

FIRST REGULAR SESSION

SENATE BILL NO. 153

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ENGLER.

Pre-filed December 4, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0355S.01I

AN ACT

To repeal sections 354.180, 354.210, 354.350, 354.400, 354.435, 354.444, 354.455, 354.460, 354.464, 354.475, 354.485, 354.500, 354.510, 354.530, 354.540, 354.545, 354.550, 354.600, 354.722, 374.210, 374.215, 374.280, 374.285, 374.512, 374.710, 374.715, 374.755, 374.760, 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, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 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 seventy-four new sections relating to various enforcement and regulatory powers of the department of insurance, financial and professional regulation, 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, 354.400, 354.435, 354.444, 354.455, 354.460, 354.464, 354.475, 354.485, 354.500, 354.510, 354.530, 354.540, 354.545, 354.550, 354.600, 354.722, 374.210, 374.215, 374.280, 374.285, 374.512, 374.710, 374.715, 374.755, 374.760, 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, 375.881, 375.940, 375.942, 375.946, 375.994, 375.1010, 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375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510, 379.790, 380.391, 380.571, and 384.071, RSMo, are repealed and seventy-four new sections enacted in lieu thereof, to be known as sections 354.180, 354.210, 354.350, 354.400, 354.435, 354.444, 354.455, 354.460, 354.464, 354.475, 354.485, 354.500, 354.510, 354.530, 354.540, 354.545, 354.550, 354.600,

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

12 354.722, 374.051, 374.055, 374.185, 374.210, 374.215, 374.280, 374.285, 374.512,
13 374.707, 374.710, 374.715, 374.755, 374.760, 374.761, 374.773, 374.780, 374.787,
14 374.789, 375.012, 375.020, 375.143, 375.145, 375.152, 375.236, 375.306, 375.310,
15 375.445, 375.720, 375.777, 375.780, 375.786, 375.881, 375.940, 375.942, 375.946,
16 375.994, 375.1010, 375.1014, 375.1016, 375.1135, 375.1156, 375.1160, 375.1161,
17 375.1204, 375.1306, 375.1309, 376.309, 376.889, 376.1094, 379.361, 379.510,
18 379.790, 380.391, 380.571, and 384.071, to 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 in, or has**
76 **taken a substantial step toward engaging in an act, practice or course**
77 **of business constituting a violation of sections 354.010 to 354.380 or a**
78 **rule adopted or order issued pursuant thereto, or a person has**
79 **materially aided or is materially aiding an act, practice, omission, or**
80 **course of business constituting a violation of sections 354.010 to 354.380**
81 **or a rule adopted or order issued pursuant thereto, the director may**
82 **issue such administrative orders as authorized under section 374.046,**
83 **RSMo. A violation of these sections is a level two violation under**
84 **section 374.049, RSMo, except for any violation of sections 354.320 and**
85 **354.350, which is a level three violation.**

86 2. **If the director believes that a person has engaged, is engaging**
87 **in, or has taken a substantial step toward engaging in an act, practice**
88 **or course of business constituting a violation of sections 354.010 to**
89 **354.380 or a rule adopted or order issued pursuant thereto, or that a**
90 **person has materially aided or is materially aiding an act, practice,**
91 **omission, or course of business constituting a violation of sections**
92 **354.010 to 354.380 or a rule adopted or order issued pursuant thereto,**
93 **the director may maintain a civil action for relief authorized under**
94 **section 374.048, RSMo. A violation of these sections is a level two**
95 **violation under section 374.049, RSMo, except for any violation of**
96 **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 provided
14 by law for other fines and penalties] **has reason to believe that any health**
15 **services corporation is in such financial condition that the assumption**
16 **of additional obligations would be hazardous to its members or the**
17 **general public, the director may issue orders or seek relief to protect**
18 **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 in, or has taken a substantial step toward
25 engaging in an act, practice or course of business constituting a
26 violation of this section or a rule adopted or order issued pursuant
27 thereto or that a person has materially aided or is materially aiding an
28 act, practice, omission, or course of business constituting a violation of
29 this section or a rule adopted or order issued pursuant thereto, the
30 director may issue such administrative orders as authorized under
31 section 374.046, RSMo. A violation of this section is a level three
32 violation under section 374.049, RSMo. The director [of insurance] may also
33 suspend or revoke the license or certificate of authority of a corporation
34 subject to the provisions of sections 354.010 to 354.380 or enrollment
35 representative for any such willful violation.

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

354.400. As used in sections 354.400 to [354.535] **354.636**, the following
2 terms shall mean:

3 (1) "Basic health care services", health care services which an enrolled
4 population might reasonably require in order to be maintained in good health,
5 including, as a minimum, emergency care, inpatient hospital and physician care,
6 and outpatient medical services;

7 (2) "Community-based health maintenance organization", a health
8 maintenance organization which:

9 (a) Is wholly owned and operated by hospitals, hospital systems,
10 physicians, or other health care providers or a combination thereof who provide
11 health care treatment services in the service area described in the application for
12 a certificate of authority from the [department of insurance] **director**;

13 (b) Is operated to provide a means for such health care providers to
14 market their services directly to consumers in the service area of the health

15 maintenance organization;

16 (c) Is governed by a board of directors that exercises fiduciary
17 responsibility over the operations of the health maintenance organization and of
18 which a majority of the directors consist of equal numbers of the following:

19 a. Physicians licensed pursuant to chapter 334, RSMo;

20 b. Purchasers of health care services who live in the health maintenance
21 organization's service area;

22 c. Enrollees of the health maintenance organization elected by the
23 enrollees of such organization; and

24 d. Hospital executives, if a hospital is involved in the corporate ownership
25 of the health maintenance organization;

26 (d) Provides for utilization review, as defined in section 374.500, RSMo,
27 under the auspices of a physician medical director who practices medicine in the
28 service area of the health maintenance organization, using review standards
29 developed in consultation with physicians who treat the health maintenance
30 organization's enrollees;

31 (e) Is actively involved in attempting to improve performance on
32 indicators of health status in the community or communities in which the health
33 maintenance organization is operating, including the health status of those not
34 enrolled in the health maintenance organization;

35 (f) Is accountable to the public for the cost, quality and access of health
36 care treatment services and for the effect such services have on the health of the
37 community or communities in which the health maintenance organization is
38 operating on a whole;

39 (g) Establishes an advisory group or groups comprised of enrollees and
40 representatives of community interests in the service area to make
41 recommendations to the health maintenance organization regarding the policies
42 and procedures of the health maintenance organization;

43 (h) Enrolls fewer than fifty thousand covered lives;

44 (3) "Covered benefit" or "benefit", a health care service to which an
45 enrollee is entitled under the terms of a health benefit plan;

46 (4) "Director", the director of the department of insurance, **financial and**
47 **professional regulation**;

48 (5) "Emergency medical condition", the sudden and, at the time,
49 unexpected onset of a health condition that manifests itself by symptoms of
50 sufficient severity that would lead a prudent lay person, possessing an average

51 knowledge of health and medicine, to believe that immediate medical care is
52 required, which may include, but shall not be limited to:

- 53 (a) Placing the person's health in significant jeopardy;
- 54 (b) Serious impairment to a bodily function;
- 55 (c) Serious dysfunction of any bodily organ or part;
- 56 (d) Inadequately controlled pain; or
- 57 (e) With respect to a pregnant woman who is having contractions:
 - 58 a. That there is inadequate time to effect a safe transfer to another
 - 59 hospital before delivery; or
 - 60 b. That transfer to another hospital may pose a threat to the health or
 - 61 safety of the woman or unborn child;
- 62 (6) "Emergency services", health care items and services furnished or
- 63 required to screen and stabilize an emergency medical condition, which may
- 64 include, but shall not be limited to, health care services that are provided in a
- 65 licensed hospital's emergency facility by an appropriate provider;
- 66 (7) "Enrollee", a policyholder, subscriber, covered person or other
- 67 individual participating in a health benefit plan;
- 68 (8) "Evidence of coverage", any certificate, agreement, or contract issued
- 69 to an enrollee setting out the coverage to which the enrollee is entitled;
- 70 (9) "Health care services", any services included in the furnishing to any
- 71 individual of medical or dental care or hospitalization, or incident to the
- 72 furnishing of such care or hospitalization, as well as the furnishing to any person
- 73 of any and all other services for the purpose of preventing, alleviating, curing, or
- 74 healing human illness, injury, or physical disability;
- 75 (10) "Health maintenance organization", any person which undertakes to
- 76 provide or arrange for basic and supplemental health care services to enrollees
- 77 on a prepaid basis, or which meets the requirements of section 1301 of the United
- 78 States Public Health Service Act;
- 79 (11) "Health maintenance organization plan", any arrangement whereby
- 80 any person undertakes to provide, arrange for, pay for, or reimburse any part of
- 81 the cost of any health care services and at least part of such arrangement consists
- 82 of providing and assuring the availability of basic health care services to
- 83 enrollees, as distinguished from mere indemnification against the cost of such
- 84 services, on a prepaid basis through insurance or otherwise, and as distinguished
- 85 from the mere provision of service benefits under health service corporation
- 86 programs;

87 (12) "Individual practice association", a partnership, corporation,
88 association, or other legal entity which delivers or arranges for the delivery of
89 health care services and which has entered into a services arrangement with
90 persons who are licensed to practice medicine, osteopathy, dentistry, chiropractic,
91 pharmacy, podiatry, optometry, or any other health profession and a majority of
92 whom are licensed to practice medicine or osteopathy. Such an arrangement shall
93 provide:

94 (a) That such persons shall provide their professional services in
95 accordance with a compensation arrangement established by the entity; and

96 (b) To the extent feasible for the sharing by such persons of medical and
97 other records, equipment, and professional, technical, and administrative staff;

98 (13) "Medical group/staff model", a partnership, association, or other
99 group:

100 (a) Which is composed of health professionals licensed to practice
101 medicine or osteopathy and of such other licensed health professionals (including
102 dentists, chiropractors, pharmacists, optometrists, and podiatrists) as are
103 necessary for the provisions of health services for which the group is responsible;

104 (b) A majority of the members of which are licensed to practice medicine
105 or osteopathy; and

106 (c) The members of which (i) as their principal professional activity over
107 fifty percent individually and as a group responsibility engaged in the coordinated
108 practice of their profession for a health maintenance organization; (ii) pool their
109 income from practice as members of the group and distribute it among themselves
110 according to a prearranged salary or drawing account or other plan, or are
111 salaried employees of the health maintenance organization; (iii) share medical
112 and other records and substantial portions of major equipment and of
113 professional, technical, and administrative staff; (iv) establish an arrangement
114 whereby an enrollee's enrollment status is not known to the member of the group
115 who provides health services to the enrollee;

116 (14) "Person", any partnership, association, or corporation;

117 (15) "Provider", any physician, hospital, or other person which is licensed
118 or otherwise authorized in this state to furnish health care services;

119 (16) "Uncovered expenditures", the costs of health care services that are
120 covered by a health maintenance organization, but that are not guaranteed,
121 insured, or assumed by a person or organization other than the health
122 maintenance organization, or those costs which a provider has not agreed to

123 forgive enrollees if the provider is not paid by the health maintenance
124 organization.

354.435. 1. Every health maintenance organization shall annually, on or
2 before March first, file a report, verified by at least two principal officers, with
3 the director, covering its preceding calendar year.

4 2. Such report shall be on forms prescribed by the director and shall
5 include:

6 (1) A financial statement of the organization, including its balance sheet
7 for the preceding calendar year;

8 (2) Any material changes in the information submitted pursuant to
9 subsection 3 of section 354.405;

10 (3) The number of persons enrolled during the year, the number of
11 enrollees, as of the end of the year, and the number of enrollments terminated
12 during the year;

13 (4) A statement setting forth the amount of uncovered and covered
14 expenses that are payable and are more than ninety days past due for the period
15 of August first through December thirty-first of the preceding year;

16 (5) Such other information relating to the performance of the organization
17 as is necessary to enable the director to carry out his duties under sections
18 354.400 to [354.550] **354.636**.

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 engaged**
5 **in, or has taken a substantial step toward engaging in an act, practice**
6 **or course of business constituting a violation** of sections 354.400 to 354.636
7 **[for which no specific punishment is provided, or order a specific punishment in**
8 **accordance with such sections. Such forfeiture may be recovered by a civil action**
9 **brought by and in the name of the department of insurance. The civil action may**
10 **be brought in the county which has venue for an action against the person or**
11 **corporation], or a rule adopted or order issued pursuant thereto or that**
12 **a person has materially aided or is materially aiding an act, practice,**
13 **omission, or course of business constituting a violation of sections**
14 **354.400 to 354.636 or a rule adopted or order issued pursuant thereto,**
15 **the director may issue such administrative orders as authorized under**
16 **section 374.046, RSMo. A violation of any of these sections is a level**

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

 354.455. Unless otherwise provided in sections 354.400 to [354.550]
2 **354.636**, each health maintenance organization shall deposit with the director,
3 or with any organization or trustee acceptable to him through which a custodial
4 or controlled account is utilized, cash, securities, or any combination of these or
5 other measures acceptable to him, in the amount set forth in section 354.410.

 354.460. No health maintenance organization, or representative thereof,
2 may cause or knowingly permit the use of advertising which is untrue or
3 misleading, solicitation which is untrue or misleading, or any form of evidence of
4 coverage which is deceptive. For purposes of sections 354.400 to [354.550]
5 **354.636:**

6 (1) A statement or item of information shall be deemed to be untrue if it
7 does not conform to fact in any respect which is or may be significant to an
8 enrollee of, or person considering enrollment with, a health maintenance
9 organization;

10 (2) A statement or item of information shall be deemed to be misleading,
11 whether or not it may be literally untrue, if, in the total context in which such
12 statement is made or such item of information is communicated, such statement
13 or item of information may be reasonably understood by a reasonable person, not
14 possessing special knowledge regarding health care coverage, as indicating any
15 benefit or advantage or the absence of any exclusion, limitation, or disadvantage

16 of possible significance to an enrollee of, or person considering enrollment in, a
17 health maintenance organization plan, if such benefit, advantage, or absence of
18 limitation, exclusion, or disadvantage does not, in fact, exist;

19 (3) An evidence of coverage shall be deemed to be deceptive if the evidence
20 of coverage, taken as a whole, is misleading.

354.464. No health maintenance organization, unless licensed as an
2 insurer, may use in its name, contracts, or literature any of the words
3 "insurance", "casualty", "surety", "mutual", or any other words descriptive of the
4 insurance, casualty, or surety business or deceptively similar to the name or
5 description of any insurance or surety corporation doing business in this state
6 when such words are deceptive or misleading. No person, if not in possession of
7 a valid certificate of authority issued pursuant to sections 354.400 to [354.550]
8 **354.636**, may use the phrase "health maintenance organization" or "HMO" in the
9 course of its operation.

354.475. 1. An insurance company licensed in this state, or a health
2 services corporation authorized to do business in this state, may directly or
3 through a subsidiary or affiliate, organize and operate a health maintenance
4 organization under the provisions of sections 354.400 to [354.550] **354.636** so long
5 as they comply with the provisions of section 354.410 as applicable
6 thereto. Notwithstanding any other law to the contrary, any two or more such
7 insurance companies, health services corporations, or subsidiaries or affiliates
8 thereof, may jointly organize and operate a health maintenance organization.

9 2. Notwithstanding any other provision of law pertaining to insurance and
10 health services corporations to the contrary, an insurer or a health services
11 corporation may contract with a health maintenance organization to provide
12 insurance or similar protection against the cost of care provided through health
13 maintenance organizations and to provide coverage in the event of the failure of
14 the health maintenance organization to meet its obligations. The enrollees of a
15 health maintenance organization shall be deemed to constitute a permissible
16 group under such laws. Among other things, under such contracts, the insurer
17 or health services corporation may make benefit payments to health maintenance
18 organizations for health care services rendered by providers.

354.485. The director may promulgate such reasonable rules and
2 regulations in accordance with chapter 536, RSMo, as are necessary or proper to
3 carry out the provisions of sections 354.400 to [354.550] **354.636**.

354.500. 1. If the director shall for any reason have cause to believe that

2 any violation of sections 354.400 to [354.550] **354.636** has occurred or is about
3 to occur, the director may give notice to the health maintenance organization and
4 to the representatives, or other persons who appear to be involved in such
5 suspected violation, to arrange a conference with the alleged violators, or
6 potential violators, or their authorized representatives, for the purpose of
7 attempting to ascertain the facts relating to such suspected or potential violation,
8 and, in the event it appears that any violation has occurred or is about to occur,
9 to arrive at an adequate and effective means of correcting or preventing such
10 violation. Proceedings under this subsection shall not be governed by any formal
11 procedural requirements, and may be conducted in such manner as the director
12 may deem appropriate under the circumstances.

13 2. The director may issue an order directing a health maintenance
14 organization, or a representative of a health maintenance organization, to cease
15 and desist from engaging in any act or practice in violation of the provisions of
16 sections 354.400 to [354.550] **354.636**. Within twenty days after service of the
17 order to cease and desist, the respondent may request a hearing on the question
18 of whether acts or practices in violation of sections 354.400 to [354.550] **354.636**
19 have occurred. Such hearing shall be conducted, and judicial review shall be
20 available, as provided in chapter 536, RSMo.

21 3. In the case of noncompliance with a cease and desist order issued
22 pursuant to subsection 2 of this section, the director may institute a proceeding
23 to obtain injunctive or other appropriate relief, in the circuit court.

 354.510. **Unless otherwise provided**, all applications, filings, and
2 reports required under sections 354.400 to [354.550] **354.636** shall be treated as
3 public documents.

 354.530. If any section, term, or provision of sections 354.400 to [354.550]
2 **354.636** shall be adjudged invalid for any reason, such judgment shall not affect,
3 impair, or invalidate any other section, term, or provision of sections 354.400 to
4 [354.550] **354.636**, but the remaining sections, terms, and provisions shall be and
5 remain in full force and effect.

 354.540. A health maintenance organization approved and regulated
2 under the laws of another bordering state may be admitted to do business in this
3 state by satisfying the director that it is fully and legally organized under the
4 laws of its state, and that it complies with all requirements for health
5 maintenance organizations organized within Missouri. The director may waive
6 or modify the provisions of sections 354.400 to [354.550] **354.636** if he determines

7 that the same are not appropriate or necessary to a particular health
8 maintenance organization of another state.

354.545. The provisions of sections 354.400 to [354.550] **354.636** shall not
2 apply to any labor organization's health plan providing services established and
3 maintained solely for its members and their dependents, and facilities of
4 not-for-profit corporations in existence on October 1, 1980, subject either to the
5 provisions and regulations of section 302 of the Labor-Management Relations Act,
6 29 U.S.C. 186 or the Labor-Management Reporting and Disclosure Act, 29 U.S.C.
7 401-538.

354.550. The provisions of sections 354.400 to [354.550] **354.636** shall not
2 apply to community health corporations as defined by Public Law 94-63 so long
3 as such corporations limit their activities to those described in Public Law 94-63.

354.600. For purposes of sections 354.600 to 354.636 the following terms
2 shall mean:

3 (1) ["Covered benefit" or "benefit", a health care service to which an
4 enrollee is entitled under the terms of a health benefit plan;

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

6 (3) "Emergency medical condition", the sudden and, at the time,
7 unexpected onset of a health condition that manifests itself by symptoms of
8 sufficient severity that would lead a prudent lay person, possessing an average
9 knowledge of medicine and health, to believe that immediate medical care is
10 required, which may include, but shall not be limited to:

11 (a) Placing the person's health in significant jeopardy;

12 (b) Serious impairment to a bodily function;

13 (c) Serious dysfunction of any bodily organ or part;

14 (d) Inadequately controlled pain; or

15 (e) With respect to a pregnant woman who is having contractions:

16 a. That there is inadequate time to effect a safe transfer to another
17 hospital before delivery; or

18 b. That transfer to another hospital may pose a threat to the health or
19 safety of the woman or unborn child;

20 (4) "Emergency service", a health care item or service furnished or
21 required to screen and stabilize an emergency medical condition, which may
22 include, but shall not be limited to, health care services that are provided in a
23 licensed hospital's emergency facility by an appropriate provider;

24 (5) "Enrollee", a policyholder, subscriber, covered person or other

25 individual participating in a health benefit plan;

26 (6)] "Facility", an institution providing health care services or a health
27 care setting, including but not limited to, hospitals and other licensed inpatient
28 centers, ambulatory surgical or treatment centers, skilled nursing facilities,
29 residential treatment centers, diagnostic, laboratory and imaging centers, and
30 rehabilitation and other therapeutic health settings;

31 [(7)] (2) "Health benefit plan", a policy, contract, certificate or agreement
32 entered into, offered or issued by a health carrier to provide, deliver, arrange for,
33 pay for or reimburse any of the costs of health care services;

34 [(8)] (3) "Health care professional", a physician or other health care
35 practitioner licensed, accredited or certified by the state of Missouri to perform
36 specified health services;

37 [(9)] (4) "Health care provider" or "provider", a health care professional
38 or a facility;

39 [(10)] "Health care service", a service for the diagnosis, prevention,
40 treatment, cure or relief of a health condition, illness, injury or disease;

41 (11)] (5) "Health carrier", a health maintenance organization established
42 pursuant to sections 354.400 to 354.636;

43 [(12)] (6) "Health indemnity plan", a health benefit plan that is not a
44 managed care plan;

45 [(13)] (7) "Intermediary", a person authorized to negotiate and execute
46 provider contracts with health carriers on behalf of health care providers or on
47 behalf of a network;

48 [(14)] (8) "Managed care plan", a health benefit plan that either requires
49 an enrollee to use, or creates incentives, including financial incentives, for an
50 enrollee to use health care providers managed, owned, under contract with or
51 employed by the health carrier;

52 [(15)] (9) "Network", the group of participating providers providing
53 services to a managed care plan;

54 [(16)] (10) "Participating provider", a provider who, under a contract with
55 the health carrier or with its contractor or subcontractor, has agreed to provide
56 health care services to enrollees with an expectation of receiving payment, other
57 than coinsurance, co-payments or deductibles, directly or indirectly from the
58 health carrier;

59 [(17)] "Person", an individual, a corporation, a partnership, an association,
60 a joint venture, a joint stock company, a trust, an unincorporated organization,

61 any similar entity or any combination of the foregoing; and

62 (18)] (11) "Primary care professional" or "primary care provider", a
63 participating health care professional designated by the health carrier to
64 supervise, coordinate or provide initial care or continuing care to an enrollee, and
65 who may be required by the health carrier to initiate a referral for specialty care
66 and maintain supervision of health care services rendered to the enrollee.

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;

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

17 [(6)] (5) The prepaid dental plan corporation has failed to substantially
18 comply with the provisions of sections 354.700 to 354.723 or any rules or
19 regulations 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 in, or has taken a substantial step toward engaging in an act,

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

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

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

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, RSMo, may file a petition with the administrative hearing**
4 **commission alleging that the director has refused the license. The**
5 **administrative hearing commission shall conduct hearings and make**
6 **findings of fact and conclusions of law in determining whether the**
7 **applicant may be disqualified by statute. Notwithstanding section**
8 **621.120, RSMo, the director shall retain discretion in refusing a license**
9 **or renewal and such discretion shall not transfer to the administrative**
10 **hearing 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, RSMo, the**
13 **director shall refer the matter to the administrative hearing**
14 **commission by directing the filing of a complaint. The administrative**
15 **hearing commission shall conduct hearings and make findings of fact**
16 **and conclusions of law in such cases. The director shall have the**

17 burden of proving cause for discipline. If cause is found, the
18 administrative hearing commission shall submit its findings of fact and
19 conclusions of law to the director, who may determine appropriate
20 discipline.

21 3. Hearing procedures before the director or the administrative
22 hearing commission and judicial review of the decisions and orders of
23 the director and of the administrative hearing commission, and all
24 other procedural matters under this chapter, shall be governed by the
25 provisions of chapter 536, RSMo. Hearings before the administrative
26 hearing commission shall also be governed by the provisions of chapter
27 621, 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, RSMo, and chapters
4 375 to 385, RSMo, or a rule adopted by the director, or by any refusal
5 or 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, and consult
2 with other members of the National Association of Insurance
3 Commissioners, the commissioner of securities, state securities
4 regulators, the division of finance, the division of credit unions, the
5 attorney general, federal banking and securities regulators, the
6 National Association of Securities Dealers (NASD), the United States
7 Department of Justice, the Commodity Futures Trading Commission,
8 and the Federal Trade Commission to effectuate greater uniformity in
9 insurance and financial services regulation among state and federal
10 governments, and self-regulatory organizations. The director may
11 share records with any aforesaid entity, except that any record that is

12 confidential, privileged, or otherwise protected from disclosure by law
13 shall not be disclosed unless such entity agrees in writing prior to
14 receiving such record to provide it the same protection. No waiver of
15 any applicable privilege or claim of confidentiality regarding any
16 record shall occur as the result of any disclosure.

17 2. In cooperating, coordinating, consulting, and sharing records
18 and information under this section and in acting by rule, order, or
19 waiver under the laws relating to insurance, the director shall, at the
20 discretion of the director, take into consideration in carrying out the
21 public interest the following general policies:

22 (1) Maximizing effectiveness of regulation for the protection of
23 insurance consumers;

24 (2) Maximizing uniformity in regulatory standards; and

25 (3) Minimizing burdens on the business of insurance, without
26 adversely affecting essentials of consumer protection.

27 3. The cooperation, coordination, consultation, and sharing of
28 records and information authorized by this section includes:

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

32 (2) Encouraging insurance companies and producers to
33 implement electronic filing through a central electronic depository;

34 (3) Developing and maintaining uniform forms;

35 (4) Conducting joint market conduct examinations and other
36 investigations through collaboration and cooperation with other
37 insurance regulators;

38 (5) Holding joint administrative hearings;

39 (6) Instituting and prosecuting joint civil or administrative
40 enforcement proceedings;

41 (7) Sharing and exchanging personnel;

42 (8) Coordinating licensing under section 375.014, RSMo;

43 (9) Formulating rules, statements of policy, guidelines, forms, no
44 action determinations, and bulletins; and

45 (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 this chapter, chapter 354, RSMo, and chapters**
5 **375 to 385, RSMo, to:**

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

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

15 **(1) Knowingly make or cause to be made a false statement upon**
16 **oath or affirmation or in any record that is submitted to the director**
17 **or used in any proceeding under this chapter, chapter 354, RSMo, and**
18 **chapters 375 to 385, RSMo; or**

19 **(2) Make any false certificate or entry or memorandum upon any of the**
20 **books or papers of any insurance company, or upon any statement or exhibit**
21 **offered, filed or offered to be filed in the [insurance] department, or used in the**
22 **course of any examination, inquiry, or investigation[, with intent to deceive the**
23 **director or any person employed or appointed by him to make any examination,**
24 **inquiry or investigation, shall, upon conviction, be punished by a fine not**
25 **exceeding one thousand dollars, and by imprisonment not less than two months**
26 **in the county or city jail, nor more than five years in the penitentiary] under**
27 **this chapter, chapter 354, RSMo, and chapters 375 to 385, RSMo.**

28 **2. If a person does not appear or refuses to testify, file a**
29 **statement, produce records, or otherwise does not obey a subpoena as**
30 **required by the director, the director may apply to the circuit court of**
31 **any county of the state or any city not within a county, or a court of**
32 **another state to enforce compliance. The court may:**

33 **(1) Hold the person in contempt;**

34 **(2) Order the person to appear before the director;**

35 **(3) Order the person to testify about the matter under**
36 **investigation or in question;**

37 **(4) Order the production of records;**

38 **(5) Grant injunctive relief;**

39 **(6) Impose a civil penalty of up to fifty thousand dollars for each**

40 violation; and

41 (7) Grant any other necessary or appropriate relief.

42 The director may also suspend, revoke or refuse any license or
43 certificate of authority issued by the director to any person who does
44 not appear or refuses to testify, file a statement, produce records, or
45 does not obey a subpoena.

46 3. This section does not preclude a person from applying to the
47 circuit court of any county of the state or any city not within a county
48 for relief from a request to appear, testify, file a statement, produce
49 records, or obey a subpoena.

50 4. A person is not excused from attending, testifying, filing a
51 statement, producing a record or other evidence, or obeying a subpoena
52 of the director under an action or proceeding instituted by the director
53 on the grounds that the required testimony, statement, record, or other
54 evidence, directly or indirectly, may tend to incriminate the individual
55 or subject the individual to a criminal fine, penalty, or forfeiture. If
56 the person refuses to testify, file a statement, or produce a record or
57 other evidence on the basis of the individual's privilege against self-
58 incrimination, the director may apply to the circuit court of any county
59 of the state or any city not within a county to compel the testimony, the
60 filing of the statement, the production of the record, or the giving of
61 other evidence. The testimony, record, or other evidence compelled
62 under such an order may not be used as evidence against the person in
63 a criminal case, except in a prosecution for perjury or contempt or
64 otherwise failing to comply with the order.

65 5. If the director determines that a person has engaged, is
66 engaging in, or has taken a substantial step toward engaging in an act,
67 practice or course of business constituting a violation of this section,
68 or a rule adopted or order issued pursuant thereto, or that a person has
69 materially aided or is materially aiding an act, practice, omission, or
70 course of business constituting a violation of this section or a rule
71 adopted or order issued pursuant thereto, the director may issue such
72 administrative orders as authorized under section 374.046. A violation
73 of subsection 1 of this section is a level four violation under section
74 374.049. The director may also suspend or revoke the license or
75 certificate of authority of such person for any willful violation.

76 6. If the director believes that a person has engaged, is engaging

77 in, or has taken a substantial step toward engaging in an act, practice
78 or course of business constituting a violation of this section or a rule
79 adopted or order issued pursuant thereto, or that a person has
80 materially aided or is materially aiding an act, practice, omission, or
81 course of business constituting a violation of this section or a rule
82 adopted or order issued pursuant thereto, the director may maintain
83 a civil action for relief authorized under section 374.048. A violation of
84 subsection 1 of this section is a level four violation under section
85 374.049.

86 7. Any person who knowingly engages in any act, practice,
87 omission, or course of business in violation of subsection 1 of this
88 section is guilty of a class D felony. If the offender holds a license or
89 certificate of authority under the insurance laws of this state, the court
90 imposing sentence shall order the department to revoke such license or
91 certificate of authority.

92 8. The director may refer such evidence as is available
93 concerning violations of this section to the proper prosecuting
94 attorney, who with or without a criminal reference, or the attorney
95 general under section 27.030, RSMo, may institute the appropriate
96 criminal proceedings.

97 9. Nothing in this section shall limit the power of the state to
98 punish any person for any conduct that constitutes a crime under any
99 other state statute.

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

10 2. Any insurance company doing business in this state which knowingly
11 or intentionally files or which has filed on its behalf any materially false report
12 or statement forfeits not more than one thousand dollars.

13 3. Any forfeiture required or permitted by this section shall be considered

14 a civil penalty which the director of the department of insurance may order
15 pursuant to the provisions of sections 374.040 and 374.280] **of receiving**
16 **notification. After the expiration of such fifteen days, each day in**
17 **which the company or entity fails to file such report or statement is a**
18 **separate violation of this section.**

19 **2. If the director determines that a person has engaged, is**
20 **engaging in, or has taken a substantial step toward engaging in an act,**
21 **practice or course of business constituting a violation of this section or**
22 **a rule adopted or order issued pursuant thereto, or that a person has**
23 **materially aided or is materially aiding an act, practice, omission, or**
24 **course of business constituting a violation of this section or a rule**
25 **adopted or order issued pursuant thereto, the director may issue such**
26 **administrative orders as authorized under section 374.046. A violation**
27 **of this section is a level two violation under section 374.049. The**
28 **director may also suspend or revoke the certificate of authority of such**
29 **person for any willful violation.**

30 **3. If the director believes that a person has engaged, is engaging**
31 **in, or has taken a substantial step toward engaging in an act, practice**
32 **or course of business constituting a violation of this section or a rule**
33 **adopted or order issued pursuant thereto, or that a person has**
34 **materially aided or is materially aiding an act, practice, omission, or**
35 **course of business constituting a violation of this section or a rule**
36 **adopted or order issued pursuant thereto, the director may maintain**
37 **a civil action for relief authorized under section 374.048. A violation of**
38 **this section is a level 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 payable** to the state
4 of Missouri [a sum not to exceed one hundred dollars for each violation by any
5 person, partnership or corporation knowingly violating any provision of chapters
6 374, 375, 376, 377, 378 and 379, RSMo, or order of the director of insurance made
7 in 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.

374.285. Except as provided in section 375.141, RSMo, all records of
2 disciplinary actions against an insurance [agent, broker, agency or] producer
3 which resulted in a [voluntary] forfeiture **or other monetary relief** of two
4 hundred dollars or less **and places no other legal duty upon the producer**
5 shall be expunged after a period of five years from the date of the execution of the
6 [voluntary forfeiture] **order or settlement agreement** by the director [of the
7 department of insurance].

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 in, or**
11 **has taken a substantial step toward engaging in an act, practice or**
12 **course of business constituting a violation of sections 374.500 to 374.515**
13 **or a rule adopted or order issued pursuant thereto, or that a person has**
14 **materially aided or is materially aiding an act, practice, omission, or**
15 **course of business constituting a violation of sections 374.500 to 374.515**
16 **or a rule adopted or order issued pursuant thereto, the director may**
17 **issue such administrative orders as authorized under section 374.046.**
18 **A violation of any of these sections is a level two violation under**
19 **section 374.049. The director may also suspend or revoke the license**
20 **or certificate of authority of 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, is engaging in, or has taken a substantial step**
35 **toward engaging in an act, practice or course of business constituting**
36 **a violation of sections 374.500 to 374.515 or a rule adopted or order**
37 **issued pursuant thereto, or that a person has materially aided or is**
38 **materially aiding an act, practice, omission, or course of business**
39 **constituting a violation of sections 374.500 to 374.515 or a rule adopted**
40 **or order issued pursuant thereto, the director may maintain a civil**
41 **action for relief authorized under section 374.048. A violation of any of**
42 **these sections is a level two violation under section 374.049.**

374.707. Upon notice of a forfeiture from the court, the director
2 **shall notify any general bail bond agent who is listed as having a**
3 **forfeited bond. Such attempt by the director to notify the general bail**
4 **bond agent shall be made by facsimile or electronic mail within forty-**
5 **eight hours of the forfeiture being listed with the department,**
6 **excluding official holidays and weekends.**

 374.710. 1. Except as otherwise provided in sections 374.695 to 374.775,
2 no person or other entity shall practice as a bail bond agent or general bail bond
3 agent, as defined in section 374.700, in Missouri unless and until the department
4 has issued to him or her a license, to be renewed every two years as hereinafter
5 provided, to practice as a bail bond agent or general bail bond agent. **The**
6 **department shall include the photograph of the bail bond agent or**
7 **general bail bond agent on the license.**

8 2. An applicant for a bail bond and general bail bond agent license shall

9 submit with the application proof that he or she has received twenty-four hours
10 of initial basic training in areas of instruction in subjects determined by the
11 director deemed appropriate to professionals in the bail bond profession. Bail
12 bond agents and general bail bond agents who are licensed at the date which this
13 act becomes law shall be exempt from such twenty-four hours of initial basic
14 training.

15 3. In addition to the twenty-four hours of initial basic training to become
16 a bail bond agent or general bail bond agent, there shall be eight hours of
17 biennial continuing education for all bail bond agents and general bail bond
18 agents to maintain their state license. The director shall determine said
19 appropriate areas of instruction for said biennial continuing education. The
20 director shall determine which institutions, organizations, associations, and
21 individuals shall be eligible to provide the initial basic training and the biennial
22 continuing education instruction. The department may allow state institutions,
23 organizations, associations, or individuals to provide courses for the initial basic
24 training and the biennial continuing education training. The cost shall not
25 exceed two hundred dollars for the initial basic training and one hundred fifty
26 dollars for biennial continuing education.

27 4. Upon completion of said basic training or biennial continuing education
28 and the licensee meeting the other requirements as provided under sections
29 374.695 to 374.789, the director shall issue a two-year license for the bail bond
30 agent or general bail bond agent for a fee not to exceed one hundred fifty dollars.

31 5. **A licensee shall provide the name, address, and telephone**
32 **number of each employer for which he or she works or operates under**
33 **as an independent contractor to the department. A licensee shall have**
34 **a continuing duty to provide notice to the department should this**
35 **information change. It is unlawful for an agent to begin writing bond**
36 **as an agent under a new appointment with a different general bail bond**
37 **agent or insurance company unless such information with the**
38 **department has been updated.**

39 6. For any new appointment of a bail bond agent, the bail bond
40 agent shall file an affidavit with the department and the appointing
41 general bail bond agent stating that there are no outstanding premiums
42 owed. If outstanding premiums are owed and the bail bond agent does
43 not satisfy such premium obligations, the former general bail bond
44 agent shall file notice, along with supporting documents with the

45 department, and provide such notice to the bail bond agent and the
46 newly appointing general bail bond agent, stating under oath the fact
47 that the bail bond agent has failed to satisfy their obligations. Upon
48 receipt of such notification and supporting documents, the appointing
49 general bail bond agent shall immediately cancel the newly appointed
50 bail bond authority. Such authority shall remain cancelled until all
51 premiums are paid.

52 7. Nothing in sections 374.695 to 374.775 shall be construed to prohibit
53 any person from posting or otherwise providing a bail bond in connection with
54 any legal proceeding, provided that such person receives no fee, remuneration or
55 consideration therefor.

374.715. 1. Applications for examination and licensure as a bail bond
2 agent or general bail bond agent shall be in writing and on forms prescribed and
3 furnished by the department, and shall contain such information as the
4 department requires. Each application shall be accompanied by proof satisfactory
5 to the department that the applicant is a citizen of the United States, is at least
6 twenty-one years of age, has a high school diploma or general education
7 development certificate (GED), is of good moral character, and meets the
8 qualifications for surety on bail bonds as provided by supreme court rule. Each
9 application shall be accompanied by the examination [and], application fee set by
10 the department, **the results of a fingerprinting performed and submitted**
11 **in a manner approved by the highway patrol in accordance with section**
12 **43.543, RSMo, and the results of a criminal history record information**
13 **check processed by the highway patrol under sections 43.500 to 43.543,**
14 **RSMo.** Individuals currently employed as bail bond agents and general bail bond
15 agents shall not be required to meet the education requirements needed for
16 licensure pursuant to this section.

17 2. In addition, each applicant for licensure as a general bail bond agent
18 shall furnish proof satisfactory to the department that the applicant or, if the
19 applicant is a corporation[,] **writing surety on behalf of an insurance**
20 **company** that each officer thereof, has completed at least two years as a bail
21 bond agent, and that the applicant possesses liquid assets of at least [ten]
22 **twenty** thousand dollars, along with a duly executed assignment of [ten] **twenty**
23 thousand dollars to the state of Missouri. The assignment shall become effective
24 upon the applicant's violating any provision of sections 374.695 to 374.789. The
25 assignment required by this section shall be in the form and executed in the

26 manner prescribed by the department. The director may require by regulation
27 conditions by which additional assignments of assets of the general bail bond
28 agent may occur when the circumstances of the business of the general bail bond
29 agent warrants additional funds. However, such additional funds shall not
30 exceed [twenty-five] **one hundred** thousand dollars.

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, censure, or limit a**
5 **license authorized under sections 374.695 to 374.775**, or **bar** any person
6 who has failed to renew or has surrendered his or her license for any [one or any
7 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] **Has, within the past fifteen years,**
12 **been found guilty or pleaded** guilty or nolo contendere [within the past fifteen
13 years in a criminal prosecution under any state or federal law for a] **to any**
14 **felony or [a] crime involving moral turpitude under any state or federal law**
15 **whether or not a sentence is imposed**[, prior to issuance of license date];

16 (3) **Has been found guilty of or pleaded guilty or nolo contendere**
17 **to any dangerous felony, as defined by section 556.061, RSMo, any**
18 **felony crime of assault, any felony crime that results in the serious**
19 **physical injury or death of another person, any felony crime against the**
20 **administration of justice, or any felony of which deceit or fraud is an**
21 **element of the offense, under any state or federal law, whether or not**
22 **a sentence is imposed**;

23 (4) Use of fraud, deception, misrepresentation or bribery in securing any
24 license or in obtaining permission to take any examination required pursuant to
25 sections 374.695 to 374.775;

26 [(4)] (5) Obtaining or attempting to obtain any compensation as a
27 member of the profession licensed by sections 374.695 to [374.775] **374.789** by
28 means of fraud, deception or misrepresentation;

29 [(5)] (6) Misappropriation of the premium, collateral, or other things of
30 value given to a bail bond agent or a general bail bond agent for the taking of
31 bail, [incompetency] **incompetence**, misconduct, gross negligence, fraud, or

32 misrepresentation in the performance of the functions or duties of the profession
33 licensed or regulated by sections 374.695 to 374.775;

34 [(6)] (7) Violation of any provision of or any obligation imposed by the
35 laws of this state, department [of insurance] rules and regulations, or aiding or
36 abetting other persons to violate such laws, orders, rules or regulations, or
37 subpoenas;

38 [(7)] (8) Transferring a license or permitting another person to use a
39 license of the licensee;

40 [(8)] (9) Disciplinary action against the holder of a license or other right
41 to practice the profession regulated by sections 374.695 to 374.789 granted by
42 another state, territory, federal agency or country upon grounds for which
43 revocation or suspension is authorized in this state;

44 [(9)] (10) Being finally adjudged insane or incompetent by a court of
45 competent jurisdiction;

46 [(10)] (11) Assisting or enabling any person to practice or offer to
47 practice the profession licensed or regulated by sections 374.695 to 374.789 who
48 is not currently licensed and eligible to practice pursuant to sections 374.695 to
49 374.789;

50 [(11)] (12) Acting in the capacity of an attorney at a trial or hearing of
51 a person for whom the attorney is acting as surety;

52 [(12)] (13) Failing to provide a copy of the bail contract, [renumbered]
53 **prenumbered** written receipt for acceptance of money, or other collateral for the
54 taking of bail to the principal, if requested by any person who is a party to the
55 bail contract, or any person providing funds or collateral for bail on the
56 principal's behalf; **or**

57 (14) **Failing to meet any of the qualifications for surety on bail**
58 **bonds as provided by supreme court rule.**

59 2. **If an action is initiated to suspend or revoke a license** after the
60 filing of [such] a complaint **under section 374.051**, the proceedings shall be
61 conducted in accordance with the provisions of chapter 621, RSMo. Upon a
62 finding by the administrative hearing commission that one or more of the causes
63 stated in subsection 1 of this section have been met, the director may suspend or
64 revoke the license or enter into an agreement for a [monetary or other penalty
65 pursuant to section 374.280] **consent order under section 374.280.**

66 3. In lieu of filing a complaint at the administrative hearing commission
67 **for suspension or revocation, after a hearing before the director, the**

68 **director may order other authorized discipline, or** the director and the
69 bail bond agent or general bail bond agent may enter into an agreement for a
70 [monetary or other penalty pursuant to section 374.280] **consent order under**
71 **section 374.780.**

72 4. [In addition to any other remedies available, the director may issue a
73 cease and desist order or may seek an injunction in a court of competent
74 jurisdiction pursuant to the provisions of section 374.046 whenever it appears
75 that any person is acting as a bail bond agent or general bail bond agent without
76 a license or violating any other provisions of sections 374.695 to 374.789] **Any**
77 **bail bond agent or general bail bond agent who has his or her license**
78 **revoked by the director shall immediately return such license to the**
79 **department.**

374.760. 1. Each general bail bond agent shall file, between the first and
2 tenth day of each month, sworn affidavits with the department stating that there
3 are no unsatisfied judgments against him. Such affidavits shall be in the form
4 and manner prescribed by the department.

5 2. Each general bail bond agent shall file with the director and
6 the state courts administrator, no later than December first of each
7 year, a sworn affidavit in a form and manner prescribed by the state
8 courts administrator attesting that the general agent has net assets
9 with a value in excess of any personal exemptions from execution, at
10 least equal to the aggregate amount of bonds that are subject to
11 execution in this state. The state courts administrator may establish
12 and assess a filing fee. This filing shall be satisfactory proof of
13 compliance with the financial qualification under supreme court rule
14 and no municipal and circuit court in this state may place additional
15 financial requirements upon a general bail bond agent duly qualified
16 with the state courts administrator.

374.761. 1. A duly licensed bail bond agent in good standing with
2 the department shall be qualified to write bail on behalf of a general
3 bail bond agent in every municipal or circuit court in this state in
4 which the general bail bond agent who employs the agent or directs the
5 agent as an independent contractor is duly licensed and qualified to
6 write bail as provided by supreme court rule.

7 2. It is unlawful for a bail bond agent writing on behalf of an
8 individual general bail bond agent to fail to clearly disclose to the

9 court, to the defendant and in the bond, the actual legal name of the
10 individual general bail bond agent on behalf of whom the agent is
11 acting.

374.773. Any licensed general bail bond agent or bail bond agent
2 who is arrested for a felony shall notify the director within ten days of
3 his or her arrest.

374.780. 1. If the director determines that a person has engaged,
2 is engaging in, or has taken a substantial step toward engaging in an
3 act, practice or course of business constituting a violation of sections
4 374.695 to 374.789 or a rule adopted or order issued pursuant thereto,
5 or that a person has materially aided or is materially aiding an act,
6 practice, omission, or course of business constituting a violation of
7 sections 374.695 to 374.789 or a rule adopted or order issued pursuant
8 thereto, the director may issue such administrative orders as
9 authorized under section 374.046. A violation of any of these sections
10 is a level one violation under section 374.049, except a violation of
11 section 374.761(b) is a level two violation.

2. If the director believes that a person has engaged, is engaging
13 in, or has taken a substantial step toward engaging in an act, practice
14 or course of business constituting a violation of sections 374.695 to
15 374.789 or a rule adopted or order issued pursuant thereto, or that a
16 person has materially aided or is materially aiding an act, practice,
17 omission, or course of business constituting a violation of sections
18 374.695 to 374.789 or a rule adopted or order issued pursuant thereto,
19 the director may maintain a civil action for relief authorized under
20 section 374.048. A violation of any of these sections is a level one
21 violation under section 374.049, except a violation of section 374.761(b)
22 is a level two violation.

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, censure or limit**
4 **a surety recovery agent license authorized under sections 374.783 to**
5 **374.789, or bar** any person who has failed to renew or has surrendered his or her
6 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] **Has been found guilty of or**
11 **pleaded** guilty or nolo contendere [in a criminal prosecution] **to any felony or**
12 **crime involving moral turpitude** under state or federal law [for a felony or
13 a crime involving moral turpitude,] whether or not a sentence is imposed;

14 (3) Using fraud, deception, misrepresentation, or bribery in securing a
15 license or in obtaining permission to take any examination required by sections
16 374.783 to 374.789;

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

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

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

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

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

33 3. In lieu of filing a complaint with the administrative hearing
34 commission **for suspension or revocation, after hearing before the**
35 **director, the director may order other authorized discipline**, or the
36 director and the surety recovery agent may enter into an agreement for a
37 [monetary or other penalty pursuant to section 374.280] **consent order under**
38 **section 374.780 or after hearing order any other authorized discipline**.

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

374.789. 1. [A person is guilty of a class D felony if he or she does not
2 hold a valid] **It is unlawful for any person to engage in any of the**
3 **following acts unless the person is licensed by the director as a surety**

4 recovery agent [license or], a bail bond [license and commits any of the following
5 acts] **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 in, or has taken a substantial step toward engaging in an act,**
12 **practice or course of business constituting violation of this section or**
13 **a rule adopted or order issued pursuant thereto, or that a person has**
14 **materially aided or is materially aiding an act, practice, omission, or**
15 **course of business constituting a violation of this section or a rule**
16 **adopted or order issued pursuant thereto, the director may issue such**
17 **administrative orders as authorized under section 374.046. A violation**
18 **of any of these sections is a level three violation under section 374.049.**

19 3. **If the director believes that a person has engaged, is engaging**
20 **in, or has taken a substantial step toward engaging in an act, practice**
21 **or course of business constituting a violation of this section or a rule**
22 **adopted or order issued pursuant thereto, or that a person has**
23 **materially aided or is materially aiding an act, practice, omission, or**
24 **course of business constituting a violation of this section or a rule**
25 **adopted or order issued pursuant thereto, the director may maintain**
26 **a civil action for relief authorized under section 374.048. A violation of**
27 **any of these sections is a level three violation under section 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 director to revoke such license or certificate**
33 **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, **financial and**
7 **professional regulation;**

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

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

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

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

30 (7) "License", a document issued by the director authorizing a person to
31 act as an insurance producer for the lines of authority specified in the

32 document. The license itself shall not create any authority, actual, apparent or
33 inherent, in the holder to represent or commit an insurance company;

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

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

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

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

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

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

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

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

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

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

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

68 producer license;

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

72 [2.] 3. All statutory references to "insurance agent" or "insurance broker"
73 shall mean "insurance producer", as that term is defined pursuant to subsection
74 1 of this section.

375.020. 1. Beginning January 1, [1990] **2008**, 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 hours of instruction for a property or casualty license or both a property and
9 a casualty license. Sixteen hours of training will suffice for those with a life,
10 health, accident, property and casualty license]. Of the [sixteen hours'] training
11 required [above] **in this subsection**, the hours need not be divided equally
12 **among the lines of authority in which the producer has qualified**. The
13 courses or programs **attended by the producer during each two-year**
14 **period** shall include instruction on Missouri law, **products offered in any line**
15 **of authority in which the producer is qualified, producers' duties and**
16 **obligations to the department, and business ethics, including sales**
17 **suitability**. Course credit shall be given to members of the general assembly as
18 determined by the department.

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

- 22 (1) American College Courses (CLU, ChFC);
23 (2) Life Underwriters Training Council (LUTC);
24 (3) Certified Insurance Counselor (CIC);
25 (4) Chartered Property and Casualty Underwriter (CPCU);
26 (5) Insurance Institute of America (IIA);
27 (6) **Any other professional financial designation approved by the**
28 **director by rule;**
29 (7) An insurance-related course taught by an accredited college or

30 university or qualified instructor who has taught a course of insurance law at
31 such institution;

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

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

40 4. Excess [classroom] hours accumulated during any two-year period may
41 be carried forward to the two-year period immediately following the two-year
42 period in which the course, program or seminar was held.

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

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

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

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

65 8. The provisions of this section shall not apply to a life insurance

66 producer who is limited by the terms of a written agreement with the insurer to
67 transact only specific life insurance policies having an initial face amount of five
68 thousand dollars or less, or annuities having an initial face amount of ten
69 thousand dollars or less, that are designated by the purchaser for the payment
70 of funeral or burial expenses. The director may require the insurer entering into
71 the written agreements with the insurance producers pursuant to this subsection
72 to certify as to the representations of the insurance producers.

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

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

80 (2) Filing fees for course approval: Every applicant seeking approval by
81 the director of a continuing education course under this section shall pay to the
82 director a filing fee of fifty dollars per course. Fees shall be waived for state and
83 local insurance producer groups. Such fee shall accompany any application form
84 required by the director. Courses shall be approved for a period of no more than
85 one year. Applicants holding courses intended to be offered for a longer period
86 must reapply for approval. Courses approved by the director prior to August 28,
87 1993, for which continuous certification is sought should be resubmitted for
88 approval sixty days before the anniversary date of the previous approval.

89 10. All funds received pursuant to the provisions of this section shall be
90 transmitted by the director to the department of revenue for deposit in the state
91 treasury to the credit of the [department of] insurance dedicated fund. All
92 expenditures necessitated by this section shall be paid from funds appropriated
93 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 in, or has taken a substantial step toward engaging in an**

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

13 2. If the director believes that a person has engaged, is engaging
14 in, or has taken a substantial step toward engaging in an act, practice
15 or course of business constituting a violation of this section or a rule
16 adopted or order issued pursuant thereto, or that a person has
17 materially aided or is materially aiding an act, practice, omission, or
18 course of business constituting a violation of this section or a rule
19 adopted or order issued pursuant thereto, the director may maintain
20 a civil action for relief authorized under section 374.048, RSMo. A
21 violation of any of sections 375.012 to 375.142 is a level two violation
22 under section 374.049, RSMo. A violation of section 375.144 is a level
23 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 in, or has taken a substantial step toward engaging in an act,
12 practice or course of business constituting a violation of sections
13 375.147 to 375.153 or a rule adopted or order issued pursuant thereto,
14 or that a person has materially aided or is materially aiding an act,
15 practice, omission, or course of business constituting a violation of
16 sections 375.147 to 375.153 or a rule adopted or order issued pursuant

17 thereto, the director may issue such administrative orders as
18 authorized under section 374.046, RSMo. A violation of any of these
19 sections is a level two violation under section 374.049, RSMo.

20 2. If the director believes that a person has engaged, is engaging
21 in, or has taken a substantial step toward engaging in an act, practice
22 or course of business constituting a violation of sections 375.147 to
23 375.153 or a rule adopted or order issued pursuant thereto, or that a
24 person has materially aided or is materially aiding an act, practice,
25 omission, or course of business constituting a violation of sections
26 375.147 to 375.153 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 under any of these sections is a level
29 two violation under section 374.049, RSMo. In addition to the relief
30 available in this section, the director may also order the managing
31 general agent to reimburse the insurer, the rehabilitator or liquidator of the
32 insurer, for any losses incurred by the insurer caused by a violation of sections
33 375.147 to 375.153 committed by the managing general agent.

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

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

39 4. Nothing contained in sections 375.147 to 375.153 is intended to or shall
40 in any manner limit or restrict the rights of policyholders, claimants and
41 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
13 department of this state], in the manner provided by section 379.050, RSMo, in
14 regard to the making of such deposit by companies organized under [sections
15 375.010 to 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 in, or has taken a substantial step toward**
28 **engaging in an act, practice or course of business constituting a**
29 **violation of this section or a rule adopted or order issued pursuant**
30 **thereto, or that a person has materially aided or is materially aiding 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.**

36 5. **If the director believes that a person has engaged, is engaging**
37 **in, or has taken a substantial step toward engaging in an act, practice**
38 **or course of business constituting a violation of this section or a rule**
39 **adopted or order issued pursuant thereto, or that a person has**
40 **materially aided or is materially aiding an act, practice, omission, or**
41 **course of business constituting a violation of this section or a rule**
42 **adopted or order issued pursuant thereto, the director may maintain**

43 **a civil action for relief authorized under section 374.048, RSMo. A**
44 **violation of this section is a level two violation under section 374.049,**
45 **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 in, or has taken a substantial step toward engaging in an act,**
30 **practice or course of business constituting a violation of this section or**
31 **a rule adopted or order issued pursuant thereto, or that a person has**
32 **materially aided or is materially aiding an act, practice, omission, or**
33 **course of business constituting a violation of this section or a rule**

34 adopted or order issued pursuant thereto, the director may issue such
35 administrative orders as authorized under section 374.046, RSMo. A
36 violation of this section is a level four violation under section 374.049,
37 RSMo.

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

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

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

56 6. Nothing in this section shall limit the power of the state to
57 punish any person for any conduct that constitutes a crime under any
58 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]; or
6 (3) Habitually and as a matter of business practice compelling claimants
7 under policies or liability judgment creditors of the insured to either accept less
8 than the amount due under the terms of the policy or resort to litigation against
9 the company to secure payment of the amount due[, and that a proceeding in
10 respect thereto would be in the interest of the public, he shall issue and serve
11 upon the company a statement of the charges in that respect and a notice of a
12 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 in, or has taken a substantial step**
24 **toward engaging in an act, practice or course of business constituting**
25 **a violation of this section or a rule adopted or order issued pursuant**
26 **thereto, or that a person has materially aided or is materially aiding 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 [of an insurer or agent] **or certificate of**
33 **authority of such person** for any [such] willful violation.

34 3. **If the director believes that a person has engaged, is engaging**
35 **in, or has taken a substantial step toward engaging in an act, practice**
36 **or course of business constituting a violation of this section or a rule**
37 **adopted or order issued pursuant thereto, or that a person has**
38 **materially aided or is materially aiding an act, practice, omission, or**
39 **course of business constituting a violation of this section or a rule**
40 **adopted or order issued pursuant thereto, the director may maintain**
41 **a civil action for relief authorized under section 374.048, RSMo. A**
42 **violation of this section is a level three violation under section 374.049,**
43 **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 in, or has taken a substantial step toward engaging in an act,**
10 **practice or course of business constituting a violation of this section or**
11 **a rule adopted or order issued pursuant thereto, or that a person has**
12 **materially aided or is materially aiding an act, practice, omission, or**
13 **course of business constituting a violation of this section or a rule**
14 **adopted or order issued pursuant thereto, the director may issue such**
15 **administrative orders as authorized under section 374.046, RSMo. A**
16 **violation of this section is a level three violation under section 374.049,**
17 **RSMo. The director may also suspend or revoke the license or**
18 **certificate of authority of such person for any willful violation.**

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

29 **4. Any person who knowingly engages in any act, practice,**
30 **omission, or course of business in violation of this section is guilty of**
31 **a class C felony. If the offender holds a license or certificate of**
32 **authority under the insurance laws of this state, the court imposing**
33 **sentence shall order the director to revoke such 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 in, or has taken a substantial step toward engaging in an act,**
29 **practice or course of business constituting a violation of this section or**
30 **a rule adopted or order issued pursuant thereto, or that a person has**
31 **materially aided or is materially aiding an act, practice, omission, or**
32 **course of business constituting a violation of this section or a rule**
33 **adopted or order issued pursuant thereto, the director may issue such**
34 **administrative orders as authorized under section 374.046, RSMo. A**
35 **violation of this section is a level two violation under section 374.049,**
36 **RSMo. The director may also suspend or revoke the license or**
37 **certificate of authority of such person for any willful violation.**

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

 375.780. [Every violation of] 1. **A person commits a crime if he or**
2 **she 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 in, or has taken a substantial step toward engaging in an act,**
117 **practice or course of business constituting a violation of this section or**
118 **a rule adopted or order issued pursuant thereto, or that a person has**
119 **materially aided or is materially aiding an act, practice, omission, or**
120 **course of business constituting a violation of this section or a rule**
121 **adopted or order issued pursuant thereto, the director may issue such**
122 **administrative orders as authorized under section 374.046, RSMo. A**
123 **violation of this section is a level four violation under section 374.049,**
124 **RSMo.**

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

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

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

142 **8. Nothing in this section shall limit the power of the state to**
143 **punish any person for any conduct that constitutes a crime in any other**
144 **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 975.948**, 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 has**
36 **taken a substantial step toward engaging in an act, practice, or course**
37 **of business constituting a violation of sections 375.930 to 375.948 or a**
38 **rule adopted or order issued pursuant thereto, or that a person has**
39 **materially aided or is materially aiding a practice constituting a**
40 **violation of sections 375.930 to 375.948 or a rule adopted or order issued**
41 **pursuant thereto, the director may issue such administrative orders as**
42 **authorized under section 374.046, RSMo. Each practice in violation of**
43 **section 375.934 is a level two violation under section 374.049,**
44 **RSMo. Each act as part of a trade practice does not constitute a**
45 **separate violation under section 374.049, RSMo. The director may also**
46 **suspend or revoke the license or certificate of authority of an insurer**
47 **for any willful violation.**

48 2. **If the director believes that an insurer has engaged, is**
49 **engaging in, or has taken a substantial step toward engaging in an act,**
50 **practice or course of business constituting a violation of sections**
51 **375.930 to 375.948 or a rule adopted or order issued pursuant thereto,**

52 or that a person has materially aided or is materially aiding an act,
53 practice, omission, or course of business conduct constituting a
54 violation of sections 375.930 to 375.948 or a rule adopted or order issued
55 pursuant thereto, the director may maintain a civil action for relief
56 authorized under section 374.048, RSMo. Each practice in violation of
57 section 375.934 is a level two violation under section 374.049,
58 RSMo. Each act as part of a trade practice does not constitute a
59 separate violation under section 374.049, 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 in, or has taken a substantial step toward engaging in an act,**
12 **practice or course of business constituting a violation of section 375.991**
13 **or a rule adopted or order issued pursuant thereto, or that a person has**
14 **materially aided or is materially aiding an act, practice, omission, or**
15 **course of business constituting a violation of section 375.991 or a rule**
16 **adopted 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. The director may also suspend or revoke the license or**
20 **certificate of authority of such person for any willful violation.**

21 **5. If the director believes that a person has engaged, is engaging**
22 **in, or has taken a substantial step toward engaging in an act, practice**
23 **or course of business constituting a violation of section 375.991 or a**
24 **rule adopted or order issued pursuant thereto, or that a person has**
25 **materially aided or is materially aiding an act, practice, omission, or**
26 **course of business constituting a violation of section 375.991 or a rule**
27 **adopted or order issued pursuant thereto, the director may maintain**
28 **a civil action for relief authorized under section 374.048, RSMo. A**
29 **violation of any of these sections is a level two violation under section**
30 **374.049, RSMo.**

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

34 **[5. In the event] 7. If the director determines that a person regulated**
35 **under this chapter has conducted its business fraudulently with respect to**
36 **sections 375.991 to 375.994, or has as a matter of business practice abused its**
37 **rights under said sections, such conduct shall [be considered] constitute either**
38 **an unfair trade practice under the provisions of sections 375.930 to 375.948 or an**
39 **unfair claims settlement practice under the provisions of sections 375.1000 to**
40 **375.1018. [The director shall have the power and authority, pursuant to the**
41 **unfair trade practices act and the unfair claims settlement practices act to subject**
42 **such persons to the monetary penalty or suspend or revoke such person's license**
43 **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 a person has engaged, is engaging in, or has taken a**
42 **substantial step toward engaging in an act, practice or course of**
43 **business constituting a violation of sections 375.1000 to 375.1018 or a**
44 **rule adopted or order issued pursuant thereto, or that a person has**
45 **materially aided or is materially aiding an act, practice, omission, or**
46 **course of business constituting a violation of sections 375.1000 to**
47 **375.1018 or a rule adopted or order issued pursuant thereto, the**

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

55 **2. If the director believes that an insurer has engaged, is**
56 **engaging in, or has taken a substantial step toward engaging in an act,**
57 **practice or course of business constituting a violation of sections**
58 **375.1000 to 375.1018 or a rule adopted or order issued pursuant thereto,**
59 **or that a person has materially aided or is materially aiding an act,**
60 **practice, omission, or course of business constituting a violation of**
61 **sections 375.1000 to 375.1018 or a rule adopted or order issued pursuant**
62 **thereto, the director may maintain a civil action for relief authorized**
63 **under section 374.048, RSMo. Each practice in violation of section**
64 **375.1005 is a level two violation under section 374.049, RSMo. Each act**
65 **as part of a claims settlement practice does not constitute a separate**
66 **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 in, or has taken a**
9 **substantial step toward engaging in an act, practice or course of**
10 **business constituting a violation of sections 375.1110 to 375.1140 or a**

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

21 2. If the director believes that a reinsurance intermediary,
22 insurer, or reinsurer has engaged, is engaging in, or has taken a
23 substantial step toward engaging in an act, practice or course of
24 business constituting a violation of sections 375.1110 to 375.1140 or a
25 rule adopted or order issued pursuant thereto, or that a person has
26 materially aided or is materially aiding an act, practice, omission, or
27 course of business constituting a violation of sections 375.1110 to
28 375.1140 or a rule adopted or order issued pursuant thereto, the
29 director may maintain a civil action for relief authorized under section
30 374.048, RSMo. A violation of any of these sections is a level two
31 violation under section 374.049, RSMo.

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

37 [2. The decision, determination or order of the director pursuant to
38 subsection 1 of this section shall be subject to judicial review pursuant to sections
39 536.100 to 536.140, RSMo.

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

42 4. Nothing contained in sections 375.1110 to 375.1140 is intended to or
43 shall in any manner limit or restrict the rights of policyholders, claimants,
44 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 person shall] **It is unlawful for any person included in**
15 **subsection 1 of this section to** obstruct or interfere with the director in the
16 conduct of any delinquency proceeding or any investigation preliminary or
17 incidental thereto.

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

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

33 5.] In any proceeding under sections 375.1150 to 375.1246, the director
34 and his deputies shall be responsible on their official bonds for the faithful
35 performance of their duties. If the court deems it desirable for the protection of
36 the assets, it may at any time require an additional bond from the director or his
37 deputies, and such bonds shall be paid for out of the assets of the insurer as a
38 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 in, or has taken a substantial step toward
3 engaging in an act, practice or course of business constituting a
4 violation of sections 375.1150 to 375.1246 or a rule adopted or order
5 issued pursuant thereto, or that a person has materially aided or is
6 materially aiding an act, practice, omission, or course of business
7 constituting a violation of sections 375.1150 to 375.1246 or a rule
8 adopted or order issued pursuant thereto, the director may issue such
9 administrative orders as authorized under section 374.046, RSMo. A
10 violation of any of these sections is a level four violation under section
11 374.049, RSMo. The director may also suspend or revoke the license or
12 certificate of authority of such person for any willful violation.

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

375.1204. 1. [An agent, broker,] A producer, premium finance
2 company, or any other person, other than the insured, responsible for the
3 payment of a premium, shall be obligated to pay any unpaid earned premium due
4 the insurer at the time of the declaration of insolvency as shown on the records
5 of the insurer. The liquidator shall also have the right to recover from such
6 person any part of an unearned premium that represents commission of such

7 person. Credits or setoffs or both shall not be allowed to [an agent, broker,] a
8 **producer** or premium finance company for any amounts advanced to the insurer
9 by the [agent, broker,] **producer** or premium finance company on behalf of, but
10 in the absence of a payment by the insured. An insured shall be obligated to pay
11 any unpaid earned premium due the insurer at the time of the declaration of
12 insolvency, as 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 in, or has taken a substantial step toward**
33 **engaging in an act, practice or course of business constituting a**
34 **violation of this section or a rule adopted or order issued pursuant**
35 **thereto, or that a person has materially aided or is materially aiding an**
36 **act, practice, omission, or course of business constituting a violation of**
37 **this section or a rule adopted or order issued pursuant thereto, the**
38 **director may issue such administrative orders as authorized under**
39 **section 374.046, RSMo. A violation of this section is a level one**
40 **violation under section 374.049, RSMo. The director may also suspend,**
41 **revoke, or refuse to renew any license issued by the director to any**
42 **offending person for any willful violation.**

43 **3. If the director believes that a person has engaged, is engaging**
44 **in, or has taken a substantial step toward engaging in an act, practice**
45 **or course of business constituting a violation of this section or a rule**
46 **adopted or order issued pursuant thereto, or that a person has**
47 **materially aided or is materially aiding an act, practice, omission, or**
48 **course of business constituting a violation of this section or a rule**
49 **adopted or order issued pursuant thereto, the director may maintain**
50 **a civil action for relief authorized under section 374.048, RSMo. A**
51 **violation of this section is a level one violation under section 374.049,**
52 **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 in, or has**
17 **taken a substantial step toward engaging in an act, practice or course**
18 **of business constituting a violation of this section or a rule adopted or**
19 **order issued pursuant thereto, or that a person has materially aided or**
20 **is materially aiding an act, practice, omission, or course of business**
21 **constituting a violation of this section or a rule adopted or order issued**
22 **pursuant thereto, the director may issue such administrative orders as**
23 **authorized under section 374.046, RSMo. A violation of any of these**
24 **sections is a level two violation under section 374.049, RSMo.**

25 **3. If the director believes that a person has engaged, is engaging**
26 **in, or has taken a substantial step toward engaging in an act, practice**

27 or course of business constituting a violation of this section or a rule
28 adopted or order issued pursuant thereto, or that a person has
29 materially aided or is materially aiding an act, practice, omission, or
30 course of business constituting a violation of this section or a rule
31 adopted or order issued pursuant thereto, the director may maintain
32 a civil action for relief authorized under section 374.048, RSMo. A
33 violation of any of these sections is a level two violation under section
34 374.049, 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 person
20 has engaged, is engaging in, or has taken a substantial step toward
21 engaging in an act, practice or course of business constituting a
22 violation of this section or a rule adopted or order issued pursuant
23 thereto, or that a person has materially aided or is materially aiding an
24 act, practice, omission, or course of business constituting a violation of
25 this section or a rule adopted or order issued pursuant thereto, the
26 director may issue such administrative orders as authorized under
27 section 374.046, RSMo. A violation of any of these sections is a level
28 two violation under section 374.049, RSMo.**

29 **3. If the director believes that a person has engaged, is engaging**
30 **in, or has taken a substantial step toward engaging in an act, practice**
31 **or course of business constituting a violation of this section or a rule**
32 **adopted or order issued pursuant thereto, or that a person has**
33 **materially aided or is materially aiding an act, practice, omission, or**
34 **course of business constituting a violation of this section or a rule**
35 **adopted or order issued pursuant thereto, the director may maintain**
36 **a civil action for relief authorized under section 374.048, RSMo. A**
37 **violation of any of these sections is a level two violation under section**
38 **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
56 value. Such transfer shall be deemed approved to the extent the assets of a
57 separate account so transferred have been paid to or are being held by the
58 company in connection with a pension, retirement or profit-sharing plan subject
59 to the provisions of the Internal Revenue Code, as amended, and the Employee
60 Retirement Income Security Act of 1974, as amended. The director [of insurance]
61 may withdraw such deemed approval by providing written notice to the company
62 that its financial condition or past practices require such withdrawal. The

63 director [of insurance] may approve other transfers among such accounts if the
64 director concludes that such transfers would be equitable.

65 5. Unless otherwise approved by the director [of insurance], assets
66 allocated to a separate account shall be valued at their market value on the date
67 of 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 authority
74 to regulate the issuance and **authority to regulate the** sale of contracts under
75 which amounts are to be allocated to one or more separate accounts as provided
76 herein, and to issue such reasonable rules, regulations and licensing
77 requirements as [he] **the director** shall deem necessary to carry out the
78 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 in, or has taken a substantial step toward
9 engaging in an act, practice or course of business constituting a
10 violation of sections 376.850 to 376.890 or a rule adopted or order issued
11 pursuant thereto, or that a person has materially aided or is materially
12 aiding an act, practice, omission, or course of business constituting a
13 violation of sections 376.850 to 376.890 or a rule adopted or order issued
14 pursuant thereto, the director may issue such administrative orders as
15 authorized under section 374.046, RSMo. A violation of any of these

16 sections is a level two violation under section 374.049, RSMo.

17 **2. If the director believes that a person has engaged, is engaging**
18 **in, or has taken a substantial step toward engaging in an act, practice**
19 **or course of business constituting a violation of sections 376.850 to**
20 **376.890 or a rule adopted or order issued pursuant thereto, or that a**
21 **person has materially aided or is materially aiding an act, practice,**
22 **omission, or course of business constituting a violation of sections**
23 **376.850 to 376.890 or a rule adopted or order issued pursuant thereto,**
24 **the director may maintain a civil action for relief authorized under**
25 **section 374.048, RSMo. A violation of any of these sections is a level**
26 **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 in, or has taken a**
57 **substantial step toward engaging in an act, practice or course of**
58 **business constituting a violation of sections 376.1075 to 376.1095 or a**
59 **rule adopted or order issued pursuant thereto, or that a person has**
60 **materially aided or is materially aiding an act, practice, omission, or**
61 **course of business constituting a violation of sections 376.1075 to**

62 **376.1095 or a rule adopted or order issued pursuant thereto, the**
63 **director may issue such administrative orders as authorized under**
64 **section 374.046, RSMo. A violation of any of these sections is a level**
65 **three violation under section 374.049, RSMo.**

66 **5. If the director believes that a person has engaged, is engaging**
67 **in, or has taken a substantial step toward engaging in an act, practice**
68 **or course of business constituting a violation of sections 376.1075 to**
69 **376.1095 or a rule adopted or order issued pursuant thereto, or that a**
70 **person has materially aided or is materially aiding an act, practice,**
71 **omission, or course of business constituting a violation of sections**
72 **376.1075 to 376.1095 or a rule adopted or order issued pursuant thereto,**
73 **the director may maintain a civil action for relief authorized under**
74 **section 374.048, RSMo. A violation of any of these sections is a level**
75 **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 in, or has**
22 **taken a substantial step toward engaging in an act, practice or course**

23 of business constituting a violation of section 379.017 and sections
24 379.316 to 379.361 or a rule adopted or order issued pursuant thereto,
25 or that a person has materially aided or is materially aiding an act,
26 practice, omission, or course of business constituting a violation of
27 section 379.017 and sections 379.316 to 379.361 or a rule adopted or
28 order issued pursuant thereto, the director may issue such
29 administrative orders as authorized under section 374.046, RSMo. A
30 violation of any of these sections is a level two violation under section
31 374.049, RSMo. The practice of using a rate not in effect under section
32 379.321, if caused by a single act or omission by the insurer or filing
33 organization, is a level two violation under section 374.049,
34 RSMo. Each act as part of a rating violation does not constitute a
35 separate violation under section 374.049, RSMo. The director may also
36 suspend or revoke the license or certificate of authority of an insurer
37 or filing company for any willful violation.

38 2. If the director believes that a person has engaged, is engaging
39 in, or has taken a substantial step toward engaging in an act, practice
40 or course of business constituting a violation of section 379.017 and
41 sections 379.316 to 379.361 or a rule adopted or order issued pursuant
42 thereto, or that a person has materially aided or is materially aiding an
43 act, practice, omission, or course of business constituting a violation of
44 section 379.017 and sections 379.316 to 379.361 or a rule adopted or
45 order issued pursuant thereto, the director may maintain a civil action
46 for relief authorized under section 374.048, RSMo. A violation of any
47 of these sections is a level two violation under section 374.049,
48 RSMo. The practice of using a rate not in effect under section 379.321,
49 if caused by a single act or omission by the insurer or filing
50 organization, is a level two violation under section 374.049,
51 RSMo. Each act as part of a rating violation does not constitute a
52 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 in, or has taken a substantial step toward engaging in an act,**
13 **practice or course of business constituting a violation of this section or**
14 **a rule adopted or order issued pursuant thereto, or that a person has**
15 **materially aided or is materially aiding an act, practice, omission, or**
16 **course of business constituting a violation of this section or a rule**
17 **adopted or order issued pursuant thereto, the director may issue such**
18 **administrative orders as authorized under section 374.046, RSMo. A**
19 **violation of this section is a level one violation under section 374.049,**
20 **RSMo.**

21 **3. If the director believes that a person has engaged, is engaging**
22 **in, or has taken a substantial step toward engaging in an act, practice**
23 **or course of business constituting a violation of this section or a rule**
24 **adopted or order issued pursuant thereto, or that a person has**
25 **materially aided or is materially aiding an act, practice, omission, or**
26 **course of business constituting a violation of this section or a rule**
27 **adopted or order issued pursuant thereto, the director may maintain**
28 **a civil action for relief authorized under section 374.048, RSMo. A**
29 **violation of this section is a level one violation under section 374.049,**
30 **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 in, or has taken a substantial step toward engaging in an act,**
43 **practice or course of business constituting a violation of sections**
44 **380.201 to 380.611 or a rule adopted or order issued pursuant thereto,**
45 **or that a person has materially aided or is materially aiding an act,**
46 **practice, omission, or course of business constituting a violation of**
47 **sections 380.201 to 380.611 or a rule adopted or order issued pursuant**
48 **thereto, the director may issue such administrative orders as**
49 **authorized under section 374.046, RSMo. A violation of any of these**
50 **sections is a level two violation under section 374.049, RSMo, except a**
51 **violation of section 380.391 is a level four violation under section**
52 **374.049, RSMo. The director may also suspend or revoke the certificate**
53 **of authority of such person for any willful violation.**

54 2. **If the director believes that a person has engaged, is engaging**
55 **in, or has taken a substantial step toward engaging in an act, practice**

56 or course of business constituting a violation of sections 380.201 to
57 380.611 or a rule adopted or order issued pursuant thereto, or that a
58 person has materially aided or is materially aiding an act, practice,
59 omission, or course of business constituting a violation of sections
60 380.201 to 380.611 or a rule adopted or order issued pursuant thereto,
61 the director may maintain a civil action for relief authorized under
62 section 374.048, RSMo. A violation of any of these sections is a level
63 two violation under section 374.049, RSMo, except a violation of section
64 380.391 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 in, or has taken a substantial step toward engaging in an
3 act, practice or course of business constituting a violation of sections
4 384.011 to 384.071 or a rule adopted or order issued pursuant thereto,
5 or that a person has materially aided or is materially aiding an act,
6 practice, omission, or course of business constituting a violation of
7 384.011 to 384.071 or a rule adopted or order issued pursuant thereto,
8 the director may issue such administrative orders as authorized under
9 section 374.046, RSMo. A violation of any of these sections is a level
10 three violation under section 374.049, RSMo.

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

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

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

29 thousand dollars for the first offense, and not exceeding two thousand dollars for
30 each succeeding offense.

31 3.] 4. The above penalties are not exclusive remedies. [Penalties may
32 also be assessed under sections 375.930 to 375.948, RSMo.]

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