred to the state treasurer for deposit
7 to general revenue of the state;

8 (2) Revocation or suspension of the producer's license, provided that such
9 action may be taken only after compliance with chapter 621, RSMo;

10 (3) **If the director determines that a person has engaged, is**
11 **engaging, or is about to engage in a violation of sections 375.147 to**
12 **375.153 or a rule adopted or order issued pursuant thereto, or that a**
13 **person has materially aided, is materially aiding, or is about to**
14 **materially aid an act, practice, omission, or course of business**
15 **constituting a violation of sections 375.147 to 375.153 or a rule adopted**
16 **or order issued pursuant thereto, the director may issue such**
17 **administrative orders as authorized under section 374.046, RSMo. A**
18 **violation of any of these sections is a level two violation under section**
19 **374.049, RSMo.**

20 **2. If the director believes that a person has engaged, is engaging,**
21 **or is about to engage in a violation of sections 375.147 to 375.153 or a**
22 **rule adopted or order issued pursuant thereto, or that a person has**
23 **materially aided, is materially aiding, or is about to materially aid an**
24 **act, practice, omission, or course of business constituting a violation of**
25 **sections 375.147 to 375.153 or a rule adopted or order issued pursuant**
26 **thereto, the director may maintain a civil action for relief authorized**
27 **under section 374.048, RSMo. A violation under any of these sections**
28 **is a level two violation under section 374.049, RSMo. In addition to the**
29 **relief available in this section, the director may also order the managing**
30 **general agent to reimburse the insurer, the rehabilitator or liquidator of the**
31 **insurer, for any losses incurred by the insurer caused by a violation of sections**
32 **375.147 to 375.153 committed by the managing general agent.**

33 [2. The decision, determination or order of the director made pursuant to
34 subsection 1 of this section shall be subject to judicial review pursuant to sections
35 536.100 to 536.140, RSMo.]

36 3. Nothing contained in this section shall affect the right of the director
37 to impose any other penalties provided for in the insurance law.

38 4. Nothing contained in sections 375.147 to 375.153 is intended to or shall
39 in any manner limit or restrict the rights of policyholders, claimants and
40 creditors.

375.236. Other provisions of law notwithstanding, the director may
2 suspend or revoke, after a hearing, the certificate of authority or license of any
3 insurance company including a reciprocal or interinsurance exchange for the
4 same reasons and upon the same grounds as set forth in section [375.560]
5 **374.047, RSMo.**

375.306. 1. It [shall not be lawful] **is unlawful** for any person to act
2 within this state as agent, **producer**, or otherwise, in receiving or procuring
3 applications for insurance, or in any manner to aid in transacting the business
4 referred to in [sections 375.010 to 375.920] **this chapter** for any company or
5 association doing business in this state, unless the company is possessed of the
6 amount of capital and of actual paid-up capital, or of premium notes, cash
7 premiums or guarantee fund, of the kind, character and amounts required of
8 companies organized under the provisions of [sections 375.010 to 375.920] **this**
9 **chapter.**

10 2. The guarantee fund of companies other than those of this state shall
11 be deposited with the proper officer of the state or country under the laws of
12 which the company is organized, or with the director of the insurance department
13 of this state, in the manner provided by section 379.050, RSMo, in regard to the
14 making of such deposit by companies organized under [sections 375.010 to
15 375.920] **this chapter.**

16 3. Whenever any insurance company doing business in this state
17 advertises its assets, either in any newspaper or periodical, or by any sign,
18 circular, card, policy of insurance or certificate of renewal thereof, it shall, in the
19 same connection, equally conspicuously advertise its liabilities, and the amount
20 of its assets available for fire and life losses separately, the same to be
21 determined in the manner required in making statement to the insurance
22 department, and all advertisements purporting to show the amount of capital of
23 the company shall show only the amount of capital actually paid up in cash.

24 4. [Any insurance company or agent thereof violating the provisions of
25 this section shall be liable to a fine of not less than fifty dollars nor more than
26 five hundred dollars] **If the director determines that a person has**
27 **engaged, is engaging, or is about to engage in a violation of this section**
28 **or a rule adopted or order issued pursuant thereto, or that a person has**

29 **materially aided, is materially aiding, or is about to materially aid an**
30 **act, practice, omission, or course of business constituting a violation of**
31 **this section or a rule adopted or order issued pursuant thereto, the**
32 **director may issue such administrative orders as authorized under**
33 **section 374.046, RSMo. A violation of this section is a level two**
34 **violation under section 374.049, RSMo.**

35 **5. If the director believes that a person has engaged, is engaging,**
36 **or is about to engage in a violation of this section or a rule adopted or**
37 **order issued pursuant thereto, or that a person has materially aided,**
38 **is materially aiding, or is about to materially aid an act, practice,**
39 **omission, or course of business constituting a violation of this section**
40 **or a rule adopted or order issued pursuant thereto, the director may**
41 **maintain a civil action for relief authorized under section 374.048,**
42 **RSMo. A violation of this section is a level two violation under section**
43 **374.049, RSMo.**

375.310. 1. **It is unlawful for any person, association of individuals,**
2 **[and] or any corporation [transacting] to transact** in this state any insurance
3 business[, without being] **unless the person, association, or corporation is**
4 **duly** authorized by the director [of the insurance department of this state so to
5 do, or after the authority so to do has been suspended, revoked, or has expired,
6 shall be subject to suit by the director who may institute proceedings in the
7 circuit court of the county or city in which said company was organized, or in
8 which it has, or last had, its principal or chief office or place of business, or in the
9 county of Cole, to enjoin said company from the further transaction of its
10 business, either temporarily or perpetually, and for such other decrees and relief
11 as the court shall deem advisable; or said association of individuals or corporation
12 shall be liable to a penalty of two hundred and fifty dollars for each offense,
13 which penalty may be recovered by ordinary civil action in the name of the state,
14 and shall, when recovered, become part of the school fund, as by law provided for
15 other fines and penalties; suit for said penalty may be brought by the attorney
16 general, the director of the insurance department, or any county, circuit or
17 prosecuting attorney, in either the city or county in which the policy was
18 delivered, or in which the money was paid to any agent of such association or
19 corporation, or in which the receipt was delivered, or in any county or city in
20 which an attorney for service or any agent of said association or corporation may
21 be found; and if the plaintiff recover, an attorney fee to be allowed by the court

22 for each cause of action upon which recovery is had shall be taxed as and added
23 to the costs; service shall be made of process in any such action, either as in other
24 civil actions or as provided in sections 375.010 to 375.920 for service on insurance
25 companies] **under a certificate of authority or appropriate licensure, or**
26 **is an insurance company exempt from certification under section**
27 **375.786.**

28 **2. If the director determines that a person has engaged, is**
29 **engaging, or is about to engage in a violation of this section or a rule**
30 **adopted or order issued pursuant thereto, or that a person has**
31 **materially aided, is materially aiding, or is about to materially aid an**
32 **act, practice, omission, or course of business constituting a violation of**
33 **this section or a rule adopted or order issued pursuant thereto, the**
34 **director may issue such administrative orders as authorized under**
35 **section 374.046, RSMo. A violation of this section is a level four**
36 **violation under section 374.049, RSMo.**

37 **3. If the director believes that a person has engaged, is engaging,**
38 **or is about to engage in a violation of this section or a rule adopted or**
39 **order issued pursuant thereto, or that a person has materially aided,**
40 **is materially aiding, or is about to materially aid an act, practice,**
41 **omission, or course of business constituting a violation of this section**
42 **or a rule adopted or order issued pursuant thereto, the director may**
43 **maintain a civil action for relief authorized under section 374.048,**
44 **RSMo. A violation of this section is a level four violation under section**
45 **374.049, RSMo.**

46 **4. Any person who knowingly engages in any act, practice,**
47 **omission, or course of business in violation of this section is guilty of**
48 **a class D felony.**

49 **5. The director may refer such evidence as is available**
50 **concerning violations of this chapter to the proper prosecuting**
51 **attorney, who with or without a criminal reference, or the attorney**
52 **general under section 27.030, RSMo, may institute the appropriate**
53 **criminal proceedings.**

54 **6. Nothing in this section shall limit the power of the state to**
55 **punish any person for any conduct that constitutes a crime under any**
56 **other state statute.**

375.445. 1. [When upon investigation the director finds that] **It is**
2 **unlawful for any insurance company transacting business [in] under the**

3 **laws of this state [has conducted] to:**

4 **(1) Conduct** its business fraudulently[, is not carrying];

5 **(2) Fail to carry** out its contracts in good faith[,]; or [is]

6 **(3) Habitually and as a matter of business practice [compelling] compel**
7 claimants under policies or liability judgment creditors of the insured to either
8 accept less than the amount due under the terms of the policy or resort to
9 litigation against the company to secure payment of the amount due[, and that
10 a proceeding in respect thereto would be in the interest of the public, he shall
11 issue and serve upon the company a statement of the charges in that respect and
12 a notice of a hearing thereon].

13 2. [If after the hearing the director shall determine that the company has
14 fraudulently conducted its business as defined in this section, he shall order the
15 company to cease and desist from the fraudulent practice and may suspend the
16 company's certificate of authority for a period not to exceed thirty days and may
17 in addition order a forfeiture to the state of Missouri of a sum not to exceed one
18 thousand dollars, which forfeiture may be recovered by a civil action brought by
19 and in the name of the director of insurance. The civil action may be brought in
20 the circuit court of Cole County or, at the option of the director of insurance, in
21 another county which has venue of an action against the person, partnership or
22 corporation under other provisions of law.] **If the director determines that a**
23 **person has engaged, is engaging, or is about to engage in a violation of**
24 **this section or a rule adopted or order issued pursuant thereto, or that**
25 **a person has materially aided, is materially aiding, or is about to**
26 **materially aid an act, practice, omission, or course of business**
27 **constituting a violation of this section or a rule adopted or order issued**
28 **pursuant thereto, the director may issue such administrative orders as**
29 **authorized under section 374.046, RSMo. A violation of this section is**
30 **a level three violation under section 374.049, RSMo.** The director of
31 insurance may also suspend or revoke the license [of an insurer or agent] **or**
32 **certificate of authority of such person** for any [such] willful violation.

33 **3. If the director believes that a person has engaged, is engaging,**
34 **or is about to engage in a violation of this section or a rule adopted or**
35 **order issued pursuant thereto, or that a person has materially aided,**
36 **is materially aiding, or is about to materially aid an act, practice,**
37 **omission, or course of business constituting a violation of this section**
38 **or a rule adopted or order issued pursuant thereto, the director may**

39 **maintain a civil action for relief authorized under section 374.048,**
40 **RSMo. A violation of this section is a level three violation under**
41 **section 374.049, RSMo.**

375.720. 1. Whenever, by chapter 375, or by any other law of this state,
2 the director is authorized or required to take possession of any of the general
3 assets of any insurer, **it is unlawful for** any person or company [who shall] **to**
4 **knowingly neglect or refuse to deliver to the director, on [his] order or demand**
5 **of the director,** any books, papers, evidences of title or debt, or any property
6 belonging to any such insurer in its, his or their possession, or under his, its or
7 their control[, shall be guilty of a class C felony].

8 **2. If the director determines that a person has engaged, is**
9 **engaging, or is about to engage in a violation of this section or a rule**
10 **adopted or order issued pursuant thereto, or that a person has**
11 **materially aided, is materially aiding, or is about to materially aid an**
12 **act, practice, omission, or course of business constituting a violation of**
13 **this section or a rule adopted or order issued pursuant thereto, the**
14 **director may issue such administrative orders as authorized under**
15 **section 374.046, RSMo. A violation of this section is a level three**
16 **violation under section 374.049, RSMo. The director of insurance may**
17 **also suspend or revoke the license or certificate of authority of such**
18 **person for any willful violation.**

19 **3. If the director believes that a person has engaged, is engaging,**
20 **or is about to engage in a violation of this section or a rule adopted or**
21 **order issued pursuant thereto, or that a person has materially aided,**
22 **is materially aiding, or is about to materially aid an act, practice,**
23 **omission, or course of business constituting a violation of this section**
24 **or a rule adopted or order issued pursuant thereto, the director may**
25 **maintain a civil action for relief authorized under section 374.048,**
26 **RSMo. A violation of this section is a level three violation under**
27 **section 374.049, RSMo.**

28 **4. Any person who knowingly engages in any act, practice,**
29 **omission, or course of business in violation of this section is guilty of**
30 **a class C felony. If the offender holds a license or certificate of**
31 **authority under the insurance laws of this state, the court imposing**
32 **sentence shall order the department of insurance to revoke such**
33 **license.**

34 **5. The director may refer such evidence as is available**

35 **concerning violations of this section to the proper prosecuting**
36 **attorney, who with or without a criminal reference, or the attorney**
37 **general under section 27.030, RSMo, may institute the appropriate**
38 **criminal proceedings.**

39 **6. Nothing in this section shall limit the power of the state to**
40 **punish any person for any conduct that constitutes a crime under any**
41 **other state statute.**

375.777. 1. The director shall:

2 (1) Notify the association of the existence of an insolvent insurer not later
3 than three days after he receives notice of the determination of the insolvency;

4 (2) Upon request of the board of directors, provide the association with a
5 statement of the net direct written premiums of each member insurer; and

6 (3) Notify the agents of the insolvent insurer of the determination of
7 insolvency and of the insureds' rights under sections 375.771 to 375.779. Such
8 notification shall be by first class mail at their last known address, where
9 available, but if sufficient information for notification by mail is not available,
10 notice by publication in a newspaper of general circulation shall be sufficient.

11 2. The director may[:

12 (1)] require each agent of the insolvent insurer to give prompt written
13 notice, by first class mail, at the insured's last known address, to each insured of
14 the insolvent insurer for whom he was agent of record, provided the agent has
15 received the notification of subsection 1 of this section[; and

16 (2) Suspend or revoke, after notice and hearing, the certificate of authority
17 to transact insurance in this state of].

18 **3. It is unlawful for any member insurer [which fails] to fail to pay an**
19 **assessment when due or [fails] fail to comply with the plan of operation. [As an**
20 **alternative, the director may levy an administrative penalty on any member**
21 **insurer which fails to pay an assessment when due. Such administrative penalty**
22 **shall not exceed five percent of the unpaid assessment per month, except that no**
23 **administrative penalty shall be less than one hundred dollars per month.**

24 3. Any final action or order of the director under this section shall be
25 subject to judicial review in the circuit court of Cole County] **Every day in**
26 **which the member insurer fails to pay is a separate violation.**

27 **4. If the director determines that a person has engaged, is**
28 **engaging, or is about to engage in a violation of this section or a rule**
29 **adopted or order issued pursuant thereto, or that a person has**

30 **materially aided, is materially aiding, or is about to materially aid an**
31 **act, practice, omission, or course of business constituting a violation of**
32 **this section or a rule adopted or order issued pursuant thereto, the**
33 **director may issue such administrative orders as authorized under**
34 **section 374.046, RSMo. A violation of this section is a level two**
35 **violation under section 374.049, RSMo. The director of insurance may**
36 **also suspend or revoke the license or certificate of authority of such**
37 **person for any willful violation.**

38 **5. If the director believes that a person has engaged, is engaging,**
39 **or is about to engage in a violation of this section or a rule adopted or**
40 **order issued pursuant thereto, or that a person has materially aided,**
41 **is materially aiding, or is about to materially aid an act, practice,**
42 **omission, or course of business constituting a violation of this section**
43 **or a rule adopted or order issued pursuant thereto, the director may**
44 **maintain a civil action for relief authorized under section 374.048,**
45 **RSMo. A violation of this section is a level two violation under section**
46 **374.049, RSMo.**

375.780. [Every violation of] 1. **A person commits a crime if he**
2 **willfully violates** any of the provisions of [sections 375.010 to 375.920] **this**
3 **chapter. If not otherwise specifically provided for [shall be deemed a**
4 **misdemeanor, and shall subject the individual, association of individuals or**
5 **corporation violating the same to a penalty of not less than fifty nor more than**
6 **five hundred dollars for each offense; such penalty may be recovered and sued for**
7 **against corporations or associations in the manner provided and by any of the**
8 **officers designated in section 375.310, and against individuals by civil action, by**
9 **information or by indictment, and an attorney's fee of twenty-five dollars shall be**
10 **taxed as costs against the defendant, as in said section; all fines and penalties**
11 **recovered under sections 375.010 to 375.920 shall be turned into the school fund,**
12 **as provided by law for other fines and penalties], the crime is a class B**
13 **misdemeanor.**

14 **2. The director may refer such evidence as is available**
15 **concerning violations of this section to the proper prosecuting**
16 **attorney, who with or without a criminal reference, or the attorney**
17 **general under section 27.030, RSMo, may institute the appropriate**
18 **criminal proceedings.**

19 **3. Nothing in this section shall limit the power of the state to**

20 **punish any person for any conduct that constitutes a crime under any**
21 **other state statute.**

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

5 (1) The lawful transaction of insurance as provided in chapter 384, RSMo;

6 (2) The lawful transaction of reinsurance by insurance companies;

7 (3) Transactions in this state involving a policy lawfully solicited, written
8 and delivered outside of this state covering only subjects of insurance not
9 resident, located or expressly to be performed in this state at the time of issuance,
10 and which transactions are subsequent to the issuance of such policy;

11 (4) Attorneys acting in the ordinary relation of attorney and client in the
12 adjustment of claims or losses;

13 (5) Transactions in this state involving group life and group sickness and
14 accident or blanket sickness and accident insurance or group annuities where the
15 master policy of such groups was lawfully issued and delivered in and pursuant
16 to the laws of a state in which the insurance company was authorized to do an
17 insurance business, to a group organized for purposes other than the procurement
18 of insurance, and where the policyholder is domiciled or otherwise has a bona fide
19 situs;

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

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

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

31 (a) Which procures the insurance of any risk or risks other than life,
32 health and annuity contracts by use of the services of a full-time employee acting
33 as an insurance manager or buyer or the services of [a regularly and continuously
34 retained qualified insurance consultant] **an insurance producer whose**

35 **services are wholly compensated by such insured and not by the**
36 **insurer;**

37 (b) Whose aggregate annual premiums for insurance excluding workers'
38 compensation insurance premiums total at least [twenty-five] **one hundred**
39 thousand dollars; and

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

41 (9) Transactions in this state involving life insurance, health insurance
42 or annuities provided to educational or religious or charitable institutions
43 organized and operated without profit to any private shareholder or individual
44 for the benefit of such institutions and individuals engaged in the service of such
45 institutions, provided that any company issuing such contracts under this
46 paragraph shall:

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

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

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

58 (10) Transactions in this state involving accident, health, personal effects,
59 liability or any other travel or auto-related products or coverages provided or sold
60 by a rental company after January 1, 1994, to a renter in connection with and
61 incidental to the rental of motor vehicles.

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

- 71 (1) The making of or proposing to make an insurance contract;
- 72 (2) The making of or proposing to make, as guarantor or surety, any
73 contract of guaranty or suretyship as a vocation and not merely incidental to any
74 other legitimate business or activity of the guarantor or surety;
- 75 (3) The taking or receiving of any application for insurance;
- 76 (4) The receiving or collection of any premium, commission, membership
77 fees, assessments, dues or other consideration for any insurance or any part
78 thereof;
- 79 (5) The issuance or delivery of contracts of insurance to residents of this
80 state or to persons authorized to do business in this state;
- 81 (6) Directly or indirectly acting as an agent for or otherwise representing
82 or aiding on behalf of another any person or insurance company in the
83 solicitation, negotiation, procurement or effectuation of insurance or renewals
84 thereof or in the dissemination of information as to coverage or rates, or
85 forwarding of applications, or delivery of policies or contracts, or inspection of
86 risks, a fixing of rates or investigation or adjustment of claims or losses or in the
87 transaction of matters subsequent to effectuation of the contract and arising out
88 of it, or in any other manner representing or assisting a person or insurance
89 company in the transaction of insurance with respect to subjects of insurance
90 resident, located or to be performed in this state. The provisions of this
91 subsection shall not operate to prohibit full-time salaried employees of a corporate
92 insured from acting in the capacity of an insurance manager or buyer in placing
93 insurance in behalf of such employer;
- 94 (7) The transaction of any kind of insurance business specifically
95 recognized as transacting an insurance business within the meaning of the
96 statutes relating to insurance;
- 97 (8) The transacting or proposing to transact any insurance business in
98 substance equivalent to any of the foregoing in a manner designed to evade the
99 provisions of the statutes.
- 100 3. (1) The failure of an insurance company transacting insurance
101 business in this state to obtain a certificate of authority shall not impair the
102 validity of any act or contract of such insurance company and shall not prevent
103 such insurance company from defending any action at law or suit in equity in any
104 court of this state, but no insurance company transacting insurance business in
105 this state without a certificate of authority shall be permitted to maintain an
106 action in any court of this state to enforce any right, claim or demand arising out

107 of the transaction of such business until such insurance company shall have
108 obtained a certificate of authority.

109 (2) In the event of failure of any such unauthorized insurance company
110 to pay any claim or loss within the provisions of such insurance contract, any
111 person who assisted or in any manner aided directly or indirectly in the
112 procurement of such insurance contract shall be liable to the insured for the full
113 amount of the claim or loss in the manner provided by the provisions of such
114 insurance contract.

115 **4. If the director determines that a person has engaged, is**
116 **engaging, or is about to engage in a violation of this section or a rule**
117 **adopted or order issued pursuant thereto, or that a person has**
118 **materially aided, is materially aiding, or is about to materially aid an**
119 **act, practice, omission, or course of business constituting a violation of**
120 **this section or a rule adopted or order issued pursuant thereto, the**
121 **director may issue such administrative orders as authorized under**
122 **section 374.046, RSMo. A violation of this section is a level four**
123 **violation under section 374.049, RSMo.**

124 **5. If the director believes that a person has engaged, is engaging,**
125 **or is about to engage in a violation of this section or a rule adopted or**
126 **order issued pursuant thereto, or that a person has materially aided,**
127 **is materially aiding, or is about to materially aid an act, practice,**
128 **omission, or course of business constituting a violation of this section**
129 **or a rule adopted or order issued pursuant thereto, the director may**
130 **maintain a civil action for relief authorized under section 374.048,**
131 **RSMo. A violation of this section is a level four violation under section**
132 **374.049, RSMo.**

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

135 **7. The director may refer such evidence as is available**
136 **concerning violations of this chapter to the proper prosecuting**
137 **attorney, who with or without a criminal reference, or the attorney**
138 **general under section 27.030, RSMo, may institute the appropriate**
139 **criminal proceedings.**

140 **8. Nothing in this section shall limit the power of the state to**
141 **punish any person for any conduct that constitutes a crime in any other**
142 **state statute.**

375.881. [1.] The director may revoke or suspend the certificate of

2 authority of a foreign insurance company [or may by order require the insurance
3 company to pay to the people of the state of Missouri a penalty in a sum not
4 exceeding five hundred dollars and upon failure of the insurance company to pay
5 the penalty within twenty days after the mailing of the order, postage prepaid,
6 certified, and addressed to the last known place of business of the insurance
7 company, unless the order is stayed by an order of a court of competent
8 jurisdiction, the director of insurance may revoke or suspend the license of the
9 insurance company for any period of time] **under section 374.047, RSMo, or**
10 **issue such administrative orders as appropriate under section 374.046,**
11 **RSMo**, whenever he finds that the company

12 (1) Is insolvent;

13 (2) Fails to comply with the requirements for admission in respect to
14 capital, the investment of its assets or the maintenance of deposits in this or
15 other state or fails to maintain the surplus which similar domestic companies
16 transacting the same kinds of business are required to maintain;

17 (3) Is in such a financial condition that its further transaction of business
18 in this state would be hazardous to policyholders and creditors in this state and
19 to the public;

20 (4) Has refused or neglected to pay a valid final judgment against the
21 company within thirty days after the rendition of the judgment;

22 (5) Has refused to submit to the jurisdiction of a court of this state upon
23 the grounds of diversity of citizenship in a cause of action arising out of business
24 transacted, acts done, or contracts made in this state by the foreign insurance
25 company;

26 (6) Has violated any law of this state or has in this state violated its
27 charter or exceeded its corporate powers;

28 (7) Has refused to submit its books, papers, accounts, records, or affairs
29 to the reasonable inspection or examination of the director, his actuaries,
30 deputies or examiners;

31 (8) Has an officer who has refused upon reasonable demand to be
32 examined under oath touching its affairs;

33 (9) Fails to file its annual statement within thirty days after the date
34 when it is required by law to file the statement;

35 (10) Fails to file with the director a copy of an amendment to its charter
36 or articles of association within thirty days after the effective date of the
37 amendment;

38 (11) Fails to file with the director copies of the agreement and certificate
39 of merger and the financial statements of the merged companies, if required,
40 within thirty days after the effective date of the merger;

41 (12) Fails to pay any fees, taxes or charges prescribed by the laws of this
42 state within thirty days after they are due and payable; provided, however, that
43 in case of objection or legal contest the company shall not be required to pay the
44 tax until thirty days after final disposition of the objection or legal contest;

45 (13) Fails to file any report for the purpose of enabling the director to
46 compute the taxes to be paid by the company within thirty days after the date
47 when it is required by law to file the report;

48 (14) Has had its corporate existence dissolved or its certificate of authority
49 revoked in the state or country in which it was organized;

50 (15) Has had all its risks reinsured in their entirety in another company;
51 or

52 (16) Has ceased to transact the business of insurance in this state for a
53 period of one year.

54 [2. The director shall not revoke or suspend the certificate of authority of
55 a foreign insurance company until he has given the company at least twenty days'
56 notice of the revocation or suspension and of the grounds therefor and has
57 afforded the company an opportunity for a hearing.]

375.940. [1.] Whenever the director shall have reason to believe that any
2 person or insurer has been engaged or is engaging in this state in any unfair
3 method of competition or any unfair or deceptive act or practice **in violation of**
4 **sections 375.930 to 375.948**, and that a proceeding by [him] **the director** in
5 respect thereto would be to the interest of the public, [he] **the director** shall
6 issue and serve upon such person or insurer a statement of the charges [in that
7 respect and a notice of hearing thereon to be held at a time and place fixed in the
8 notice which shall not be less than twenty days after the date of service thereof.

9 2. At the time and place fixed for such hearing, such person or insurer
10 shall have an opportunity to be heard to show cause why an order should not be
11 made by the director requiring such person or insurer to cease and desist from
12 the acts, methods or practices so complained of. Upon good cause shown, the
13 director shall permit any person to intervene, appear and be heard at such
14 hearing by counsel or in person. Nothing herein shall preclude the informal
15 disposition of any case by stipulation, consent order, or default, or by agreed
16 settlement where such settlement is in conformity with law.

17 3. Nothing contained in sections 375.930 to 375.948 shall require the
18 observance at any such hearing of formal rules of pleading or evidence.

19 4. Upon such hearing, the director shall have power to examine and
20 cross-examine witnesses, receive oral and documentary evidence, administer
21 oaths, subpoena witnesses and compel their attendance, and require the
22 production of books, papers, records, correspondence and all other written
23 instruments or documents which he deems relevant to the inquiry. The director,
24 upon any such hearing, shall cause to be made a record of all the evidence and
25 all the proceedings had at such hearing. In case of a refusal of any person to
26 comply with any subpoena issued hereunder or to testify with respect to any
27 matter concerning which he may be lawfully interrogated, the circuit court of Cole
28 County or the county where such party resides, or may be found, on application
29 of the director, may issue an order requiring such person to comply with such
30 subpoena and to testify; and any failure to obey any such order of the court may
31 be punished by the court as a contempt thereof.

32 5. Statements of charges, notices, orders, and other processes of the
33 director under sections 375.930 to 375.948 may be served by anyone duly
34 authorized by the director either in the manner provided by law for service of
35 process in civil actions, or by registering or certifying and mailing a copy thereof
36 to the person affected by such statement, notice, order, or other process at his or
37 its residence or principal office or place of business. The verified return by the
38 person so serving such statement, notice, order or other process, setting forth the
39 manner of such service, shall be proof of the same, and the return postcard
40 receipt for such statement, notice, order or other process, registered and mailed
41 as aforesaid, shall be proof of the service of the same] **under the procedures**
42 **set forth in section 374.046, RSMo.**

 375.942. 1. [If, after such hearing, the director determines that the
2 person charged has engaged in an unfair method of competition or in an unfair
3 or deceptive act or practice prohibited by section 375.934 or 375.937, he shall
4 reduce his findings to writing and shall issue and cause to be served upon the
5 person charged with the violation a copy of such findings and an order requiring
6 such person to cease and desist from engaging in such method of competition, act
7 or practice, and thereafter the director may, at his discretion, order one or more
8 of the following:

9 (1) Payment of a monetary penalty of not more than one thousand dollars
10 for each violation but not to exceed an aggregate penalty of one hundred thousand

11 dollars in any twelve-month period unless the violation was committed flagrantly
12 and in conscious disregard of section 375.934 or 375.937, in which case the
13 penalty shall be not more than twenty-five thousand dollars for each violation but
14 not to exceed an aggregate penalty of two hundred fifty thousand dollars in any
15 twelve-month period;

16 (2) Suspension or revocation of the insurer's license if such insurer knew
17 or reasonably should have known it was in violation of section 375.934 or 375.937.

18 2. Until the expiration of the time allowed under section 375.944 for filing
19 a petition for judicial review, if no such petition has been duly filed within such
20 time or, if a petition for review has been filed within such time, then until the
21 transcript of the record in the proceeding has been filed in the circuit court of
22 Cole County, the director may at any time, upon such notice and in such manner
23 as he shall deem proper, modify or set aside in whole or in part any order issued
24 by him under this section.

25 3. After the expiration of the time allowed for filing such a petition for
26 review, if no such petition has been duly filed within such time, the director may
27 at any time, after notice and opportunity for hearing, reopen and alter, modify or
28 set aside, in whole or in part, any order issued by him under this section,
29 whenever in his opinion conditions of fact or of law have so changed as to require
30 such action or if the public interest shall so require.

31 4. Nothing contained in sections 375.930 to 375.948 shall be construed to
32 prohibit the director and the person from agreeing to a voluntary forfeiture with
33 or without proceedings being instituted. Any sum so agreed upon shall be paid
34 into the school fund as provided by law for other fines and penalties] **If the**
35 **director determines that an insurer has engaged, is engaging, or is**
36 **about to engage in a violation of sections 375.930 to 375.948 or a rule**
37 **adopted or order issued pursuant thereto, or that a person has**
38 **materially aided, is materially aiding, or is about to materially aid a**
39 **practice constituting a violation of sections 375.930 to 375.948 or a rule**
40 **adopted or order issued pursuant thereto, the director may issue such**
41 **administrative orders as authorized under section 374.046, RSMo. Each**
42 **practice in violation of section 375.934 is a level two violation under**
43 **section 374.049, RSMo. Each act as part of a trade practice does not**
44 **constitute a separate violation under section 374.049, RSMo. The**
45 **director of insurance may also suspend or revoke the license or**
46 **certificate of authority of an insurer for any willful violation.**

47 **2. If the director believes that an insurer has engaged, is**
48 **engaging, or is about to engage in a violation of sections 375.930 to**
49 **375.948 or a rule adopted or order issued pursuant thereto, or that a**
50 **person has materially aided, is materially aiding, or is about to**
51 **materially aid a practice constituting a violation of sections 375.930 to**
52 **375.948 or a rule adopted or order issued pursuant thereto, the director**
53 **may maintain a civil action for relief authorized under section 374.048,**
54 **RSMo. Each practice in violation of section 375.934 is a level two**
55 **violation under section 374.049, RSMo. Each act as part of a trade**
56 **practice does not constitute a separate violation under section 374.049,**
57 **RSMo.**

 375.946. [Any person who violates] **It is unlawful for any person to**
2 **violate any provision of** a cease and desist order of the director under section
3 375.942[, while such order is in effect, may, after notice and hearing, and upon
4 order of the director, be subject to either or both of the following:

5 (1) A monetary penalty of not more than twenty-five thousand dollars for
6 each and every act or violation not to exceed an aggregate amount of two hundred
7 fifty thousand dollars pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of
9 authority]. **The director may institute an action under sections 374.046**
10 **and 374.047, RSMo, as necessary to enforce any such order.**

 375.994. 1. Department investigators shall have the power to serve
2 subpoenas issued for the examination, investigation, and trial of all offenses
3 determined by their investigations.

4 2. It is unlawful for any person to interfere, either by abetting or assisting
5 such resistance or otherwise interfering, with department investigators in the
6 duties imposed upon them by law or department rule.

7 3. Any moneys, or other property which is awarded to the department as
8 costs of investigation, or as a fine, shall be credited to the department of
9 insurance dedicated fund created by section 374.150, RSMo.

10 **4. If the director determines that a person has engaged, is**
11 **engaging, or is about to engage in a violation of section 375.991 or a**
12 **rule adopted or order issued pursuant thereto, or that a person has**
13 **materially aided, is materially aiding, or is about to materially aid an**
14 **act, practice, omission, or course of business constituting a violation of**
15 **section 375.991 or a rule adopted or order issued pursuant thereto, the**

16 **director may issue such administrative orders as authorized under**
17 **section 374.046, RSMo. A violation of any of these sections is a level**
18 **two violation under section 374.049, RSMo. The director of insurance**
19 **may also suspend or revoke the license or certificate of authority of**
20 **such person for any willful violation.**

21 **5. If the director believes that a person has engaged, is engaging,**
22 **or is about to engage in a violation of section 375.991 or a rule adopted**
23 **or order issued pursuant thereto, or that a person has materially aided,**
24 **is materially aiding, or is about to materially aid an act, practice,**
25 **omission, or course of business constituting a violation of section**
26 **375.991 or a rule adopted or order issued pursuant thereto, the director**
27 **may maintain a civil action for relief authorized under section 374.048,**
28 **RSMo. A violation of any of these sections is a level two violation**
29 **under section 374.049, RSMo.**

30 **6.** Nothing in this section shall be construed as prohibiting the
31 department of insurance from regulating unfair or fraudulent trade practices as
32 provided for in sections 375.930 to 375.948.

33 [5. In the event] **7. If the director determines that a person regulated**
34 **under this chapter has conducted its business fraudulently with respect to**
35 **sections 375.991 to 375.994, or has as a matter of business practice abused its**
36 **rights under said sections, such conduct shall [be considered] constitute either**
37 **an unfair trade practice under the provisions of sections 375.930 to 375.948 or an**
38 **unfair claims settlement practice under the provisions of sections 375.1000 to**
39 **375.1018. [The director shall have the power and authority, pursuant to the**
40 **unfair trade practices act and the unfair claims settlement practices act to subject**
41 **such persons to the monetary penalty or suspend or revoke such person's license**
42 **or certificate of authority, under such acts.]**

375.1010. 1. [Whenever the director shall have reason to believe that any
2 insurer has been engaged or is engaging in this state in any improper claims
3 practice, and that a proceeding by him in respect thereto would be to the interest
4 of the public, he shall issue and serve upon such person or insurer a statement
5 of the charges in that respect and a notice of hearing thereon to be held at a time
6 and place fixed in the notice which shall not be less than twenty days after the
7 date of service thereof.

8 2. At the time and place fixed for such hearing, such insurer shall have
9 an opportunity to be heard to show cause why an order should not be made by the

10 director requiring such insurer to cease and desist from the acts, methods or
11 practices so complained of. Upon good cause shown, the director shall permit any
12 person to intervene, appear and be heard at such hearing by counsel or in
13 person. Nothing in sections 375.1000 to 375.1018 shall preclude the informal
14 disposition of any case by stipulation, consent order, or default, or by agreed
15 settlement where such settlement is in conformity with law.

16 3. Nothing contained in sections 375.1000 to 375.1018 shall require the
17 observance at any such hearing of formal rules of pleading or evidence.

18 4. Upon such hearing, the director may examine and cross-examine
19 witnesses, receive oral and documentary evidence, administer oaths, subpoena
20 witnesses and compel their attendance, and require the production of books,
21 papers, records, correspondence and all other written instruments or documents
22 which he deems relevant to the inquiry. The director, upon any such hearing,
23 shall cause to be made a record of all the evidence and all the proceedings had
24 at such hearing. In case of a refusal of any person to comply with any subpoena
25 issued hereunder or to testify with respect to any matter concerning which he
26 may be lawfully interrogated, the circuit court of Cole County or the county where
27 such party resides, or may be found, on application of the director, may issue an
28 order requiring such person to comply with such subpoena and to testify; and any
29 failure to obey any such order of the court may be punished by the court as a
30 contempt thereof.

31 5. Statements of charges, notices, orders, and other processes of the
32 director under sections 375.1000 to 375.1018 may be served by anyone duly
33 authorized by the director either in the manner provided by law for service of
34 process in civil actions, or by registering or certifying and mailing a copy thereof
35 to the person affected by such statement, notice, order, or other process at his or
36 its residence or principal office or place of business. The verified return by the
37 person so serving such statement, notice, order or other process, setting forth the
38 manner of such service, shall be proof of the same, and the return postcard
39 receipt for such statement, notice, order or other process, registered and mailed
40 as aforesaid, shall be proof of the service of the same.] **If the director**
41 **determines that an insurer has engaged, is engaging, or is about to**
42 **engage in a violation of sections 375.1000 to 375.1018 or a rule adopted**
43 **or order issued pursuant thereto, or that a person has materially aided,**
44 **is materially aiding, or is about to materially aid an act, practice,**
45 **omission, or course of business constituting a violation of sections**

46 **375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto,**
47 **the director may issue such administrative orders as authorized under**
48 **section 374.046, RSMo. Each practice in violation of section 375.1005 is**
49 **a level two violation under section 374.049, RSMo. Each act as part of**
50 **a claims settlement practice does not constitute a separate violation**
51 **under section 374.049, RSMo. The director of insurance may also**
52 **suspend or revoke the license or certificate of authority of an insurer**
53 **for any willful violation.**

54 **2. If the director believes that an insurer has engaged, is**
55 **engaging, or is about to engage in a violation of sections 375.1000 to**
56 **375.1018 or a rule adopted or order issued pursuant thereto, or that a**
57 **person has materially aided, is materially aiding, or is about to**
58 **materially aid an act, practice, omission, or course of business**
59 **constituting a violation of sections 375.1000 to 375.1018 or a rule**
60 **adopted or order issued pursuant thereto, the director may maintain**
61 **a civil action for relief authorized under section 374.048, RSMo. Each**
62 **practice in violation of section 375.1005 is a level two violation under**
63 **section 374.049, RSMo. Each act as part of a claims settlement practice**
64 **does not constitute a separate violation under section 374.049, RSMo.**

375.1014. 1. [Any person, including any person who has been permitted
2 to intervene, who is aggrieved by a final order or decision of the director shall be
3 entitled to judicial review thereof.

4 2. The court shall make and enter upon the pleadings evidence and
5 proceedings set forth in the transcript a degree modifying, affirming or reversing
6 the order of the director, in whole or in part. To the extent that the order of the
7 director is affirmed, the court shall thereupon issue its own order commanding
8 obedience to the terms of such order of the director. If either party shall apply
9 to the court for leave to adduce additional evidence, and shall show to the
10 satisfaction of the court that such additional evidence is material and that there
11 were reasonable grounds for the failure to adduce such evidence in the proceeding
12 before the director, the court may order such additional evidence to be taken
13 before the director and to be adduced upon the hearing in such manner and upon
14 such terms and conditions as the court may deem proper. The director may
15 modify his findings of fact, or make new findings by reason of the additional
16 evidence so taken, and he shall file such modified or new findings which are
17 supported by evidence on the record and his recommendation, if any, for the

18 modification or setting aside of his original order, with the return of such
19 additional evidence.

20 3. An order issued by the director under section 375.1012 shall become
21 final:

22 (1) Upon the expiration of the time allowed for filing a petition for review
23 if no such petition has been duly filed within such time; except that the director
24 may thereafter modify or set aside his order to the extent provided in subsection
25 2 of section 375.1012; or

26 (2) Upon the final decision of the court if the court directs that the order
27 of the director be affirmed or the petition for review dismissed.

28 **4.] A final order issued by the director under sections 375.1000**
29 **to 375.1018 is subject to judicial review in accordance with the**
30 **provisions of chapter 536, RSMo, in the circuit court of Cole County.**

31 2. No order of the director under section 375.942 or order of a court to
32 enforce the same shall in any way relieve or absolve any person affected by such
33 order from any liability under any other laws of this state.

375.1016. [Any person who violates] **It is unlawful for any person to**
2 **violate any provision of a cease and desist order of the director under section**
3 **375.1012, [while such order is in effect, may, after notice and hearing, and upon**
4 **order of the director, be subject to either or both of the following:**

5 (1) A monetary penalty of not more than twenty-five thousand dollars for
6 each and every act or violation not to exceed an aggregate amount of two hundred
7 fifty thousand dollars pursuant to any such hearing; or

8 (2) Suspension or revocation of such person's license or certificate of
9 authority] **and the director may institute an action under sections**
10 **374.046 and 374.047, RSMo, as necessary to enforce any such order.**

375.1135. 1. [A reinsurance intermediary, insurer or reinsurer found by
2 the director, after a hearing conducted in accordance with chapter 536, RSMo, to
3 be in violation of any provisions of sections 375.1110 to 375.1140, shall:

4 (1) For each separate violation, pay a penalty in an amount not exceeding
5 five thousand dollars;

6 (2) Be subject to revocation or suspension of its license; and

7 (3)] **If the director determines that a reinsurance intermediary,**
8 **insurer, or reinsurer has engaged, is engaging, or is about to engage in**
9 **a violation of sections 375.1110 to 375.1140 or a rule adopted or order**
10 **issued pursuant thereto, or that a person has materially aided, is**

11 **materially aiding, or is about to materially aid an act, practice,**
12 **omission, or course of business constituting a violation of sections**
13 **375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto,**
14 **the director may issue such administrative orders as authorized under**
15 **section 374.046, RSMo. A violation of any of these sections is a level**
16 **two violation under section 374.049, RSMo. The director of insurance**
17 **may also suspend or revoke the license or certificate of authority of a**
18 **reinsurance intermediary, insurer, or reinsurer for any willful**
19 **violation.**

20 **2. If the director believes that a reinsurance intermediary,**
21 **insurer, or reinsurer has engaged, is engaging, or is about to engage in**
22 **a violation of sections 375.1110 to 375.1140 or a rule adopted or order**
23 **issued pursuant thereto, or that a person has materially aided, is**
24 **materially aiding, or is about to materially aid an act, practice,**
25 **omission, or course of business constituting a violation of sections**
26 **375.1110 to 375.1140 or a rule adopted or order issued pursuant thereto,**
27 **the director may maintain a civil action for relief authorized under**
28 **section 374.048, RSMo. A violation of any of these sections is a level**
29 **two violation under section 374.049, RSMo.**

30 **3. In addition to any other relief authorized by sections 374.046**
31 **and 374.047, RSMo,** if a violation was committed by the reinsurance
32 intermediary, such reinsurance intermediary shall make restitution to the
33 insurer, reinsurer, rehabilitator or liquidator of the insurer or reinsurer for the
34 net losses incurred by the insurer or reinsurer attributable to such violation.

35 [2. The decision, determination or order of the director pursuant to
36 subsection 1 of this section shall be subject to judicial review pursuant to sections
37 536.100 to 536.140, RSMo.

38 3. Nothing contained in this section shall affect the right of the director
39 to impose any other penalties provided by law.]

40 4. Nothing contained in sections 375.1110 to 375.1140 is intended to or
41 shall in any manner limit or restrict the rights of policyholders, claimants,
42 creditors or other third parties or confer any rights to such persons.

375.1156. 1. Any officer, manager, director, trustee, owner, employee or
2 agent of any insurer, or any other persons with authority over or in charge of any
3 segment of the insurer's affairs, shall cooperate with the director or any receiver
4 in any proceeding under sections 375.1150 to 375.1246 or any investigation

5 preliminary to the proceeding. The term "person" as used in this section, shall
6 include any person who exercises control directly or indirectly over activities of
7 the insurer through any holding company or other affiliate of the insurer. "To
8 cooperate" shall include, but shall not be limited to, the following:

9 (a) To reply promptly in writing to any inquiry from the director
10 requesting such a reply; and

11 (b) To make available to the director any books, accounts, documents, or
12 other records or information or property of or pertaining to the insurer and in its
13 possession, custody or control.

14 2. **[No] It is unlawful for any person [shall] included in subsection**
15 **1 of this section to** obstruct or interfere with the director in the conduct of any
16 delinquency proceeding or any investigation preliminary or incidental thereto.

17 3. This section shall not be construed to abridge otherwise existing legal
18 rights, including the right to resist a petition for liquidation or other delinquency
19 proceedings, or other orders.

20 [4. Any person included within subsection 1 of this section who fails to
21 cooperate with the director, or any person who knowingly obstructs or interferes
22 with the director in the conduct of any delinquency proceeding or any
23 investigation preliminary or incidental thereto, or who knowingly violates any
24 order the director issued validly under sections 375.1150 to 375.1246 shall be
25 guilty of a class A misdemeanor, and, in addition thereto, after a hearing, shall
26 be subject to the imposition by the director of an administrative penalty not to
27 exceed ten thousand dollars for each occurrence or violation and shall be subject
28 further to the revocation or suspension of any insurance licenses issued by the
29 director. Moneys collected pursuant to the imposition of such administrative
30 penalties shall be transferred to the state treasurer and deposited to the general
31 revenue fund.

32 5.] 4. In any proceeding under sections 375.1150 to 375.1246, the director
33 and his deputies shall be responsible on their official bonds for the faithful
34 performance of their duties. If the court deems it desirable for the protection of
35 the assets, it may at any time require an additional bond from the director or his
36 deputies, and such bonds shall be paid for out of the assets of the insurer as a
37 cost of administration.

375.1160. 1. As used in this section:

2 (1) "Exceeded its powers" means one or more of the following conditions:

3 (a) The insurer has refused to permit examination of its books, papers,

4 accounts, records or affairs by the director, his deputy, employees or duly
5 commissioned examiners;

6 (b) A domestic insurer has unlawfully removed from this state or is unable
7 to produce books, papers, accounts or records necessary for an examination of the
8 insurer;

9 (c) The insurer has failed to promptly comply with the applicable financial
10 reporting statutes or rules and requests relating thereto;

11 (d) The insurer has neglected or refused to observe an order of the
12 director to make good, within the time prescribed by law, any prohibited
13 deficiency in its capital, capital stock or surplus;

14 (e) The insurer is continuing to transact insurance or write business after
15 its license has been revoked or suspended by the director;

16 (f) The insurer, by contract or otherwise, has unlawfully or has in
17 violation of an order of the director or has without first having obtained written
18 approval of the director if approval is required by law:

19 a. Totally reinsured its entire outstanding business, or

20 b. Merged or consolidated substantially its entire property or business
21 with another insurer;

22 (g) The insurer engaged in any transaction in which it is not authorized
23 to engage under the laws of this state;

24 (h) A domestic insurer has committed or engaged in, or is about to commit
25 or engage in, any act, practice or transaction that would subject it to delinquency
26 proceedings under sections 375.1150 to 375.1246; or

27 (i) The insurer refused to comply with a lawful order of the director;

28 (2) "Consent" means agreement to administrative supervision by the
29 insurer.

30 2. (1) An insurer may be subject to administrative supervision by the
31 director if upon examination or at any other time it appears in the director's
32 discretion that:

33 (a) The insurer's condition renders the continuance of its business
34 hazardous to the public or to its insureds;

35 (b) The insurer exceeded its powers granted under its certificate of
36 authority and applicable law;

37 (c) The insurer has failed to comply with the laws of this state relating to
38 insurance;

39 (d) The business of the insurer is being conducted fraudulently; or

40 (e) The insurer gives its consent.

41 (2) If the director determines that the conditions set forth in subdivision
42 (1) of this subsection exist, the director shall:

43 (a) Notify in writing the insurer of his determination;

44 (b) Furnish to the insurer a written list of his requirements to rescind his
45 determination; and

46 (c) Notify the insurer that it is under the supervision of the director and
47 that the director is applying and effectuating the provisions of this section.

48 (3) The notice of supervision under this subsection and any order issued
49 pursuant to this section shall be served upon the insurer in writing by registered
50 mail. The notice of supervision shall state the conduct, condition or ground upon
51 which the director bases his order.

52 (4) If placed under administrative supervision, the insurer shall have
53 sixty days, or another period of time as designated by the director, to comply with
54 the requirements of the director subject to the provisions of this section. In the
55 event of such insurer's failure to comply with such time periods, the director may
56 institute proceedings under section 375.1165 or 375.1175 to have a rehabilitator
57 or liquidator appointed, or to extend the period of supervision.

58 (5) If it is determined that none of the conditions giving rise to the
59 supervision exist, the director shall release the insurer from supervision.

60 3. (1) Except as set forth in this subsection, all proceedings, hearings,
61 notices, orders, correspondence, reports, records and other information in the
62 possession of the director or the department of insurance relating to the
63 supervision of any insurer are confidential except as provided by this section.

64 (2) Personnel of the department of insurance shall have access to these
65 proceedings, hearings, notices, orders, correspondence, reports, records or
66 information as permitted by the director.

67 (3) The director may open the proceedings or hearings or disclose the
68 notices, orders, correspondence, reports, records or information to a department,
69 agency or instrumentality of this or another state or the United States if the
70 director determines that the disclosure is necessary or proper for the enforcement
71 of the laws of this or another state of the United States.

72 (4) The director may open the proceedings or hearings or make public the
73 notices, orders, correspondence, reports, records or other information if the
74 director deems that it is in the best interest of the public or in the best interest
75 of the insurer, its insureds, creditors or the general public.

76 (5) This subsection does not apply to hearings, notices, correspondence,
77 reports, records or other information obtained upon the appointment of a receiver
78 for the insurer by a court of competent jurisdiction.

79 4. During the period of supervision, the director or his designated
80 appointee shall serve as the administrative supervisor. The director may provide
81 that the insurer shall not do any of the following things during the period of
82 supervision, without the prior approval of the director or the appointed
83 supervisor:

84 (1) Dispose of, convey or encumber any of its assets or its business in
85 force;

86 (2) Withdraw any of its bank accounts;

87 (3) Lend any of its funds;

88 (4) Invest any of its funds;

89 (5) Transfer any of its property;

90 (6) Incur any debt, obligation or liability;

91 (7) Merge or consolidate with another company;

92 (8) Approve new premiums or renew any policies;

93 (9) Enter into any new reinsurance contract or treaty;

94 (10) Terminate, surrender, forfeit, convert or lapse any insurance policy,
95 certificate or contract, except for nonpayment of premiums due;

96 (11) Write any new or renewal business;

97 (12) Release, pay or refund premium deposits, accrued cash or loan
98 values, unearned premiums, or other reserves on any insurance policy, certificate
99 or contract;

100 (13) Make any material change in management; or

101 (14) Increase salaries and benefits of officers or directors or the
102 preferential payment of bonuses, dividends or other payments deemed
103 preferential.

104 5. Any insurer subject to a supervision order under this section may seek
105 review pursuant to section 536.150, RSMo, of that order within thirty days of the
106 entry of the order of supervision. Such a request for a hearing shall not stay the
107 effect of the order.

108 6. During the period of supervision the insurer may contest an action
109 taken or proposed to be taken by the administrative supervisor specifying the
110 manner in which the action being complained of would not result in improving
111 the condition of the insurer. An insurer may request review pursuant to section

112 536.150, RSMo, of written denial of the insurer's request to reconsider pursuant
113 to this subsection.

114 7. If any person has violated any supervision order issued under this
115 section which as to him was still in effect, the director may [impose an
116 administrative penalty in an amount not to exceed ten thousand dollars for each
117 violation. Moneys collected pursuant to the imposition of such penalties shall be
118 transferred to the state treasurer and deposited to the general revenue fund.

119 8. The director or administrative supervisor may apply for, and any court
120 of general jurisdiction may grant, such restraining orders, preliminary and
121 permanent injunctions, and other orders as may be deemed necessary and proper
122 to enforce a supervision order.

123 **9.] initiate an action under section 375.1161.**

124 8. In the event that any person, subject to the provisions of sections
125 375.1150 to 375.1246, including those persons described in subsection 1 of section
126 375.1156, shall knowingly violate any valid order of the director issued under the
127 provisions of this section and, as a result of such violation, the net worth of the
128 insurer shall be reduced or the insurer shall suffer loss it would not otherwise
129 have suffered, said person shall become personally liable to the insurer for the
130 amount of any such reduction or loss. The director or administrative supervisor
131 is authorized **under subsection 1 of section 375.1161** to bring an action on
132 behalf of the insurer in any court of competent jurisdiction to recover the amount
133 of reduction or loss together with any costs.

134 **[10.] 9.** Nothing contained in sections 375.1150 to 375.1246 shall
135 preclude the director from initiating judicial proceedings to place an insurer in
136 conservation, rehabilitation or liquidation proceedings or other delinquency
137 proceedings, however designated under the laws of this state, regardless of
138 whether the director has previously initiated administrative supervision
139 proceedings under this section against the insurer.

140 **[11.] 10.** The director may adopt reasonable rules necessary for the
141 implementation of this section.

142 **[12.] 11.** Notwithstanding any other provision of law, the director may
143 meet with an administrative supervisor appointed under this section and with the
144 attorney or other representative of the administrative supervisor, without the
145 presence of any other person, at the time of any proceeding or during the
146 pendency of any proceeding held under authority of this section to carry out his
147 duties under this section or for the administrative supervisor to carry out his

148 duties under this section.

149 [13.] **12.** There shall be no liability on the part of, and no cause of action
150 of any nature shall arise against, the director or the department of insurance or
151 its employees or agents for any action taken by them in the performance of their
152 powers and duties under this section.

**375.1161. 1. If the director determines that a person has
2 engaged, is engaging, or is about to engage in a violation of sections
3 375.1150 to 375.1246 or a rule adopted or order issued pursuant thereto,
4 or that a person has materially aided, is materially aiding, or is about
5 to materially aid an act, practice, omission, or course of business
6 constituting a violation of sections 375.1150 to 375.1246 or a rule
7 adopted or order issued pursuant thereto, the director may issue such
8 administrative orders as authorized under section 374.046, RSMo. A
9 violation of any of these sections is a level four violation under section
10 374.049, RSMo. The director of insurance may also suspend or revoke
11 the license or certificate of authority of such person for any willful
12 violation.**

**13 2. If the director believes that a person has engaged, is engaging,
14 or is about to engage in a violation of sections 375.1150 to 375.1246 or
15 a rule adopted or order issued pursuant thereto, or that a person has
16 materially aided, is materially aiding, or is about to materially aid an
17 act, practice, omission, or course of business constituting a violation of
18 sections 375.1150 to 375.1246 or a rule adopted or order issued pursuant
19 thereto, the director may maintain a civil action for relief authorized
20 under section 374.048, RSMo. A violation of any of these sections is a
21 level four violation under section 374.049, RSMo.**

**375.1204. 1. [An agent, broker] A producer, premium finance company,
2 or any other person, other than the insured, responsible for the payment of a
3 premium, shall be obligated to pay any unpaid earned premium due the insurer
4 at the time of the declaration of insolvency as shown on the records of the
5 insurer. The liquidator shall also have the right to recover from such person any
6 part of an unearned premium that represents commission of such person. Credits
7 or setoffs or both shall not be allowed to [an agent, broker,] a producer or
8 premium finance company for any amounts advanced to the insurer by the [agent,
9 broker,] producer or premium finance company on behalf of, but in the absence
10 of a payment by the insured. An insured shall be obligated to pay any unpaid**

11 earned premium due the insurer at the time of the declaration of insolvency, as
12 shown on the records of the insurer.

13 2. [Upon satisfactory evidence of a violation of this section, the director
14 may pursue either one or both of the following courses of action:

15 (1) Suspend or revoke or refuse to renew any licenses issued by the
16 department of insurance to such offending party or parties;

17 (2) Impose an administrative penalty of not more than one thousand
18 dollars for each and every act in violation of this section by said party or parties.
19 All amounts collected as a result of imposition of such administrative penalties
20 shall be paid to the state treasurer for deposit to the general revenue fund.

21 3. Before the director shall take any action as set forth in subsection 2 of
22 this section, he shall give written notice to the person, company, association or
23 exchange accused of violating the law, stating specifically the nature of the
24 alleged violation and fixing a time and place, at least ten days thereafter, when
25 a hearing on the matter shall be held. After such hearing, or upon failure of the
26 accused to appear at such hearing, the director, if he shall find such violation,
27 shall impose such of the penalties under subsection 2 of this section as he deems
28 advisable.

29 4. When the director shall take any action provided by subsection 2 of this
30 section, the party aggrieved may appeal said action to the court within thirty
31 days of the director's decision] **If the director determines that a person has**
32 **engaged, is engaging, or is about to engage in a violation of this section**
33 **or a rule adopted or order issued pursuant thereto, or that a person has**
34 **materially aided, is materially aiding, or is about to materially aid an**
35 **act, practice, omission, or course of business constituting a violation of**
36 **this section or a rule adopted or order issued pursuant thereto, the**
37 **director may issue such administrative orders as authorized under**
38 **section 374.046, RSMo. A violation of this section is a level one**
39 **violation under section 374.049, RSMo. The director of insurance may**
40 **also suspend, revoke, or refuse to renew any license issued by the**
41 **director to any offending person for any willful violation.**

42 3. **If the director believes that a person has engaged, is engaging,**
43 **or is about to engage in a violation of this section or a rule adopted or**
44 **order issued pursuant thereto, or that a person has materially aided,**
45 **is materially aiding, or is about to materially aid an act, practice,**
46 **omission, or course of business constituting a violation of this section**

47 **or a rule adopted or order issued pursuant thereto, the director may**
48 **maintain a civil action for relief authorized under section 374.048,**
49 **RSMo. A violation of this section is a level one violation under section**
50 **374.049, RSMo.**

375.1306. 1. An employer shall not use any genetic information or genetic
2 test results, as those terms are defined in subdivisions (3) and (4) of section
3 375.1300, of an employee or prospective employee to distinguish between,
4 discriminate against, or restrict any right or benefit otherwise due or available
5 to such employee or prospective employee. The requirements of this section shall
6 not prohibit:

7 (1) Underwriting in connection with individual or group life, disability
8 income or long-term care insurance;

9 (2) Any action required or permissible by law or regulation;

10 (3) Action taken with the written permission of an employee or
11 prospective employee or such person's authorized representative; or

12 (4) The use of genetic information when such information is directly
13 related to a person's ability to perform assigned job responsibilities.

14 2. [Any person who violates the provisions of this section shall be fined
15 not more than five hundred dollars for each violation of this section] **If the**
16 **director determines that a person has engaged, is engaging, or is about**
17 **to engage in a violation of this section or a rule adopted or order issued**
18 **pursuant thereto, or that a person has materially aided, is materially**
19 **aiding, or is about to materially aid an act, practice, omission, or**
20 **course of business constituting a violation of this section or a rule**
21 **adopted or order issued pursuant thereto, the director may issue such**
22 **administrative orders as authorized under section 374.046, RSMo. A**
23 **violation of any of these sections is a level two violation under section**
24 **374.049, RSMo.**

25 3. **If the director believes that a person has engaged, is engaging,**
26 **or is about to engage in a violation of this section or a rule adopted or**
27 **order issued pursuant thereto, or that a person has materially aided,**
28 **is materially aiding, or is about to materially aid an act, practice,**
29 **omission, or course of business constituting a violation of this section**
30 **or a rule adopted or order issued pursuant thereto, the director may**
31 **maintain a civil action for relief authorized under section 374.048,**
32 **RSMo. A violation of any of these sections is a level two violation**

33 under section 374.049, RSMo.

375.1309. 1. Any person who, in the ordinary course of business, practice
2 of a profession or rendering of a service, creates, stores, receives or furnishes
3 genetic information, as such term is defined in subdivision (3) of section 375.1300,
4 shall hold such information as confidential medical records and shall not disclose
5 such genetic information except pursuant to written authorization of the person
6 to whom such information pertains or to that person's authorized
7 representative. The requirements of this section shall not apply to:

8 (1) Statistical data compiled without reference to the identity of an
9 individual;

10 (2) Health research conducted in accordance with the provisions of the
11 federal common rule protecting the rights and welfare of research participants (45
12 CFR 46 and 21 CFR 50 and 56), or to health research using medical archives or
13 databases in which the identity of individuals is protected from disclosure by
14 coding or encryption, or by removing all identities;

15 (3) The release of such information pursuant to legal or regulatory
16 process; or

17 (4) The release of such information for body identification.

18 2. [Any person who violates the provisions of this section shall be fined
19 not more than five hundred dollars.] **If the director determines that a
20 person has engaged, is engaging, or is about to engage in violation of
21 this section or a rule adopted or order issued pursuant thereto, or that
22 a person has materially aided, is materially aiding, or is about to
23 materially aid an act, practice, omission, or course of business
24 constituting a violation of this section or a rule adopted or order issued
25 pursuant thereto, the director may issue such administrative orders as
26 authorized under section 374.046, RSMo. A violation of any of these
27 sections is a level two violation under section 374.049, RSMo.**

28 **3. If the director believes that a person has engaged, is engaging,
29 or is about to engage in a violation of this section or a rule adopted or
30 order issued pursuant thereto, or that a person has materially aided,
31 is materially aiding, or is about to materially aid an act, practice,
32 omission, or course of business constituting a violation of this section
33 or a rule adopted or order issued pursuant thereto, the director may
34 maintain a civil action for relief authorized under section 374.048,
35 RSMo. A violation of any of these sections is a level two violation**

36 under section 374.049, RSMo.

376.309. 1. As used in this section, "separate account" means an account
2 established by an insurance company, into which any amounts paid to or held by
3 such company under applicable contracts are credited and the assets of which,
4 subject to the provisions of this section, may be invested in such investments as
5 shall be authorized by a resolution adopted by such company's board of
6 directors. The income, if any, and gains and losses, realized or unrealized, on
7 such account shall be credited to or charged against the amounts allocated to
8 such account without regard to other income, gains or losses of the company. If
9 and to the extent so provided under the applicable contracts, that portion of the
10 assets of any such separate account equal to the reserves and other contract
11 liabilities with respect to such account shall not be chargeable with liabilities
12 arising out of any other business the company may conduct.

13 2. Any domestic life insurance company may, after adoption of a
14 resolution by its board of directors, establish one or more separate accounts, and
15 may allocate to such account or accounts any amounts paid to or held by it which
16 are to be applied under the terms of an individual or group contract to provide
17 benefits payable in fixed or in variable dollar amounts or in both.

18 3. To the extent it deems necessary to comply with any applicable federal
19 or state act, the company may, with respect to any separate account or any
20 portion thereof, provide for the benefit of persons having beneficial interests
21 therein special voting and other rights and special procedures for the conduct of
22 the business and affairs of such separate account or portion thereof, including,
23 without limitation, special rights and procedures relating to investment policy,
24 investment advisory services, selection of public accountants, and selection of a
25 committee, the members of which need not be otherwise affiliated with the
26 company, to manage the business and affairs of such separate account or portion
27 thereof; and the corporate charter of such company shall be deemed amended to
28 authorize the company to do so. The provisions of this section shall not affect
29 existing laws pertaining to the voting rights of such company's policyholders.

30 4. The amounts allocated to any separate account and the accumulations
31 thereon may be invested and reinvested without regard to any requirements or
32 limitations prescribed by the laws of this state governing the investments of life
33 insurance companies, and the investments in such separate account or accounts
34 shall not be taken into account in applying the investment limitations, including
35 but not limited to quantitative restrictions, otherwise applicable to the

36 investments of the company, except that to the extent that the company's reserve
37 liability with regard to benefits guaranteed as to principal amount and duration,
38 and funds guaranteed as to principal amount or stated rate of interest, is
39 maintained in any separate account, a portion of the assets of such separate
40 account at least equal to such reserve liability shall be, except as the director of
41 insurance might otherwise approve, invested in accordance with the laws of this
42 state governing the general investment account of any company. As used herein,
43 the expression "general investment account" shall mean all of the funds, assets
44 and investments of the company which are not allocated in a separate
45 account. The provisions of section 376.170 relating to deposits for registered
46 policies shall not be applicable to funds and investments allocated to separate
47 accounts. No investment in the separate account or in the general investment
48 account of a life insurance company shall be transferred by sale, exchange,
49 substitution or otherwise from one account to another unless, in case of a transfer
50 into a separate account, the transfer is made solely to establish the account or to
51 support the operation of the contracts with respect to the separate account to
52 which the transfer is made or unless the transfer, whether into or from a separate
53 account, is made by a transfer of cash, or by a transfer of other assets having a
54 readily determinable market value, provided that such transfer of other assets is
55 approved by the director of insurance and is for assets of equivalent value. Such
56 transfer shall be deemed approved to the extent the assets of a separate account
57 so transferred have been paid to or are being held by the company in connection
58 with a pension, retirement or profit-sharing plan subject to the provisions of the
59 Internal Revenue Code, as amended, and the Employee Retirement Income
60 Security Act of 1974, as amended. The director of insurance may withdraw such
61 deemed approval by providing written notice to the company that its financial
62 condition or past practices require such withdrawal. The director of insurance
63 may approve other transfers among such accounts if the director concludes that
64 such transfers would be equitable.

65 5. Unless otherwise approved by the director of insurance, assets allocated
66 to a separate account shall be valued at their market value on the date of
67 valuation, or if there is no readily available market, then as provided under the
68 terms of the contract or the rules or other written agreement applicable to such
69 separate account; provided, that the portion of the assets of such separate account
70 at least equal to the company's reserve liability with regard to the guaranteed
71 benefits and funds referred to in subsection 4 of this section, if any, shall be

72 valued in accordance with the rules otherwise applicable to the company's assets.

73 6. The director of insurance shall have the sole and exclusive **state**
74 authority to regulate the issuance and **authority to regulate the** sale of
75 contracts under which amounts are to be allocated to one or more separate
76 accounts as provided herein, and to issue such reasonable rules, regulations and
77 licensing requirements as [he] **the director** shall deem necessary to carry out
78 the purposes and provisions of this section; and [such contracts,] the companies
79 [which] **that** issue [them and the agents or other persons who sell them] **such**
80 **contracts** shall not be subject to [sections 409.101 to 409.419, RSMo, or
81 amendments thereto, nor to the jurisdiction of the] **registration with the**
82 **commissioner of securities. The director may, subject to the provisions of**
83 **section 374.185, RSMo, consult and cooperate with the commissioner of**
84 **securities in investigations arising from the offer and sale of contracts**
85 **regulated under this section and may request assistance from the**
86 **commissioner of securities in any proceeding arising from the offer and**
87 **sale of any such contracts.**

88 7. No domestic life insurance company, and no other life insurance
89 company admitted to transact business in this state, shall be authorized to
90 deliver within this state any contract under which amounts are to be allocated to
91 one or more separate accounts as provided herein until said company has
92 satisfied the director of insurance that its condition or methods of operation in
93 connection with the issuance of such contracts will not render its operation
94 hazardous to the public or its policyholders in this state. In determining the
95 qualifications of a company requesting authority to deliver such contracts within
96 this state, the director of insurance shall consider, among other things:

97 (1) The history and financial condition of the company;

98 (2) The character, responsibility and general fitness of the officers and
99 directors of the company; and

100 (3) In the case of a company other than a domestic company, whether the
101 statutes and regulations of the jurisdiction of its incorporation provide a degree
102 of protection to policyholders and the public which is substantially equal to that
103 provided by this section and the rules and regulations issued thereunder.

104 8. An authorized life insurance company, whether domestic, foreign or
105 alien, which issues contracts under which amounts are to be allocated to one or
106 more separate accounts as provided herein, and which is a subsidiary of or
107 affiliated through common management or ownership with another life insurance

108 company authorized to do business in this state, may be deemed to have met the
109 provisions of subsection 7 of this section if either it or the parent or affiliated
110 company meets the requirements thereof.

111 9. If the contract provides for payment of benefits in variable amounts, it
112 shall contain a statement of the essential features of the procedure to be followed
113 by the company in determining the dollar amount of such variable benefits. Any
114 such contract, including a group contract, and any certificate issued thereunder,
115 shall state that such dollar amount may decrease or increase and shall contain
116 on its first page a statement that the benefits thereunder are on a variable basis.

117 10. Except as otherwise provided in this section, all pertinent provisions
118 of the insurance laws of this state shall apply to separate accounts and contracts
119 relating thereto.

376.889. [In addition to any other applicable penalties, the director may
2 require issuers violating any provision of sections 376.850 to 376.890 or
3 regulations promulgated pursuant to sections 376.850 to 376.890 to cease
4 marketing any Medicare supplement policy or certificate in this state which is
5 related directly or indirectly to a violation, or may require such issuer to take
6 such actions as are necessary to comply with the provisions of sections 376.850
7 to 376.890, or both] **1. If the director determines that a person has
8 engaged, is engaging, or is about to engage in a violation of sections
9 376.850 to 376.890 or a rule adopted or order issued pursuant thereto,
10 or that a person has materially aided, is materially aiding, or is about
11 to materially aid an act, practice, omission, or course of business
12 constituting a violation of sections 376.850 to 376.890 or a rule adopted
13 or order issued pursuant thereto, the director may issue such
14 administrative orders as authorized under section 374.046, RSMo. A
15 violation of any of these sections is a level two violation under section
16 374.049, RSMo.**

17 **2. If the director believes that a person has engaged, is engaging,
18 or is about to engage in a violation of sections 376.850 to 376.890 or a
19 rule adopted or order issued pursuant thereto, or that a person has
20 materially aided, is materially aiding, or is about to materially aid an
21 act, practice, omission, or course of business constituting a violation of
22 sections 376.850 to 376.890 or a rule adopted or order issued pursuant
23 thereto, the director may maintain a civil action for relief authorized
24 under section 374.048, RSMo. A violation of any of these sections is a**

25 level two violation under section 374.049, RSMo.

376.1094. 1. **The director shall suspend or revoke** the certificate of
2 authority of an administrator [shall be suspended or revoked] if the director finds
3 that the administrator:

4 (1) Is in an unsound financial condition;

5 (2) Is using such methods or practices in the conduct of its business so as
6 to render its further transaction of business in this state hazardous or injurious
7 to insured persons or the public; or

8 (3) Has failed to satisfy any judgment rendered against it in this state
9 within sixty days after the judgment has become final.

10 2. The director may, in his discretion, suspend or revoke the certificate of
11 authority of an administrator if the director finds that the administrator or any
12 of its officers, directors or any individual responsible for the conduct of its affairs
13 as described in subdivision (3) of subsection 2 of section 376.1092:

14 (1) Has violated any lawful rule or order of the director or any provision
15 of the insurance laws of this state;

16 (2) Has refused to be examined or to produce its accounts, records and
17 files for examination, or if any of its officers has refused to give information with
18 respect to its affairs or has refused to perform any other legal obligation as to
19 such examination, when required by the director;

20 (3) Has, without just cause, refused to pay proper claims or perform
21 services arising under its contracts or has, without just cause, caused covered
22 individuals to accept less than the amount due them or caused covered
23 individuals to employ attorneys or bring suit against the administrator to secure
24 full payment or settlement of such claims;

25 (4) Is affiliated with or under the same general management or
26 interlocking directorate or ownership as another administrator or insurer which
27 unlawfully transacts business in this state without having a certificate of
28 authority;

29 (5) At any time fails to meet any qualification for which issuance of the
30 certificate could have been refused had such failure then existed and been known
31 to the department;

32 (6) Has been convicted of, or has entered a plea of guilty or nolo
33 contendere to, a felony without regard to whether adjudication was withheld;

34 (7) Is not competent, trustworthy, financially responsible or of good
35 personal and business reputation, has had an insurance or administrator license

36 denied for cause by any state or been subject to any form of administrative, civil
37 or criminal action by any federal or state agency or court resulting in some form
38 of discipline or sanction; or

39 (8) Is under suspension or revocation in another state.

40 3. The director may, in his discretion and without advance notice or
41 hearing thereon, immediately suspend the certificate of any administrator if the
42 director finds that one or more of the following circumstances exist:

43 (1) The administrator is insolvent or impaired;

44 (2) A proceeding for receivership, conservatorship, rehabilitation, or other
45 delinquency proceeding regarding the administrator has been commenced in any
46 state;

47 (3) The financial condition or business practices of the administrator
48 otherwise poses an imminent threat to the public health, safety or welfare of the
49 residents of this state.

50 4. [If the director finds that one or more grounds exist for the suspension
51 or revocation of a certificate of authority issued under sections 376.1075 to
52 376.1095, the director may, in lieu of such suspension or revocation, bring a civil
53 action against the administrator in a court of competent jurisdiction. The court
54 may impose a fine upon the administrator of not more than fifty thousand dollars,
55 such fine to be payable to the Missouri state school fund] **If the director
56 determines that a person has engaged, is engaging, or is about to
57 engage in a violation of sections 376.1075 to 376.1095 or a rule adopted
58 or order issued pursuant thereto, or that a person has materially aided,
59 is materially aiding, or is about to materially aid an act, practice,
60 omission, or course of business constituting a violation of sections
61 376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto,
62 the director may issue such administrative orders as authorized under
63 section 374.046, RSMo. A violation of any of these sections is a level
64 three violation under section 374.049, RSMo.**

65 5. **If the director believes that a person has engaged, is engaging,
66 or is about to engage in a violation of sections 376.1075 to 376.1095 or
67 a rule adopted or order issued pursuant thereto, or that a person has
68 materially aided, is materially aiding, or is about to materially aid an
69 act, practice, omission, or course of business constituting a violation of
70 sections 376.1075 to 376.1095 or a rule adopted or order issued pursuant
71 thereto, the director may maintain a civil action for relief authorized**

72 **under section 374.048, RSMo. A violation of any of these sections is a**
73 **level three violation under section 374.049, RSMo.**

379.361. 1. [The director may, if he finds that any insurer or filing
2 organization has violated any provision of section 379.017 and sections 379.316
3 to 379.361, impose a penalty of not more than five hundred dollars for each
4 violation, but if he finds the violation to be willful, he may impose a penalty of
5 not more than five thousand dollars for each violation. These penalties may be
6 in addition to any other penalty provided by law.

7 2. The director may suspend the license of any rating organization or
8 insurer which fails to comply with an order of the director within the time limited
9 by such order, or any extension thereof which the director may grant. The
10 director shall not suspend the license of any rating organization or insurer for
11 failure to comply with an order until the time prescribed for an appeal therefrom
12 has expired or if an appeal has been taken, until the order has been
13 affirmed. The director may determine when a suspension of license shall become
14 effective and it shall remain in effect for the period fixed by him, unless he
15 modifies or rescinds such suspension or until the order upon which such
16 suspension is based is modified, rescinded or reversed.

17 3. No penalty shall be imposed or no license shall be suspended or
18 revoked except upon a written order of the director, stating his findings, made
19 after a hearing held upon not less than ten days' written notice to such person or
20 organization specifying the alleged violation] **If the director determines that**
21 **any insurer or filing organization has engaged, is engaging, or is about**
22 **to engage in a violation of section 379.017 and sections 379.316 to**
23 **379.361 or a rule adopted or order issued pursuant thereto, or that a**
24 **person has materially aided, is materially aiding, or is about to**
25 **materially aid an act, practice, omission, or course of business**
26 **constituting a violation of section 379.017 and sections 379.316 to**
27 **379.361 or a rule adopted or order issued pursuant thereto, the director**
28 **may issue such administrative orders as authorized under section**
29 **374.046, RSMo. A violation of any of these sections is a level two**
30 **violation under section 374.049, RSMo. The practice of using a rate not**
31 **in effect under section 379.321, if caused by a single act or omission by**
32 **the insurer or filing organization, is a level two violation under section**
33 **374.049, RSMo. Each act as part of a rating violation does not**
34 **constitute a separate violation under section 374.049, RSMo. The**

35 **director of insurance may also suspend or revoke the license or**
36 **certificate of authority of an insurer or filing company for any willful**
37 **violation.**

38 **2. If the director believes that a person has engaged, is engaging,**
39 **or is about to engage in a violation of section 379.017 and sections**
40 **379.316 to 379.361 or a rule adopted or order issued pursuant thereto,**
41 **or that a person has materially aided, is materially aiding, or is about**
42 **to materially aid an act, practice, omission, or course of business**
43 **constituting a violation of section 379.017 and sections 379.316 to**
44 **379.361 or a rule adopted or order issued pursuant thereto, the director**
45 **may maintain a civil action for relief authorized under section 374.048,**
46 **RSMo. A violation of any of these sections is a level two violation**
47 **under section 374.049, RSMo. The practice of using a rate not in effect**
48 **under section 379.321, if caused by a single act or omission by the**
49 **insurer or filing organization, is a level two violation under section**
50 **374.049, RSMo. Each act as part of a rating violation does not**
51 **constitute a separate violation under section 374.049, RSMo.**

379.510. [Any person or organization who willfully violates a final order
2 of the director under sections 379.420 to 379.510 shall be deemed guilty of a
3 misdemeanor and shall upon conviction thereof be punished by a fine not to
4 exceed five hundred dollars for such violation] 1. **If the director determines**
5 **that any person has violated a final order of the director under sections**
6 **379.420 to 379.510, the director may issue such administrative orders as**
7 **authorized under section 374.046, RSMo. A violation of any of these**
8 **sections is a level two violation under section 374.049, RSMo.**

9 **2. If the director believes that a person has violated a final order**
10 **of the director under sections 379.420 to 379.510, the director may**
11 **maintain a civil action for relief authorized under section 374.048,**
12 **RSMo. A violation of any of these sections is a level two violation**
13 **under section 374.049, RSMo.**

379.790. 1. **It is unlawful for any attorney [who shall] to exchange any**
2 **contracts of indemnity of the kind and character specified in sections 379.650 to**
3 **379.790, or directly or indirectly solicit or negotiate any applications for same**
4 **without first complying with the foregoing provisions[, shall be deemed guilty of**
5 **a misdemeanor, and upon conviction thereof shall be subject to a fine of not less**
6 **than one hundred dollars nor more than one thousand dollars;**
7 **provided]. However, [that] the director of insurance may, in his discretion and**

8 on such terms as he may prescribe, issue a permit for organization purposes, the
9 permit to continue in force or be canceled at the pleasure of the director of
10 insurance.

11 **2. If the director determines that a person has engaged, is**
12 **engaging, or is about to engage in a violation of this section or a rule**
13 **adopted or order issued pursuant thereto, or that a person has**
14 **materially aided, is materially aiding, or is about to materially aid an**
15 **act, practice, omission, or course of business constituting a violation of**
16 **this section or a rule adopted or order issued pursuant thereto, the**
17 **director may issue such administrative orders as authorized under**
18 **section 374.046, RSMo. A violation of this section is a level one**
19 **violation under section 374.049, RSMo.**

20 **3. If the director believes that a person has engaged, is engaging,**
21 **or is about to engage in a violation of this section or a rule adopted or**
22 **order issued pursuant thereto, or that a person has materially aided,**
23 **is materially aiding, or is about to materially aid an act, practice,**
24 **omission, or course of business constituting a violation of this section**
25 **or a rule adopted or order issued pursuant thereto, the director may**
26 **maintain a civil action for relief authorized under section 374.048,**
27 **RSMo. A violation of this section is a level one violation under section**
28 **374.049, RSMo.**

380.391. [No] 1. It is unlawful for any officer, director, member, agent
2 or employee of any company operating under the provisions of sections 380.201
3 to [380.591 shall,] **380.611 to** directly or indirectly, use or employ, or permit
4 others to use or employ, any of the money, funds or securities of the company for
5 private profit or gain[, and any such use shall be deemed a felony, punishable,
6 upon conviction, by imprisonment by the department of corrections and human
7 resources for not less than two years nor more than five years for each offense].

8 **2. Any person who willfully engages in any act, practice,**
9 **omission, or course of business in violation of this section is guilty of**
10 **a class D felony.**

11 **3. The director may refer such evidence as is available**
12 **concerning violations of this section to the proper prosecuting**
13 **attorney, who with or without a criminal reference, or the attorney**
14 **general under section 27.030, RSMo, may institute the appropriate**
15 **criminal proceedings.**

16 **4. Nothing in this section shall limit the power of the state to**

17 **punish any person for any conduct that constitutes a crime in any other**
18 **state statute.**

380.571. 1. [The director may issue cease and desist orders whenever it
2 appears to him upon competent and substantial evidence that any company
3 operating under the provisions of sections 380.201 to 380.591 is acting in
4 violation of those laws or any other applicable laws or any rule or regulation
5 promulgated by the director pursuant thereto. Before any cease and desist order
6 shall be issued, a copy of the proposed order together with an order to show cause
7 why such cease and desist order should not be issued shall be served either
8 personally or by certified mail on the company named therein.

9 2. Upon issuing any order to show cause, the director shall notify the
10 company named therein that it is entitled to a public hearing before the director
11 if a request for a hearing is made in writing to the director within fifteen days
12 from the day of the service of the order to show cause why the cease and desist
13 order should not be issued. The cease and desist order shall be issued fifteen
14 days after the service of the order to show cause if no request for a public hearing
15 is made as above provided.

16 3. Upon receipt of a request for a hearing, the director shall set a time
17 and place for the hearing which shall not be less than ten days or more than
18 fifteen days from the receipt of the request or as otherwise agreed upon by the
19 parties. Notice of the time and place shall be given by the director not less than
20 five days before the hearing.

21 4. At the hearing the company may be represented by counsel and shall
22 be entitled to be advised of the nature and source of any adverse evidence
23 procured by the director, and shall be given the opportunity to submit any
24 relevant written or oral evidence in its behalf to show cause why the cease and
25 desist order should not be issued.

26 5. At the hearing the director shall have such powers as are conferred
27 upon him by the provisions of section 374.190, RSMo.

28 6. At the conclusion of the hearing, or within ten days thereafter, the
29 director shall issue the cease and desist order as proposed or as subsequently
30 modified, or notify the company that no order will be issued.

31 7. The circuit court of Cole County shall have jurisdiction to review any
32 cease and desist order of the director under the provisions of sections 536.100 to
33 536.150, RSMo; and, if any company against whom an order is issued fails to
34 request judicial review, or if, after judicial review, the director's cease and desist

35 order is upheld, the order shall become final.

36 8. If any company willfully violates any provision of any cease and desist
37 order of the director after it becomes final, it may be penalized by the director by
38 a fine of not more than one thousand dollars.

39 9. The director of insurance may in addition to a monetary fine, suspend
40 or revoke the certificate of authority of any company violating a cease and desist
41 order] **If the director determines that any person has engaged, is**
42 **engaging, or is about to engage in a violation of sections 380.201 to**
43 **380.611 or a rule adopted or order issued pursuant thereto, or that a**
44 **person has materially aided, is materially aiding, or is about to**
45 **materially aid an act, practice, omission, or course of business**
46 **constituting a violation of sections 380.201 to 380.611 or a rule adopted**
47 **or order issued pursuant thereto, the director may issue such**
48 **administrative orders as authorized under section 374.046, RSMo. A**
49 **violation of any of these sections is a level two violation under section**
50 **374.049, RSMo, except a violation of section 380.391 is a level four**
51 **violation under section 374.049, RSMo. The director of insurance may**
52 **also suspend or revoke the certificate of authority of such person for**
53 **any willful violation.**

54 2. **If the director believes that a person has engaged, is engaging,**
55 **or is about to engage in a violation of sections 380.201 to 380.611 or a**
56 **rule adopted or order issued pursuant thereto, or that a person has**
57 **materially aided, is materially aiding, or is about to materially aid an**
58 **act, practice, omission, or course of business constituting a violation of**
59 **sections 380.201 to 380.611 or a rule adopted or order issued pursuant**
60 **thereto, the director may maintain a civil action for relief authorized**
61 **under section 374.048, RSMo. A violation of any of these sections is a**
62 **level two violation under section 374.049, RSMo, except a violation of**
63 **section 380.391 is a level four violation under section 374.049, RSMo.**

384.071. 1. **If the director determines that a person has engaged,**
2 **is engaging, or is about to engage in a violation of sections 384.011 to**
3 **384.071 or a rule adopted or order issued pursuant thereto, or that a**
4 **person has materially aided, is materially aiding, or is about to**
5 **materially aid an act, practice, omission, or course of business**
6 **constituting a violation of 384.011 to 384.071 or a rule adopted or order**
7 **issued pursuant thereto, the director may issue such administrative**
8 **orders as authorized under section 374.046, RSMo. A violation of any**

9 of these sections is a level three violation under section 374.049, RSMo.
10 2. If the director believes that a person has engaged, is engaging,
11 or is about to engage in a violation of sections 384.011 to 384.071 or a
12 rule adopted or order issued pursuant thereto, or that a person has
13 materially aided, is materially aiding, or is about to materially aid an
14 act, practice, omission, or course of business constituting a violation of
15 sections 384.011 to 384.071 or a rule adopted or order issued pursuant
16 thereto, the director may maintain a civil action for relief authorized
17 under section 374.048, RSMo. A violation of any of these sections is a
18 level three violation under section 374.049, RSMo.

19 3. Any surplus lines licensee who in this state represents or aids a
20 nonadmitted insurer in violation of the provisions of sections 384.011 to 384.071
21 may be found guilty of a **class B** misdemeanor and subject to a fine not in excess
22 of one thousand dollars.

23 [2. In addition to any other penalty provided for herein or otherwise
24 provided by law, including any suspension, revocation or refusal to renew a
25 license, any person, firm, association or corporation violating any provision of
26 sections 384.011 to 384.071 shall be liable to a penalty not exceeding one
27 thousand dollars for the first offense, and not exceeding two thousand dollars for
28 each succeeding offense.

29 3.] 4. The above penalties are not exclusive remedies. [Penalties may
30 also be assessed under sections 375.930 to 375.948, RSMo.]

[375.787. Whenever the director believes, from evidence
2 satisfactory to him, that any insurance company is violating or
3 about to violate the provisions of section 375.786, the director may
4 cause a complaint to be filed in the circuit court of Cole County,
5 Missouri, to enjoin and restrain such insurance company from
6 continuing such violation or engaging therein or doing any act in
7 furtherance thereof. The court shall have jurisdiction of the
8 proceeding and shall have the power to make and enter an order or
9 judgment awarding such preliminary or final injunctive relief as in
10 its judgment is proper.]

[375.1012. 1. If, after such hearing, the director determines
2 that the insurer charged had engaged in an improper claims
3 practice prohibited by sections 375.1000 to 375.1018, he shall
4 reduce his findings to writing and shall issue and cause to be

5 served upon the person charged with the violation a copy of such
6 findings and an order requiring such person to cease and desist
7 from engaging in such improper claims practice, and thereafter the
8 director may, at his discretion order one or more of the following:

9 (1) Payment of a monetary penalty of not more than one
10 thousand dollars for each violation but not to exceed an aggregate
11 penalty of one hundred thousand dollars in any twelve-month
12 period unless the violation was committed flagrantly and in
13 conscious disregard of sections 375.1000 to 375.1018, in which case
14 the penalty shall be not more than twenty-five thousand dollars for
15 each violation but not to exceed an aggregate penalty of two
16 hundred fifty thousand dollars in any twelve-month period;

17 (2) Suspension or revocation of the insurer's license if such
18 insurer knew or reasonably should have known it was in violation
19 of sections 375.1000 to 375.1018.

20 2. Until the expiration of the time allowed under section
21 375.1016 for filing a petition for judicial review, if no such petition
22 ~~has been duly filed within such time, or if a petition for review has been filed within such time, then until the transcript of the record~~
23 in the proceeding has been filed in the circuit court of Cole County, the director
24 may at any time, upon such notice and in such manner as he shall deem proper,
25 modify or set aside in whole or in part any order issued by him under this section.

26 3. After the expiration of the time allowed for filing such a
27 petition for review, if no such petition has been duly filed within
28 such time, the director may at any time, after notice and
29 opportunity for hearing, reopen and alter, modify or set aside, in
30 whole or in part, any order issued by him under this section,
31 whenever in his opinion conditions of fact or of law have so
32 changed as to require such action or if the public interest shall so
33 require.

34 4. Nothing contained in sections 375.1000 to 375.1018 shall
35 be construed to prohibit the director and the person from agreeing
36 to a voluntary forfeiture with or without proceedings being
37 instituted.]

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