FIRST REGULAR SESSION

SENATE BILL NO. 164

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCOTT

Pre-filed December 12, 2006, and ordered printed.

0288S.03I

TERRY L. SPIELER, Secretary

AN ACT

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To repeal sections 27.040, 44.237, 91.250, 103.008, 103.178,
     104.220, 104.510, 105.711, 105.1075, 108.290, 135.508,
     135.520, 135.815, 143.999, 148.330, 148.380, 148.410,
     191.671, 191.828, 191.853, 192.068, 208.178, 208.437,
     209.285, 209.319, 214.270, 219.091, 227.100, 256.453,
     256.459, 285.230, 287.035, 287.037, 287.123, 287.129,
     287.135, 287.241, 287.280, 287.282, 287.335, 287.690,
     287.710, 287.715, 287.717, 287.730, 287.892, 287.894,
     287.896, 287.902, 287.920, 287.930, 287.945, 287.975,
     303.025, 303.026, 303.406, 303.412, 319.131, 320.082,
     324.050, 324.065, 324.128, 324.159, 324.177, 324.200,
     324.203, 324.240, 324.243, 324.400, 324.406, 324.475,
     324.478, 324.526, 325.010, 326.265, 326.268, 327.011,
     327.051, 328.030, 328.050, 329.015, 329.025, 329.028,
     329.210, 329.240, 330.110, 330.190, 331.100, 332.041,
     332.302, 332.306, 332.327, 333.221, 334.123, 334.240,
     334.400, 334.430, 334.625, 334.702, 334.720, 334.735,
     334.746, 334.749, 334.800, 334.840, 335.026, 335.036,
     336.140, 336.160, 337.010, 337.050, 337.085, 337.090,
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     337.739, 338.130, 339.120, 339.507, 340.208, 340.212,
     345.035, 345.080, 346.010, 346.120, 352.505, 352.520,
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI, AS FOLLOWS:

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           Section A. Sections 27.040, 44.237, 91.250, 103.008,
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      103.178, 104.220, 104.510, 105.711, 105.1075, 108.290, 135.508,
      135.520, 135.815, 143.999, 148.330, 148.380, 148.410, 191.671,
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      191.828, 191.853, 192.068, 208.178, 208.437, 209.285, 209.319,
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      214.270, 219.091, 227.100, 256.453, 256.459, 285.230, 287.035,
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      287.037, 287.123, 287.129, 287.135, 287.241, 287.280, 287.282,
      287.335, 287.690, 287.710, 287.715, 287.717, 287.730, 287.892,
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      287.894, 287.896, 287.902, 287.920, 287.930, 287.945, 287.975,
      303.025, 303.026, 303.406, 303.412, 319.131, 320.082, 324.050,
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      324.065, 324.128, 324.159, 324.177, 324.200, 324.203, 324.240,
      324.243, 324.400, 324.406, 324.475, 324.478, 324.526, 325.010,
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     326.265, 326.268, 327.011, 327.051, 328.030, 328.050, 329.015,
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      362.910, 365.080, 367.500, 370.005, 370.366, 374.010, 374.020,
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      374.120, 374.130, 374.150, 374.160, 374.180, 374.184, 374.194,
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      375.206, 375.221, 375.231, 375.246, 375.256, 375.251, 375.261,
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- 2 375.1080, 375.1112, 375.1152, 375.1158, 375.1160, 375.1172,
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- 6 376.210, 376.220, 376.230, 376.240, 376.290, 376.300, 376.305,
- 7 376.307, 376.311, 376.320, 376.330, 376.350, 376.360, 376.370,
- 8 376.384, 376.390, 376.397, 376.405, 376.410, 376.423, 376.426,
- 9 376.442, 376.480, 376.510, 376.600, 376.670, 376.672, 376.675,
- 376.679, 376.693, 376.697, 376.704, 376.718, 376.756, 376.773,
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- 15 376.1361, 376.1550, 377.020, 377.030, 377.170, 377.220, 377.230,
- 16 377.260, 377.400, 377.420, 377.430, 378.604, 379.080, 379.083,
- 17 379.160, 379.343, 379.440, 379.445, 379.450, 379.475, 379.670,
- 18 379.680, 379.690, 379.720, 379.730, 379.750, 379.770, 379.800,
- 19 379.815, 379.882, 379.888, 379.930, 380.011, 380.021, 380.051,
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- 380.611, 382.010, 383.015, 383.020, 383.025, 383.030, 383.060,
- 22 383.075, 383.100, 383.110, 384.015, 385.020, 400.008.117,
- 23 407.020, 407.1085, 407.1200, 408.233, 408.280, 427.140, 427.145,
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- 25 620.105, 620.106, 620.111, 620.120, 620.125, 620.127, 620.130,
- 26 620.132, 620.135, 620.140, 620.145, 620.146, 620.148, 620.149,
- 27 620.150, 620.151, 620.153, 620.154, 621.045, 660.551, 660.553,
- and 660.555, RSMo, are repealed and four hundred sixty-five new

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sections enacted in lieu thereof, to be known as sections 27.040,
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      44.237, 91.250, 103.008, 103.178, 104.220, 104.510, 105.711,
      105.1075, 108.290, 135.508, 135.520, 135.815, 143.999, 148.330,
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      287.717, 287.730, 287.892, 287.894, 287.896, 287.902, 287.920,
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      287.930, 287.945, 287.975, 303.025, 303.026, 303.406, 303.412,
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- 1 376.1220, 376.1253, 376.1275, 376.1305, 376.1315, 376.1322,
- 2 376.1350, 376.1361, 376.1550, 377.005, 377.020, 377.030, 377.170,
- 3 377.220, 377.230, 377.260, 377.400, 377.420, 377.430, 378.604,
- 4 379.005, 379.080, 379.083, 379.160, 379.343, 379.440, 379.445,
- 5 379.450, 379.475, 379.670, 379.680, 379.690, 379.720, 379.730,
- 6 379.750, 379.770, 379.800, 379.815, 379.882, 379.888, 379.930,
- 7 380.005, 380.011, 380.021, 380.051, 380.061, 380.071, 380.081,
- 8 380.091, 380.201, 380.221, 380.521, 380.611, 382.010, 383.005,
- 9 383.015, 383.020, 383.025, 383.030, 383.060, 383.075, 383.100,
- 383.110, 384.015, 385.020, 400.008.117, 407.020, 407.1085,
- 407.1200, 408.233, 408.280, 427.140, 427.145, 436.005, 443.803,
- 12 447.572, 525.050, 537.740, 537.756, 620.010, 621.045, 660.551,
- 13 660.553, and 660.555, to read as follows:
- 14 27.040. When required, he shall give his opinion, in
- 15 writing, without fee, to the general assembly, or to either
- house, and to the governor, secretary of state, auditor,
- 17 treasurer, commissioner of education, grain warehouse
- 18 commissioner, director of the department of insurance, financial
- and professional regulation, the director of the division of
- 20 finance, and the head of any state department, or any circuit or
- 21 prosecuting attorney upon any question of law relative to their
- 22 respective offices or the discharge of their duties.
- 23 44.237. 1. In addition to its responsibilities listed in
- 24 sections 44.225 to 44.237, the commission shall undertake a study
- 25 to determine the feasibility of establishing a comprehensive
- 26 program of earthquake hazard reduction having as its purposes the
- saving of lives and mitigating damage to property in Missouri.
- 28 2. The study shall accomplish the following tasks:

(1) Earthquake hazard reduction. The study shall develop a comprehensive program for the reduction of earthquake hazards in Missouri. It shall include, but not necessarily be limited to, the following:

- (a) A review of and recommendations for improving the development and implementation of technically and economically feasible codes, standards and procedures for the design and construction of new structures and the strengthening of existing structures so as to increase the earthquake resistance of structures located in areas of significant seismic hazard;
- (b) A review of current methods and recommendations for new methods to improve the development, publication and promotion, in conjunction with local officials, research organizations and professional organizations, of model codes and other means to provide better information about seismic hazards to guide land-use policy decisions and building activity;
- (c) A review of and recommendations for methods, practices and procedures to educate the public, including local officials, about the nature and consequences of earthquakes, about procedures for identifying those locations and structures especially susceptible to earthquake damage and about ways to reduce and mitigate the adverse effects of an earthquake;
- (d) A review of and recommendations for programs and techniques to improve preparedness for and response to damaging earthquakes with special attention being given to hazard control measures, pre-earthquake emergency planning, readiness of emergency services and planning for post-earthquake reconstruction and redevelopment.

(2) Implementation processes. With respect to implementation of earthquake hazard reduction, the study shall include the following:

- (a) Recommendations for new roles, responsibilities and programs for state and local agencies, universities, private organizations and volunteer organizations, including goals, priorities and expenditures of future state funds specifically identified for the recommended hazards reduction program;
- (b) Recommendations for methods and procedures to disseminate and implement basic and applied earthquake research in order to achieve higher levels of seismic safety.
- (3) Coordination with other agencies. To the extent it is practical to do so, the study required by this section shall be coordinated with the relevant local, regional and federal government agencies, key elements of the private sector, and at least the following state agencies: state emergency management agency, division of geology and land survey, division of design and construction, Missouri housing development commission, department of natural resources, department of labor and industrial relations, public service commission, department of health and senior services, office of the state fire marshal, department of transportation, department of revenue, office of the adjutant general, department of insurance, financial and professional regulation, and the department of elementary and secondary education.
- 3. The study shall include recommendations for statutory changes and specific executive actions to be taken by state and local agencies necessary to establish and implement an earthquake

- 1 hazards reduction program for the state of Missouri.
- 2 4. The commission shall submit the study to the general assembly by June 30, 1997, or earlier at its discretion.
- 91.250. When any city of over twenty thousand inhabitants has purchased or erected a waterworks system under sections 5 6 91.090 to 91.300 and issued bonds in payment therefor as herein 7 provided, such bonds shall be subject to be deposited with the 8 director of the department of insurance [of Missouri], financial 9 and professional regulation as provided by the statutes relating to the deposit of securities by trust and insurance companies, 10 11 and such bonds may also be deposited with the treasurer of the 12 state of Missouri, as provided in section 30.270, RSMo, within 13 the discretion of the governor, attorney general and treasurer of the state, as provided in said section 30.270, RSMo; provided, 14 that at the time that such bonds are offered for deposit, the 15 16 waterworks system upon which they are secured has, for a period of five years last past, earned all necessary current running 17 18 expenses, and in addition thereto an amount equal to eight percent per annum on the entire amount of such bonds issued for 19 20 the payment of said waterworks system.
 - 103.008. 1. The general administration and the responsibility for the proper operation of the plan is vested in a board of trustees of thirteen persons, as follows: the director of the department of health and senior services, the director of the department of insurance, financial and professional regulation, the commissioner of the state office of administration serving ex officio, one member of the senate from the majority party appointed by the president pro tem of the

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senate and one member of the senate from the minority party appointed by the president pro tem of the senate with the concurrence of the minority floor leader of the senate, one member of the house of representatives from the majority party appointed by the speaker of the house of representatives and one member of the house of representatives from the minority party appointed by the speaker of the house of representatives with the concurrence of the minority floor leader of the house of representatives, and six members appointed by the governor with the advice and consent of the senate. Of the six members appointed by the governor, three shall be citizens of the state of Missouri who are not members of the plan, but who are familiar with medical issues. The remaining three members shall be members of the plan and may be selected from any state agency or any participating member agency.

- 2. Except for the legislative members, the director of the department of health and senior services, the director of the department of insurance, and the commissioner of the office of administration, trustees shall be chosen for terms of four years from the first day of January next following their election or appointment. Any vacancies occurring in the office of trustee shall be filled in the same manner the office was filled previously.
- 103.178. 1. Beginning on a date specified by the board of trustees of the Missouri consolidated health care plan but not later than July 1, 1995, the Missouri consolidated health care plan established under section 103.005 shall implement a pilot project to make available to those residing in the pilot project

area who are covered by the plan an alternative system of benefits for the treatment of chemical dependency added to those benefits regularly available to plan participants. The benefits provided under the pilot project shall be similar in scope and comprehensiveness, but not limited to, the benefits provided for the treatment and rehabilitation of persons who are chemically dependent under the department of mental health's comprehensive substance treatment and rehabilitation program, popularly described as the C-STAR program. Such a pilot project shall operate for a period not to exceed four years. To the extent that participation in the pilot project incurs additional cost to a person covered under the plan, participation shall be voluntary. If no additional cost is incurred, the alternative system of benefits may be made in lieu of the regular benefits for the services in the pilot project area.

2. The Missouri state employees' retirement system or the Missouri health care plan, as appropriate, shall in cooperation with the department of mental health and the department of insurance, financial and professional regulation design the pilot project so as to generate data to evaluate the costs and benefits of providing coverage of chemical dependency using an alternative set of benefits as provided in this section. The Missouri consolidated health care plan shall at the completion of the pilot project submit to the governor and the members of the general assembly a report which describes the results of the evaluation of this pilot project. As authorized by appropriations made for that purpose, the Missouri state employees' retirement system or the Missouri consolidated health

- care plan may contract with persons to conduct an independent evaluation of the pilot project established in this section.
- 104.220. The board of trustees may select and employ an
 actuary who shall serve at its pleasure as its technical adviser
 on matters regarding the operation of the system, or may call
 upon the director of the department of insurance, financial and
 professional regulation for actuarial service, which shall be
 furnished by him. The actuary shall:

- (1) During the first year of operation of the system, or as soon as practicable, and at least once every five years thereafter, make a general investigation of the mortality, retirement, disability, death, employment turnover, interest, and earnable compensation experience of the system;
 - (2) Recommend mortality and other tables to be used for all required actuarial calculations;
 - (3) Make an annual valuation of the liabilities, assets, and reserves of the system, and a determination of the amounts of contributions required by the system to discharge the liabilities and administration costs under sections 104.010 to 104.270, and certify the results thereof to the board; and
- 21 (4) Perform such other duties as may be assigned to him by 22 the board.
 - 104.510. The board of trustees may select and employ an actuary who shall serve at its pleasure as its technical adviser on matters regarding the operation of the system, or may call upon the director of the department of insurance, financial and professional regulation for actuarial service. The actuary shall:

- 1 (1) During the first year of operation of the system, or as
- 2 soon as practicable, and at least once every five years
- 3 thereafter, make a general investigation of the mortality,
- 4 retirement, disability, death, employment turnover, interest, and
- 5 earnable compensation experience of the system;
- 6 (2) Recommend mortality and other tables to be used for all required actuarial calculations;
- 8 (3) Make an annual valuation of the liabilities, assets,
 9 and reserves of the system, and a determination of the amounts of
 10 contributions required by the system to discharge the liabilities
 11 and administration costs under sections 104.010 and 104.320 to
 12 104.800, and certify the results thereof to the board; and
- 13 (4) Perform such other duties as are assigned by the board.
- 14 105.711. 1. There is hereby created a "State Legal Expense
- 15 Fund" which shall consist of moneys appropriated to the fund by
- the general assembly and moneys otherwise credited to such fund
- pursuant to section 105.716.
- 18 2. Moneys in the state legal expense fund shall be
- available for the payment of any claim or any amount required by
- 20 any final judgment rendered by a court of competent jurisdiction
- 21 against:
- 22 (1) The state of Missouri, or any agency of the state,
- 23 pursuant to section 536.050 or 536.087, RSMo, or section 537.600,
- 24 RSMo;
- 25 (2) Any officer or employee of the state of Missouri or any
- agency of the state, including, without limitation, elected
- officials, appointees, members of state boards or commissions,
- and members of the Missouri national quard upon conduct of such

- officer or employee arising out of and performed in connection with his or her official duties on behalf of the state, or any agency of the state, provided that moneys in this fund shall not be available for payment of claims made under chapter 287, RSMo;
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- 6 (3) (a) Any physician, psychiatrist, pharmacist, 7 podiatrist, dentist, nurse, or other health care provider licensed to practice in Missouri under the provisions of chapter 8 324, 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed 9 10 by the state of Missouri or any agency of the state, under formal 11 contract to conduct disability reviews on behalf of the 12 department of elementary and secondary education or provide 13 services to patients or inmates of state correctional facilities on a part-time basis, and any physician, psychiatrist, 14 pharmacist, podiatrist, dentist, nurse, or other health care 15 provider licensed to practice in Missouri under the provisions of 16 17 chapter 324, 330, 332, 334, 335, 336, 337, or 338, RSMo, who is 18 under formal contract to provide services to patients or inmates 19 at a county jail on a part-time basis;
 - (b) Any physician licensed to practice medicine in Missouri under the provisions of chapter 334, RSMo, and his professional corporation organized pursuant to chapter 356, RSMo, who is employed by or under contract with a city or county health department organized under chapter 192, RSMo, or chapter 205, RSMo, or a city health department operating under a city charter, or a combined city-county health department to provide services to patients for medical care caused by pregnancy, delivery, and child care, if such medical services are provided by the

- physician pursuant to the contract without compensation or the physician is paid from no other source than a governmental agency except for patient co-payments required by federal or state law or local ordinance;
- Any physician licensed to practice medicine in Missouri 6 under the provisions of chapter 334, RSMo, who is employed by or 7 under contract with a federally funded community health center organized under Section 315, 329, 330 or 340 of the Public Health 8 9 Services Act (42 U.S.C. 216, 254c) to provide services to 10 patients for medical care caused by pregnancy, delivery, and 11 child care, if such medical services are provided by the 12 physician pursuant to the contract or employment agreement 13 without compensation or the physician is paid from no other 14 source than a governmental agency or such a federally funded 15 community health center except for patient co-payments required by federal or state law or local ordinance. In the case of any 16 17 claim or judgment that arises under this paragraph, the aggregate 18 of payments from the state legal expense fund shall be limited to 19 a maximum of one million dollars for all claims arising out of 20 and judgments based upon the same act or acts alleged in a single 21 cause against any such physician, and shall not exceed one 22 million dollars for any one claimant;
 - (d) Any physician licensed pursuant to chapter 334, RSMo, who is affiliated with and receives no compensation from a nonprofit entity qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, which offers a free health screening in any setting or any physician, nurse, physician assistant, dental hygienist, or

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dentist licensed or registered pursuant to chapter 332, RSMo,
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      chapter 334, RSMo, or chapter 335, RSMo, who provides medical,
      dental, or nursing treatment within the scope of his license or
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      registration at a city or county health department organized
      under chapter 192, RSMo, or chapter 205, RSMo, a city health
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      department operating under a city charter, or a combined
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      city-county health department, or a nonprofit community health
      center qualified as exempt from federal taxation under Section
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      501(c)(3) of the Internal Revenue Code of 1986, as amended, if
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      such treatment is restricted to primary care and preventive
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      health services, provided that such treatment shall not include
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      the performance of an abortion, and if such medical, dental, or
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      nursing services are provided by the physician, dentist,
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      physician assistant, dental hygienist, or nurse without
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      compensation. Medicaid or medicare payments for primary care and
      preventive health services provided by a physician, dentist,
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      physician assistant, dental hygienist, or nurse who volunteers at
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      a free health clinic is not compensation for the purpose of this
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      section if the total payment is assigned to the free health
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      clinic. For the purposes of the section, "free health clinic"
      means a nonprofit community health center qualified as exempt
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      from federal taxation under Section 501 (c)(3) of the Internal
      Revenue Code of 1987, as amended, that provides primary care and
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      preventive health services to people without health insurance
      coverage for the services provided without charge. In the case
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      of any claim or judgment that arises under this paragraph, the
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      aggregate of payments from the state legal expense fund shall be
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      limited to a maximum of five hundred thousand dollars, for all
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claims arising out of and judgments based upon the same act or 1 2 acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies 3 purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars. Liability or 5 6 malpractice insurance obtained and maintained in force by or on 7 behalf of any physician, dentist, physician assistant, dental hygienist, or nurse shall not be considered available to pay that 8 9 portion of a judgment or claim for which the state legal expense 10 fund is liable under this paragraph; or

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Any physician, nurse, physician assistant, dental hygienist, or dentist licensed or registered to practice medicine, nursing, or dentistry or to act as a physician assistant or dental hygienist in Missouri under the provisions of chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides medical, nursing, or dental treatment within the scope of his license or registration to students of a school whether a public, private, or parochial elementary or secondary school, if such physician's treatment is restricted to primary care and preventive health services and if such medical, dental, or nursing services are provided by the physician, dentist, physician assistant, dental hygienist, or nurse without compensation. In the case of any claim or judgment that arises under this paragraph, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars, for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one

- claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars; or
- 4 (4) Staff employed by the juvenile division of any judicial circuit; or

- (5) Any attorney licensed to practice law in the state of Missouri who practices law at or through a nonprofit community social services center qualified as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or through any agency of any federal, state, or local government, if such legal practice is provided by the attorney without compensation. In the case of any claim or judgment that arises under this subdivision, the aggregate of payments from the state legal expense fund shall be limited to a maximum of five hundred thousand dollars for all claims arising out of and judgments based upon the same act or acts alleged in a single cause and shall not exceed five hundred thousand dollars for any one claimant, and insurance policies purchased pursuant to the provisions of section 105.721 shall be limited to five hundred thousand dollars.
 - 3. The department of health and senior services shall promulgate rules regarding contract procedures and the documentation of care provided under paragraphs (b), (c), (d), and (e) of subdivision (3) of subsection 2 of this section. The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to the provisions of section 105.721, provided in subsection 7 of this section, shall not apply to any claim or judgment arising under paragraph (a),

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(b), (c), (d), or (e) of subdivision (3) of subsection 2 of this
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      section. Any claim or judgment arising under paragraph (a), (b),
      (c), (d), or (e) of subdivision (3) of subsection 2 of this
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      section shall be paid by the state legal expense fund or any
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      policy of insurance procured pursuant to section 105.721, to the
      extent damages are allowed under sections 538.205 to 538.235,
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            Liability or malpractice insurance obtained and maintained
      in force by any physician, dentist, physician assistant, dental
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      hygienist, or nurse for coverage concerning his or her private
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      practice and assets shall not be considered available under
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      subsection 7 of this section to pay that portion of a judgment or
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      claim for which the state legal expense fund is liable under
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      paragraph (a), (b), (c), (d), or (e) of subdivision (3) of
      subsection 2 of this section. However, a physician, nurse,
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      dentist, physician assistant, or dental hygienist may purchase
      liability or malpractice insurance for coverage of liability
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      claims or judgments based upon care rendered under paragraphs
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      (c), (d), and (e) of subdivision (3) of subsection 2 of this
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      section which exceed the amount of liability coverage provided by
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      the state legal expense fund under those paragraphs. Even if
      paragraph (a), (b), (c), (d), or (e) of subdivision (3) of
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      subsection 2 of this section is repealed or modified, the state
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      legal expense fund shall be available for damages which occur
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      while the pertinent paragraph (a), (b), (c), (d), or (e) of
      subdivision (3) of subsection 2 of this section is in effect.
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               The attorney general shall promulgate rules regarding
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      contract procedures and the documentation of legal practice
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provided under subdivision (5) of subsection 2 of this section.

The limitation on payments from the state legal expense fund or any policy of insurance procured pursuant to section 105.721 as provided in subsection 7 of this section shall not apply to any claim or judgment arising under subdivision (5) of subsection 2 of this section. Any claim or judgment arising under subdivision (5) of subsection 2 of this section shall be paid by the state legal expense fund or any policy of insurance procured pursuant to section 105.721 to the extent damages are allowed under sections 538.205 to 538.235, RSMo. Liability or malpractice insurance otherwise obtained and maintained in force shall not be considered available under subsection 7 of this section to pay that portion of a judgment or claim for which the state legal expense fund is liable under subdivision (5) of subsection 2 of this section. However, an attorney may obtain liability or malpractice insurance for coverage of liability claims or judgments based upon legal practice rendered under subdivision (5) of subsection 2 of this section that exceed the amount of liability coverage provided by the state legal expense fund under subdivision (5) of subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section is repealed or amended, the state legal expense fund shall be available for damages that occur while the pertinent subdivision (5) of subsection 2 of this section is in effect.

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5. All payments shall be made from the state legal expense fund by the commissioner of administration with the approval of the attorney general. Payment from the state legal expense fund of a claim or final judgment award against a physician, dentist, physician assistant, dental hygienist, or nurse described in

- paragraph (a), (b), (c), (d), or (e) of subdivision (3) of subsection 2 of this section, or against an attorney in subdivision (5) of subsection 2 of this section, shall only be made for services rendered in accordance with the conditions of such paragraphs. In the case of any claim or judgment against an officer or employee of the state or any agency of the state based upon conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state that would give rise to a cause of action under section 537.600, RSMo, the state legal expense fund shall be liable, excluding punitive damages, for:
 - (1) Economic damages to any one claimant; and

(2) Up to three hundred fifty thousand dollars for noneconomic damages.

The state legal expense fund shall be the exclusive remedy and shall preclude any other civil actions or proceedings for money damages arising out of or relating to the same subject matter against the state officer or employee, or the officer's or employee's estate. No officer or employee of the state or any agency of the state shall be individually liable in his or her personal capacity for conduct of such officer or employee arising out of and performed in connection with his or her official duties on behalf of the state or any agency of the state. The provisions of this subsection shall not apply to any defendant who is not an officer or employee of the state or any agency of the state in any proceeding against an officer or employee of the state or any agency of the state or any agency of the state. Nothing in this subsection

- shall limit the rights and remedies otherwise available to a claimant under state law or common law in proceedings where one or more defendants is not an officer or employee of the state or any agency of the state.
- 5 The limitation on awards for noneconomic damages provided for in this subsection shall be increased or decreased 6 7 on an annual basis effective January first of each year in accordance with the Implicit Price Deflator for Personal 8 9 Consumption Expenditures as published by the Bureau of Economic 10 Analysis of the United States Department of Commerce. 11 current value of the limitation shall be calculated by the 12 director of the department of insurance, financial and 13 professional regulation, who shall furnish that value to the secretary of state, who shall publish such value in the Missouri 14 15 Register as soon after each January first as practicable, but it shall otherwise be exempt from the provisions of section 536.021, 16 17 RSMo.

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7. Except as provided in subsection 3 of this section, in the case of any claim or judgment that arises under sections 537.600 and 537.610, RSMo, against the state of Missouri, or an agency of the state, the aggregate of payments from the state legal expense fund and from any policy of insurance procured pursuant to the provisions of section 105.721 shall not exceed the limits of liability as provided in sections 537.600 to 537.610, RSMo. No payment shall be made from the state legal expense fund or any policy of insurance procured with state funds pursuant to section 105.721 unless and until the benefits provided to pay the claim by any other policy of liability

- 1 insurance have been exhausted.
- 2 8. The provisions of section 33.080, RSMo, notwithstanding,
- 3 any moneys remaining to the credit of the state legal expense
- 4 fund at the end of an appropriation period shall not be
- 5 transferred to general revenue.
- 6 9. Any rule or portion of a rule, as that term is defined 7 in section 536.010, RSMo, that is promulgated under the authority delegated in sections 105.711 to 105.726 shall become effective 8 9 only if it has been promulgated pursuant to the provisions of 10 chapter 536, RSMo. Nothing in this section shall be interpreted 11 to repeal or affect the validity of any rule filed or adopted 12 prior to August 28, 1999, if it fully complied with the 13 provisions of chapter 536, RSMo. This section and chapter 536,
- 14 RSMo, are nonseverable and if any of the powers vested with the
- general assembly pursuant to chapter 536, RSMo, to review, to
- delay the effective date, or to disapprove and annul a rule are
- subsequently held unconstitutional, then the grant of rulemaking
- authority and any rule proposed or adopted after August 28, 1999,
- 19 shall be invalid and void.
- 20 105.1075. Insurance acquired pursuant to sections 105.1070
- 21 to 105.1079 shall be issued by an insurance company or
- 22 association authorized to transact business in this state and
- 23 shall by its terms provide adequate insurance for the employee,
- 24 member of the Missouri national guard, or agent under policy
- 25 provisions approved by the state department of insurance_
- 26 financial and professional regulation for the coverage specified
- in sections 105.1070 to 105.1079 for any damages caused by reason
- of death, personal injury, or property damage resulting from the

negligent operation of a state-controlled motor vehicle,
aircraft, or marine vessel on state business or within the course
of the employment, military duty, or scope of the agency.

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108.290. Any and all bonds registered by the state auditor under the provisions of the laws of this state, and any and all bonds that have been or may be duly issued by any county or city or school district having a population of over three hundred thousand inhabitants, whereon there is no default in payment of principal or interest, may be accepted as good and lawful security for the investment of the capital stock, surplus and reserve funds of any insurance or fraternal benefit society incorporated in or authorized to transact business in this state, or trust company authorized to transact business in this state. The state director of the department of insurance, financial and professional regulation is hereby authorized to accept such bonds as security or pledge in all cases where such pledge or security is required by the laws of this state. Such bonds may be accepted by the state treasurer as security for the deposit of any and all state funds, and by county and city treasurers as security for the deposit of any and all county and city funds. They shall also be eligible for the investment of any funds in the possession of any administrator, executor, guardian, curator, trustee and all other persons sustaining fiduciary relations. Such investments may be made without an order of court first had and obtained, and without incurring liability for loss, except in case of inexcusable negligence.

135.508. The department may certify profit or not for profit entities which submit an application to be designated as a

Missouri certified capital company. The department shall review 1 2 the organizational documents for each applicant for certification and the business history of the applicant, determine that the 3 Missouri certified capital company's cash, marketable securities 5 and other liquid assets are at least five hundred thousand 6 dollars, determine that the liquid asset base for certified 7 companies is at least five hundred thousand dollars at all times 8 during the company's participation in the program authorized by 9 sections 135.500 to 135.529, and determine that the officers and 10 the board of directors, partners, trustees or managers are 11 thoroughly acquainted with the requirements of sections 135.500 12 to 135.529. No insurance company which receives tax credits 13 permitted under sections 135.500 to 135.529 for an investment in a Missouri certified capital company shall, individually or with 14 15 or through one or more affiliates, be a managing general partner of or control the direction of investments of that Missouri 16 17 certified capital company. Within seventy-five days of 18 application, the department shall either issue the certification 19 and notify the department of revenue and the director of the 20 department of insurance, financial and professional regulation of such certification or shall refuse the certification and 21 22 communicate in detail to the applicant the grounds for the 23 refusal, including the suggestions for the removal of those 24 The department shall be responsible for the administration of the tax credits authorized by sections 135.500 25 26 to 135.529. No rule or portion of a rule promulgated under the 27 authority of sections 135.500 to 135.529 shall become effective 28 unless it has been promulgated pursuant to the provisions of

- 1 chapter 536, RSMo. All rulemaking authority delegated prior to
- June 27, 1997, is of no force and effect and repealed; however,
- 3 nothing in this section shall be interpreted to repeal or affect
- 4 the validity of any rule filed or adopted prior to June 27, 1997,
- 5 if such rule complied with the provisions of chapter 536, RSMo.
- 6 The provisions of this section and chapter 536, RSMo, are
- 7 nonseverable and if any of the powers vested with the general
- 8 assembly pursuant to chapter 536, RSMo, including the ability to
- 9 review, to delay the effective date, or to disapprove and annul a
- 10 rule or portion of a rule, are subsequently held
- 11 unconstitutional, then the purported grant of rulemaking
- 12 authority and any rule so proposed and contained in the order of
- 13 rulemaking shall be invalid and void.
- 14 135.520. 1. The division of finance [of the department of
- 15 economic development] shall conduct an annual review of each
- 16 Missouri certified capital company and any qualified investing
- 17 entities designated by it to determine if the Missouri certified
- capital company is abiding by the requirements of certifications,
- 19 to advise the Missouri certified capital company as to the
- 20 certification status of its qualified investments and to ensure
- 21 that no investment has been made in violation of sections 135.500
- 22 to 135.529. The cost of the annual review shall be paid by each
- 23 Missouri certified capital company according to a reasonable fee
- 24 schedule adopted by the department. The division of finance
- 25 shall report its findings to the department as soon as
- 26 practicable following completion of the audit.
- 2. Any material violation of sections 135.500 to 135.529
- 28 shall be grounds for decertification under this section. If the

department determines that a company is not in compliance with any requirements for continuing in certification, it shall, by written notice, inform the officers of the company and the board of directors, managers, trustees or general partners that they may be decertified in one hundred twenty days from the date of mailing of the notice, unless they correct the deficiencies and are again in compliance with the requirements for certification.

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At the end of the one hundred twenty-day grace period, 8 9 if the Missouri certified capital company is still not in 10 compliance, the department may send a notice of decertification 11 to the company and to the directors of the department of revenue 12 and department of insurance, financial and professional 13 regulation. Decertification of a Missouri certified capital 14 company prior to the certified capital company meeting all 15 requirements of subdivisions (1) to (3) of subsection 1 of section 135.516 shall cause the recapture of all premium tax 16 17 credits previously claimed by an investor and the forfeiture of 18 all future credits to be claimed by an investor with respect to 19 its investment in the certified capital company. Decertification 20 of a Missouri certified capital company after it has met all requirements of subdivisions (1) to (3) of subsection 1 of 21 22 section 135.516 shall cause the forfeiture of premium tax credits 23 for the taxable year of the investor in which the decertification 24 arose and for future taxable years with no recapture of tax 25 credits obtained by an investor with respect to the investor's 26 tax years which ended before the decertification occurred. 27 a certified capital company has made cumulative qualified 28 investments, including those made through a qualified investing

entity and deemed to have been made by the certified capital company, in an amount equal to at least one hundred percent of its certified capital, all future premium tax credits to be claimed by investors with respect to said certified capital company pursuant to sections 135.500 to 135.529 shall be nonforfeitable. Once a certified capital company has made cumulative qualified investments, including those made through a qualified investing entity and deemed to have been made by the certified capital company, in an amount equal to at least one hundred percent of its certified capital and has met all other requirements under sections 135.500 to 135.529, it shall no longer be subject to regulation by the department except with respect to the payment of distributions to the Missouri development finance board.

application, an administering agency shall verify through the department of revenue that the tax credit applicant does not owe any delinquent income, sales, or use taxes, or interest or penalties on such taxes, and through the department of insurance, financial and professional regulation that the applicant does not owe any delinquent insurance taxes. Such delinquency shall not affect the authorization of the application for such tax credits, except that the amount of credits issued shall be reduced by the applicant's tax delinquency. If the department of revenue or the department of insurance concludes that a taxpayer is delinquent after June fifteenth but before July first of any year, and the application of tax credits to such delinquency causes a tax deficiency on behalf of the taxpayer to arise, then the taxpayer

- 1 shall be granted thirty days to satisfy the deficiency in which
- 2 interest, penalties, and additions to tax shall be tolled. After
- 3 applying all available credits towards a tax delinquency, the
- 4 administering agency shall notify the appropriate department, and
- 5 that department shall update the amount of outstanding delinquent
- 6 tax owed by the applicant. If any credits remain after
- 7 satisfying all insurance, income, sales, and use tax
- 8 delinquencies, the remaining credits shall be issued to the
- 9 applicant, subject to the restrictions of other provisions of
- 10 law.
- 11 143.999. 1. Employer contributions to an individual
- medical account which are used to pay for health care expenses of
- 13 the employee in accordance with this section shall be exempt from
- 14 state income tax under this chapter, to the extent such
- 15 contributions are not excluded from gross income under 26 U.S.C.
- 16 105 and 26 U.S.C. 106 and regulations promulgated thereunder. In
- 17 order to qualify for such an exemption from taxation under this
- 18 chapter, such contributions shall be made in accordance with
- 19 health care coverage arrangements which contain at a minimum the
- 20 following components:
- 21 (1) The employer shall annually determine a contribution
- level to be expended for coverage of an insured person and any
- dependents, which shall be in lieu of any standard indemnity or
- 24 health insurance provided under a health insurance benefit
- 25 package which is established by the department of insurance,
- 26 financial and professional regulation. Such a benefit package
- 27 may be offered as an individual or group policy or other
- 28 insurance arrangement by an insurer, health maintenance

organization, health services corporation, or as a self-funded 1 2 employer plan. A percentage of the employer's designated contribution level as established by rule and regulation of the 3 department of insurance, financial and professional regulation 5 shall be used by the insurer, health maintenance organization, 6 health services corporation, or as a self-funded employer plan to 7 purchase or provide a policy or plan of major medical health care 8 benefits for the insured person and any dependents. The 9 remainder of the employer's contribution level not used to 10 provide major medical coverage shall be used to fund an 11 individual medical account. Funds in the account shall be used 12 by the insured person or his dependents, if any, to pay for that 13 portion of bona fide medical and health care expenses not covered 14 by the policy or plan of major medical health insurance coverage, 15 including any deductible, co-payment, or coinsurance requirements established by regulation of the department of insurance, 16 17 financial and professional regulation to discourage unnecessary use of health care services. Funds in the individual medical 18 19 account shall be spent for no other purpose except as otherwise 20 provided by this section;

(2) Any amount in the insured's individual medical account that is unspent at the end of the year shall remain in the account. The director of the department of insurance, financial and professional regulation shall by rule and regulation establish a balance for the account which, if exceeded, shall allow the insured to withdraw any moneys in excess of such balance. Any moneys so withdrawn from the account and interest earned on such moneys shall be subject to state income taxation;

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1 (3) The amount in an individual medical account shall not
2 be subject to state income taxation while it remains in the
3 account. Any amount spent from the individual medical account on
4 medical and health care expenses and interest accrued on such
5 amount shall be totally exempt from state income taxation;

- (4) The insurer, health maintenance organization, health services corporation, or employer which sponsors or provides health insurance coverage as authorized by this section shall administer the account on behalf of the insured person and any dependents.
- 2. As used in this section, bona fide medical and health care expenses shall be those medical and health procedures as defined by regulation of the department of insurance, financial and professional regulation. Such regulations shall be developed in consultation with the department of health and senior services.
- 3. The director of the department of insurance, financial and professional regulation shall promulgate such rules and regulations as may be necessary to implement the provisions of this section and section 374.126, RSMo. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.
- 148.330. 1. Every such company shall, on or before the first day of March in each year, make a return, verified by the affidavit of its president and secretary, or other authorized officers, to the director of the department of insurance, financial and professional regulation stating the amount of all

premiums received on account of policies issued in this state by 1 2 the company, whether in cash or in notes, during the year ending on the thirty-first day of December, next preceding. Upon 3 receipt of such returns the director of the department of 5 insurance, financial and professional regulation shall verify the 6 same and certify the amount of tax due from the various companies 7 on the basis and at the rates provided in section 148.320, and shall certify the same to the director of revenue together with 8 9 the amount of the quarterly installments to be made as provided in subsection 2 of this section, on or before the thirtieth day 10 11 of April of each year.

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2. Beginning January 1, 1983, the amount of the tax due for that calendar year and each succeeding calendar year thereafter shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the tax for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance, financial and professional regulation of the amount of tax due from the various companies the director of revenue shall notify and assess each company the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company the amount of the estimated quarterly installments to be made for the calendar year. If the

amount of the actual tax due for any year exceeds the total of 1 2 the installments made for such year, the balance of the tax due shall be paid on the first day of June of the year following, 3 together with the regular quarterly payment due at that time. 5 the total amount of the tax actually due is less than the total 6 amount of the installments actually paid, the amount by which the 7 amount paid exceeds the amount due shall be credited against the tax for the following year and deducted from the quarterly 8 9 installment otherwise due on the first day of June. If the March 10 first quarterly installment made by a company is less than the 11 amount assessed by the director of revenue, the difference will 12 be due on June first, but no interest will accrue to the state on 13 the difference unless the amount paid by the company is less than eighty percent of one-fourth of the total amount of tax assessed 14 by the director of revenue for the immediately preceding taxable 15 year. The state treasurer, upon receiving the moneys paid as a 16 17 tax upon such premiums to the director of revenue, shall place 18 the moneys to the credit of a fund to be known as "The County Stock Insurance Fund", which is hereby created and established. 19 20 The county stock insurance fund shall be included in the 21 calculation of total state revenue pursuant to article X, section 22 18, of the Missouri Constitution.

3. If the estimated quarterly tax installments are not so paid, the director of revenue shall certify such fact to the director of the [division] department of insurance, financial and professional regulation who shall thereafter suspend such delinquent company or companies from the further transaction of business in this state until such taxes shall be paid and such

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- companies shall be subject to the provisions of sections 148.410 to 148.461.
- 4. On or before the first day of September of each year the 3 commissioner of administration shall apportion all moneys in the 5 county stock insurance fund to the general revenue fund of the 6 state, to the county treasurer and to the treasurer of the school 7 district in which the principal office of the company paying the same is located. All premium tax credits described in sections 8 9 135.500 to 135.529, RSMo, and sections 348.430 and 348.432, RSMo, 10 shall only reduce the amounts apportioned to the general revenue 11 fund of the state and shall not reduce any moneys apportioned to 12 any county treasurer or to the treasurer of the school district 13 in which the principal office of the company paying the same is Apportionments shall be made in the same ratio which 14 15 the rates of levy for the same year for state purposes, for county purposes, and for all school district purposes, bear to 16 17 each other; provided that any proceeds from such tax for prior 18 years remaining on hand in the hands of the county collector or 19 county treasurer undistributed on the effective date of sections 20 148.310 to 148.460 and any proceeds of such tax for prior years collected thereafter shall be distributed and paid in accordance 21 22 with the provisions of such sections. Whenever the word "county" 23 occurs herein it shall be construed to include the city of St. 24 Louis.
 - 148.380. 1. Every such company, on or before the first day of March in each year, shall make a return verified by the affidavit of its president and secretary, or other chief officers, to the director of the department of insurance,

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financial and professional regulation, stating the amount of all 1 2 direct premiums received by it from policyholders in this state, whether in cash or in notes, during the year ending on the 3 thirty-first day of December, next preceding. Upon receipt of such returns the director of the department of insurance shall 5 6 verify the same and certify the amount of the tax due from the 7 various companies on the basis and at the rate provided in section 148.370, taking into consideration deductions and credits 8 9 allowed by law, and shall certify the same to the director of 10 revenue together with the amount of the quarterly installments to 11 be made as provided in subsection 2 of this section, on or before 12 the thirtieth day of April of each year.

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Beginning January 1, 1983, the amount of the tax due for that calendar year and each succeeding calendar year thereafter shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the tax for the immediately preceding taxable year ending on the thirty-first day of December, next preceding. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September and the first day of December. Immediately after receiving certification from the director of the department of insurance, financial and professional regulation of the amount of tax due from the various companies, the director of revenue shall notify and assess each company the amount of taxes on its premiums for the calendar year ending on the thirty-first day of December, next preceding. The director of revenue shall also notify and assess each company the amount of the estimated

- quarterly installments to be made for the calendar year. If the 1 2 amount of the actual tax due for any year exceeds the total of the installments made for such year, the balance of the tax due 3 shall be paid on the first day of June of the year following, 5 together with the regular quarterly payment due at that time. If 6 the total amount of the tax actually due is less than the total 7 amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall be credited against the 8 9 tax for the following year and deducted from the quarterly 10 installment otherwise due on the first day of June. If the March 11 first quarterly installment made by a company is less than the 12 amount assessed by the director of revenue, the difference will 13 be due on June first, but no interest will accrue to the state on 14 the difference unless the amount paid by the company is less than 15 eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable 16 17 year.
 - 3. If the estimated quarterly tax installments are not so paid, the director of revenue shall notify the director of the department of insurance, financial and professional regulation who shall thereupon suspend such delinquent company from the further transaction of business in this state until such taxes shall be paid, and such companies shall be subject to the provisions of sections 148.410 to 148.461.

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4. Upon receipt of the money the state treasurer shall receipt one-half thereof into the general revenue fund of the state, and one-half thereof to the credit of the county foreign insurance fund for the purposes set forth in section 148.360.

148.410. If any company or association shall fail or refuse to make the return required by sections 148.330, 148.350, and 148.380, the director of the department of insurance, financial and professional regulation shall certify the amount of tax to the director of revenue and the director of revenue shall notify and shall assess the tax against such company at the rate provided for in sections 148.320, 148.340, and 148.380 on such amount of premiums as he shall deem just, and the proceedings thereon shall be the same as if the return had been made.

any insurer, health services corporation, or health maintenance organization licensed by the department of insurance, financial and professional regulation which conducts HIV testing only for the purposes of assessing a person's fitness for insurance coverage offered by such insurer, health services corporation, or health maintenance corporation, except that nothing in this section shall be construed to exempt any insurer, health services corporation or health maintenance organization in their capacity as employers from the provisions of section 191.665 relating to employment practices.

2. Upon renewal of any individual or group insurance policy, subscriber contractor health maintenance organization contract covering medical expenses, no insurer, health services corporation or health maintenance organization shall deny or alter coverage to any previously covered individual who has been diagnosed as having HIV infection or any HIV-related condition during the previous policy or contract period only because of such diagnosis, nor shall any such insurer, health services

1 corporation or health maintenance organization exclude coverage 2 for treatment of such infection or condition with respect to any 3 such individual.

- 3. The director of the department of insurance, financial and professional regulation shall establish by regulation standards for the use of HIV testing by insurers, health services corporations and health maintenance organizations.
- 4. A laboratory certified by the U.S. Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, permitting testing of specimens obtained in interstate commerce, and which subjects itself to ongoing proficiency testing by the College of American Pathologists, the American Association of Bio Analysts, or an equivalent program approved by the Centers for Disease Control shall be authorized to perform or conduct HIV testing for an insurer, health services corporation or health maintenance organization pursuant to this section.
- 5. The result or results of HIV testing of an applicant for insurance coverage shall not be disclosed by an insurer, health services corporation or health maintenance organization, except as specifically authorized by such applicant in writing. Such result or results shall, however, be disclosed to a physician designated by the subject of the test. If there is no physician designated, the insurer, health services corporation, or health maintenance organization shall disclose the identity of individuals residing in Missouri having a confirmed positive HIV test result to the department of health and senior services. Provided, further, that no such insurer, health services corporation or health maintenance organization shall be liable

- 1 for violating any duty or right of confidentiality established by
- 2 law for disclosing such identity of individuals having a
- 3 confirmed positive HIV test result to the department of health
- 4 and senior services. Such disclosure shall be in a manner that
- 5 ensures confidentiality. Disclosure of test results in violation
- of this section shall constitute a violation of sections 375.930
- 7 to 375.948, RSMo, regulating trade practices in the business of
- 8 insurance. Nothing in this subsection shall be construed to
- 9 foreclose any remedies existing on June 1, 1988.
- 10 191.828. 1. The following departments shall conduct
- on-going evaluations of the effect of the initiatives enacted by
- 12 the following sections:
- 13 (1) The department of insurance, financial and professional
- 14 <u>regulation</u> shall evaluate the effect of revising section 376.782,
- 15 RSMo, and sections 143.999, RSMo, 208.178, RSMo, 374.126, RSMo,
- 16 and 376.891 to 376.894, RSMo;
- 17 (2) The department of health and senior services shall
- evaluate the effect of revising sections 105.711, RSMo, and
- 19 sections 191.520 and 191.600 and enacting section 191.411, and
- 20 sections 167.600 to 167.621, RSMo, 191.231, RSMo, 208.177, RSMo,
- 431.064, RSMo, and 660.016, RSMo. In collaboration with the
- 22 state board of registration for the healing arts, the state board
- of nursing, and the state board of pharmacy, the department of
- 24 health and senior services shall also evaluate the effect of
- revising section 195.070, RSMo, section 334.100, RSMo, and
- 26 section 335.016, RSMo, and of sections 334.104 and 334.112, RSMo,
- 27 and section 338.095 and 338.198, RSMo;
- 28 (3) The department of social services shall evaluate the

- 1 effect of revising section 198.090, RSMo, and sections 208.151,
- 2 208.152 and 208.215, RSMo, and section 383.125, RSMo, and of
- 3 sections 167.600 to 167.621, RSMo, 208.177, 208.178, 208.179,
- 4 208.181, RSMo, and 211.490, RSMo;

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- 5 (4) The office of administration shall evaluate the effect 6 of revising sections 105.711 and 105.721, RSMo;
- 7 (5) The Missouri consolidated health care plan shall evaluate the effect of section 103.178, RSMo; and
- 9 (6) The department of mental health shall evaluate the 10 effect of section 191.831 as it relates to substance abuse 11 treatment and of section 191.835.
- 2. The department of revenue and office of administration
 shall make biannual reports to the joint committee on health care
 policy and planning and the governor concerning the income
 received into the health initiatives fund and the level of
 funding required to operate the programs and initiatives funded
 by the health initiatives fund at an optimal level.
- 18 191.853. 1. The "Missouri Assistive Technology Advisory
 19 Council" is hereby established, as created pursuant to the
 20 Missouri state grant under Title I of the Technology-Related
 21 Assistance for Individuals with Disabilities Act of 1988, P.L.
 22 100-407.
 - 2. The voting membership of the advisory council shall be composed of twenty-three members. The members of the council that are serving on August 28, 1993, shall continue to serve in their normal capacities. The original twenty-one members shall determine by lot which seven are to have a one-year term, which seven are to have a two-year term, and which seven are to have a

three-year term. Thereafter, the successors to each of the 1 2 twenty-one members shall serve a three-year term and until his successor is appointed by the governor. The members appointed by 3 the governor shall include twelve consumer representatives, the 5 group consisting of individuals with disabilities, parents, 6 spouses, or quardians of individuals with disabilities and shall 7 include a variety of types of disabilities across the age span 8 from all geographic areas of the state, and nine agency 9 representatives, the group consisting of one representative of 10 the division of vocational rehabilitation, one representative of 11 the division of special education, one representative of the 12 department of insurance, financial and professional regulation, 13 one representative of rehabilitation services for the blind, one representative of the division of medical services, one 14 15 representative of the department of health and senior services, one representative of the department of mental health, and two 16 17 representatives of other agencies or organizations responsible 18 for the service delivery, policy implementation, and funding of 19 assistive technology. In addition, one member who is a member of 20 the house of representatives shall be appointed by the speaker of the house and one member who is a member of the senate shall be 21 22 appointed by the president pro tempore of the senate. 23 appointment of individuals representing state agencies shall be 24 conditioned on their continued employment with their respective 25 agencies.

3. A chairperson shall be elected by the council. The council shall meet at the call of the chairperson, but not less often than four times each year.

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1 192.068. 1. Any entity subject to the provisions of sections 354.400 to 354.636, RSMo, shall provide data regarding quality of care, access to care, member satisfaction and member health status to the director of the department of health and senior services. Failure to provide such data shall be reported to the director of the department of insurance, financial and professional regulation and shall be subject to the penalties provided in section 354.444, RSMo. Any entity subject to the provisions of sections 354.400 to 354.636, RSMo, which continually or substantially fails to comply with the provisions of this section may be prohibited by the director of the department of insurance, financial and professional regulation from participating in any health program administered by the The department of health and senior services shall promulgate rules defining continual or substantial failure to comply with the provisions of this section.

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- The department of health and senior services shall specify by rule the types of data which shall be submitted and the methods of collection and submission. In defining data standards for the measurement of the quality of care, access to care, member satisfaction and member health status, the director of the department of health and senior services may:
- Use as the data set the Health Plan Employer Data and Information Set (HEDIS) or an equivalent data set as determined by the department of health and senior services;
- (2) Consider published standards developed by nationally recognized accreditation organizations including, but not limited to, the National Committee for Quality Assurance and the Joint

Committee on Accreditation of Health Care Organizations;

- 2 (3) Consult with other state agencies and interested 3 parties responsible for delivering, financing and purchasing 4 health care in the state; and
 - (4) Use available department of health and senior services data and other agency data wherever appropriate.
 - 3. Data or other information obtained by the department of health and senior services pursuant to the provisions of this section shall not be public information. Reports and studies prepared by the department based upon such information shall be public information and may identify individual entities in the business of delivering or financing health care. The department of health and senior services may authorize the use of the data for other research pursuant to the provisions of section 192.067. The department shall not release data in a form which could be used to identify a patient.
 - 4. The department may choose to perform studies and shall publish information, including at least an annual consumer guide, based upon the information obtained pursuant to the provisions of this section. The department shall allow health care financing entities or health care providers who have submitted data which will be used in any report to review and comment on the report prior to its publication or release for public use. With the permission of the entity or the health care provider, the department may include any comments of a health care financing entity or health care provider in the publication. The reports shall be made available to the public. The department may charge a reasonable fee to any entity in the business of delivering or

financing health care for specialized reports or services
requested by such entity. The fees shall be credited to the
public health services fund established in section 192.900.

- 208.178. 1. On or after July 1, 1995, the department of social services may make available for purchase a policy of health insurance coverage through the Medicaid program. Premiums for such a policy shall be charged based upon actuarially sound principles to pay the full cost of insuring persons under the provisions of this section. The full cost shall include both administrative costs and payments for services. Coverage under a policy or policies made available for purchase by the department of social services shall include coverage of all or some of the services listed in section 208.152, RSMo, as determined by the director of the department of social services. Such a policy may be sold to a person who is otherwise uninsured and who is:
- (1) A surviving spouse eligible for coverage under sections 376.891 to 376.894, RSMo, who is determined under rules and regulations of the department of social services to be unable to afford continuation of coverage under that section;
- (2) An adult over twenty-one years of age who is not pregnant and who resides in a household with an income which does not exceed one hundred eighty-five percent of the federal poverty level for the applicable family size. Net taxable income shall be used to determine that portion of income of a self-employed person; or
- (3) A dependent of an insured person who resides in a household with an income which does not exceed one hundred eighty-five percent of the federal poverty level for the

- 1 applicable family size.
- 2 2. Any policy of health insurance sold pursuant to the
- 3 provisions of this section shall conform to requirements
- 4 governing group health insurance under chapters 375, 376, and
- 5 379, RSMo.
- 6 3. The department of social services shall establish
- 7 policies governing the issuance of health insurance policies
- 8 pursuant to the provisions of this section by rules and
- 9 regulations developed in consultation with the department of
- insurance, financial and professional regulation.
- 11 208.437. 1. A Medicaid managed care organization
- reimbursement allowance period as provided in sections 208.431 to
- 13 208.437 shall be from the first day of July to the thirtieth day
- of June. The department shall notify each Medicaid managed care
- organization with a balance due on the thirtieth day of June of
- each year the amount of such balance due. If any managed care
- 17 organization fails to pay its managed care organization
- 18 reimbursement allowance within thirty days of such notice, the
- 19 reimbursement allowance shall be delinquent. The reimbursement
- allowance may remain unpaid during an appeal.
- 2. Except as otherwise provided in this section, if any
- 22 reimbursement allowance imposed under the provisions of sections
- 23 208.431 to 208.437 is unpaid and delinquent, the department of
- 24 social services may compel the payment of such reimbursement
- 25 allowance in the circuit court having jurisdiction in the county
- 26 where the main offices of the Medicaid managed care organization
- 27 are located. In addition, the director of the department of
- 28 social services or the director's designee may cancel or refuse

- 1 to issue, extend or reinstate a Medicaid contract agreement to
- 2 any Medicaid managed care organization which fails to pay such
- 3 delinquent reimbursement allowance required by sections 208.431
- 4 to 208.437 unless under appeal.
- 5 3. Except as otherwise provided in this section, failure to
- 6 pay a delinquent reimbursement allowance imposed under sections
- 7 208.431 to 208.437 shall be grounds for denial, suspension or
- 8 revocation of a license granted by the department of insurance,
- 9 <u>financial and professional regulation</u>. The director of the
- department of insurance may deny, suspend or revoke the license
- of a Medicaid managed care organization with a contract under 42
- 12 U.S.C. Section 1396b(m) which fails to pay a managed care
- organization's delinquent reimbursement allowance unless under
- 14 appeal.
- 15 4. Nothing in sections 208.431 to 208.437 shall be deemed
- to affect or in any way limit the tax-exempt or nonprofit status
- 17 of any Medicaid managed care organization with a contract under
- 18 42 U.S.C. Section 1396b(m) granted by state law.
- 19 5. Sections 208.431 to 208.437 shall expire on June 30,
- 20 2007.
- 21 209.285. As used in sections 209.285 to 209.339, unless the
- 22 context clearly requires otherwise, the following terms mean:
- 23 (1) "American sign language", a visual-gestural system of
- communication that has its own syntax, rhetoric and grammar.
- 25 American sign language is recognized, accepted and used by many
- deaf Americans. This native language represents concepts rather
- 27 than words:
- 28 (2) "Board", the Missouri board for certification of

- 1 interpreters, established within the commission in section
- 2 209.287;
- 3 (3) "Certification", a document issued by the Missouri
- 4 commission for the deaf and hard of hearing declaring that the
- 5 holder is qualified to practice interpreting at a disclosed
- 6 level;
- 7 (4) "Commission", the Missouri commission for the deaf and
- 8 hard of hearing;
- 9 (5) "Committee", the Missouri state committee of
- 10 interpreters, established in section 209.319;
- 11 (6) "Conversion levels", the process of granting levels of
- 12 certification by the commission to individuals holding
- certification from another state or within another certification
- 14 system in this state or another state;
- 15 (7) "Coordinator", a staff person, hired by the executive
- 16 director of the Missouri commission for the deaf and hard of
- 17 hearing, who shall serve as coordinator for the Missouri
- interpreter certification system;
- 19 (8) "Deaf person", any person who is not able to
- discriminate speech when spoken in a normal conversational tone
- 21 regardless of the use of amplification devices;
- 22 (9) "Department", the [Missouri] department of [economic
- 23 development] <u>insurance</u>, <u>financial</u> and professional regulation;
- 24 (10) "Director", the director of the division of
- 25 professional registration [in the department of economic
- development];
- 27 (11) "Division", the division of professional registration;
- 28 (12) "Executive director", the executive director of the

- Missouri commission for the deaf and hard of hearing;
- 2 (13) "Interpreter", any person who offers to render
- 3 interpreting services implying that he or she is trained, and
- 4 experienced in interpreting, and holds a current, valid
- 5 certification and license to practice interpreting in this state;
- 6 provided that a telecommunications operator providing deaf relay
- 7 service or a person providing operator services for the deaf
- 8 shall not be considered to be an interpreter;
- 9 (14) "Interpreter trainer", a person, certified and
- 10 licensed by the state of Missouri as an interpreter, who trains
- 11 new interpreters in the translating of spoken English or written
- 12 concepts to any necessary specialized vocabulary used by a deaf
- 13 consumer. Necessary specialized vocabularies include, but are
- 14 not limited to, American sign language, Pidgin Signed English,
- oral, tactile sign and language deficient skills;
- 16 (15) "Interpreting", the translating of English spoken or
- 17 written concepts to any necessary specialized vocabulary used by
- 18 a deaf person or the translating of a deaf person's specialized
- 19 vocabulary to English spoken or written concepts; provided that a
- 20 telecommunications operator providing deaf relay service or a
- 21 person providing operator services for the deaf shall not be
- 22 considered to be interpreting. Necessary specialized
- vocabularies include, but are not limited to, American sign
- language, Pidgin Signed English, oral, tactile sign and language
- 25 deficient skills:

- 26 (16) "Language deficient", mode of communication used by
- deaf individuals who lack crucial language components, including,
- but not limited to, vocabulary, language concepts, expressive

- 1 skills, language skills and receptive skills;
- 2 (17) "Missouri commission for the deaf", Missouri
- 3 commission for the deaf and hard of hearing established in
- 4 section 161.400;
- 5 (18) "Oral", mode of communication having characteristics
- of speech, speech reading and residual hearing as a primary means
- 7 of communication using situational and culturally appropriate
- 8 gestures, without the use of sign language;
- 9 (19) "Pidgin Signed English", a mode of communication
- 10 having characteristics of American sign language;
- 11 (20) "Practice of interpreting", rendering or offering to
- 12 render or supervise those who render to individuals, couples,
- groups, organizations, institutions, corporations, schools,
- 14 government agencies or the general public any interpreting
- 15 service involving the translation of any mode of communication
- used by a deaf person to spoken English or of spoken English to a
- mode of communication used by a deaf person;
- 18 (21) "Tactile sign", mode of communication, used by deaf
- and blind individuals, using any one or a combination of the
- 20 following: tactile sign, constricted space sign or notetaking.
- 21 209.319. 1. There is hereby established in the division of
- 22 professional registration the "Missouri State Committee of
- 23 Interpreters", which shall consist of seven members, including
- 24 two public members. At least one of the public members shall be
- 25 deaf. The committee members shall be appointed by the governor
- 26 with the advice and consent of the senate. Each member of the
- 27 committee shall be a citizen of the United States and a resident
- of this state and, except as provided in subsections 2 and 3 of

- 1 this section, shall be licensed as an interpreter by this state.
- 2 2. The initial interpreter appointments made to the
- 3 committee shall be made from interpreters who have voluntarily
- 4 registered with the Missouri commission for the deaf and hard of
- 5 hearing. In making the initial appointments to the committee,
- 6 the governor shall stagger the terms of the appointees so that
- 7 two members serve initial terms of two years, two members serve
- 8 initial terms of three years, two members serve initial terms of
- 9 four years and one member serves an initial term of one year.
- 3. At the time of appointment the public members shall be
- 11 United States citizens, Missouri residents for a period of one
- 12 year, registered voters, persons who are not and never were
- members of any profession licensed or regulated pursuant to
- sections 209.285 to 209.339, persons who do not have and never
- 15 have had a material financial interest in providing interpreting
- services or persons who do not have and never have had a
- 17 financial interest in an activity or organization directly
- 18 related to interpreting.
- 19 4. Members shall be appointed to serve four-year terms. No
- 20 person shall be eligible for reappointment who has served as a
- 21 member of the committee for eight or more years. The membership
- 22 of the committee shall reflect the differences in levels of
- 23 certification, work experience and education. Not more than two
- 24 interpreter educators shall be members of the committee at the
- 25 same time.
- 26 5. A vacancy in the office of a member shall be filled by
- 27 appointment by the governor for the remainder of the unexpired
- term. The governor may remove a committee member for misconduct,

- 1 inefficiency, incompetence or neglect of his or her official
- 2 duties after giving the committee member written notice of the
- 3 charges against the committee member and an opportunity to be
- 4 heard.
- 5 6. Each member of the committee shall receive as
- 6 compensation an amount set [by the committee not to exceed fifty
- 7 dollars] under section 324.015, RSMo, for each day devoted to the
- 8 affairs of the committee and shall be reimbursed for necessary
- 9 and actual expenses incurred in the performance of his or her
- 10 official duties.
- 7. The committee shall hold an annual meeting at which it
- shall elect from its membership a chairperson and a secretary.
- 13 The committee may hold such additional meetings as may be
- 14 required in the performance of its duties. A quorum of the
- 15 committee shall consist of four of its members.
- 16 8. The staff for the committee shall be provided by the
- 17 director of the division of professional registration.
- 18 9. The committee may sue and be sued in its official name
- 19 and shall have a seal which shall be affixed to all certified
- 20 copies of records and papers on file and to such other
- 21 instruments as the committee may direct. All courts shall take
- judicial notice of such seal. Copies of records and proceedings
- of the committee and of all papers on file with the division on
- 24 behalf of the committee certified under the seal shall be
- 25 received as evidence in all courts of record.
- 26 214.270. As used in sections 214.270 to 214.410, the
- 27 following terms mean:
- 28 (1) "Agent" or "authorized agent", any person empowered by

the cemetery operator to represent the operator in dealing with the general public, including owners of the burial space in the

cemetery;

- 4 (2) "Burial space", one or more than one plot, grave,
 5 mausoleum, crypt, lawn, surface lawn crypt, niche or space used
 6 or intended for the interment of the human dead;
 - interment of the human dead by formal dedication or reservation by deed but shall not include any of the foregoing held or operated by the state or federal government or any political subdivision thereof, any incorporated city or town, any county or any religious organization, cemetery association or fraternal society holding the same for sale solely to members and their immediate families;
- "Cemetery association", any number of persons who shall have associated themselves by articles of agreement in writing as a not-for-profit association or organization, whether incorporated or unincorporated, formed for the purpose of ownership, preservation, care, maintenance, adornment and administration of a cemetery. Cemetery associations shall be governed by a board of directors. Directors shall serve without compensation;
 - (5) "Cemetery operator" or "operator", any person who owns, controls, operates or manages a cemetery;
 - (6) "Cemetery service", those services performed by a cemetery owner or operator licensed pursuant to this chapter as an endowed care cemetery including setting a monument, setting a tent, excavating a grave, or setting a vault;

- 1 (7) "Columbarium", a building or structure for the inurnment of cremated human remains:
- 3 (8) "Community mausoleum", a mausoleum containing a 4 substantial area of enclosed space and having either a heating, 5 ventilating or air conditioning system;
 - (9) "Department", department of [economic development] insurance, financial and professional regulation;

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duration, or any like term;

- (10) "Developed acreage", the area which has been platted into grave spaces and has been developed with roads, paths, features, or ornamentations and in which burials can be made;
- 11 (11) "Director", director of the division of professional 12 registration;
 - (12) "Division", division of professional registration;
 - (13) "Endowed care", the maintenance, repair and care of all burial space subject to the endowment within a cemetery, including any improvements made for the benefit of such burial space. Endowed care shall include the general overhead expenses needed to accomplish such maintenance, repair, care and improvements. Endowed care shall include the terms perpetual care, permanent care, continual care, eternal care, care of
- 22 (14) "Endowed care cemetery", a cemetery, or a section of a 23 cemetery, which represents itself as offering endowed care and 24 which complies with the provisions of sections 214.270 to 25 214.410;
- 26 (15) "Endowed care fund", "endowed care trust", or "trust",
 27 any cash or cash equivalent, to include any income therefrom,
 28 impressed with a trust by the terms of any gift, grant,

- 1 contribution, payment, devise or beguest to an endowed care
- 2 cemetery, or its endowed care trust, or funds to be delivered to
- 3 an endowed care cemetery's trust received pursuant to a contract
- 4 and accepted by any endowed care cemetery operator or his agent.
- 5 This definition includes the terms endowed care funds,
- 6 maintenance funds, memorial care funds, perpetual care funds, or
- 7 any like term;
- 8 (16) "Family burial ground", a cemetery in which no burial
- 9 space is sold to the public and in which interments are
- 10 restricted to persons related by blood or marriage;
- 11 (17) "Fraternal cemetery", a cemetery owned, operated,
- 12 controlled or managed by any fraternal organization or auxiliary
- organizations thereof, in which the sale of burial space is
- restricted solely to its members and their immediate families;
- 15 (18) "Garden mausoleum", a mausoleum without a substantial
- 16 area of enclosed space and having its crypt and niche fronts open
- 17 to the atmosphere. Ventilation of the crypts by forced air or
- otherwise does not constitute a garden mausoleum as a community
- 19 mausoleum;
- 20 (19) "Government cemetery", or "municipal cemetery", a
- 21 cemetery owned, operated, controlled or managed by the federal
- 22 government, the state or a political subdivision of the state,
- 23 including a county or municipality or instrumentality thereof;
- 24 (20) "Grave" or "plot", a place of ground in a cemetery,
- used or intended to be used for burial of human remains;
- 26 (21) "Human remains", the body of a deceased person in any
- 27 state of decomposition, as well as cremated remains;
- 28 (22) "Inurnment", placing an urn containing cremated

- 1 remains in a burial space;
- 2 (23) "Lawn crypt", a burial vault or other permanent
- 3 container for a casket which is permanently installed below
- 4 ground prior to the time of the actual interment. A lawn crypt
- 5 may permit single or multiple interments in a grave space;
- 6 (24) "Mausoleum", a structure or building for the
- 7 entombment of human remains in crypts;
- 8 (25) "Niche", a space in a columbarium used or intended to
- 9 be used for inurnment of cremated remains;
- 10 (26) "Nonendowed care cemetery", or "nonendowed cemetery",
- 11 a cemetery or a section of a cemetery for which no endowed care
- 12 fund has been established in accordance with sections 214.270 to
- 13 214.410;
- 14 (27) "Owner of burial space", a person to whom the cemetery
- operator or his authorized agent has transferred the right of use
- 16 of burial space;
- 17 (28) "Person", an individual, corporation, partnership,
- joint venture, association, trust or any other legal entity;
- 19 "Registry", the list of cemeteries maintained in the
- 20 division office for public review. The division may charge a fee
- 21 for copies of the registry;
- 22 (30) "Religious cemetery", a cemetery owned, operated,
- controlled or managed by any church, convention of churches,
- 24 religious order or affiliated auxiliary thereof in which the sale
- of burial space is restricted solely to its members and their
- 26 immediate families;
- 27 (31) "Surface lawn crypt", a sealed burial chamber whose
- 28 lid protrudes above the land surface;

- 1 (32) "Total acreage", the entire tract which is dedicated
- 2 to or reserved for cemetery purposes;
- 3 "Trustee of an endowed care fund", the separate legal
- 4 entity appointed as trustee of an endowed care fund.
- 5 219.091. 1. As used in this section, the term "department"
- 6 means:
- 7 (1) The office of administration;
 - (2) The department of agriculture;
- 9 (3) The department of conservation;
- 10 (4) The department of economic development;
- 11 (5) The department of elementary and secondary education;
- 12 (6) The department of health and senior services;
- 13 (7) The department of higher education;
- 14 (8) The department of transportation;
- 15 (9) The department of insurance, financial and professional
- 16 regulation;
- 17 (10) The department of labor and industrial relations;
- 18 (11) The department of mental health;
- 19 (12) The department of natural resources;
- 20 (13) The department of public safety;
- 21 (14) The department of revenue; and
- 22 (15) The department of social services.
- 23 2. The division of youth services shall develop and
- establish a community work program whereby offenders from age
- fourteen to eighteen committed to the custody of the division may
- be employed in projects developed and established by any
- 27 department.
- 28 3. The director or chief administrative officer of any

- 1 department may request that the director of the division of youth
- 2 services choose suitable offenders for employment in work
- 3 projects developed by the division. Such projects shall be
- 4 designed and approved by the director or chief administrative
- 5 officer of any department and approved by the director of the
- 6 division of youth services.
- 7 4. The division of youth services shall retain custody,
- 8 supervision and control of any offender employed in a work
- 9 project developed pursuant to this section. Any work crew
- 10 employed in a work project developed pursuant to this section
- 11 shall consist of not more than eleven offenders.
- 12 5. No offender shall be employed in a work project
- developed pursuant to this section if the offender has been
- 14 convicted of a violent crime or whose conduct while under the
- 15 control of the division of youth services suggests a propensity
- 16 toward violence. As used in this subsection, the term "violent
- 17 crime" means any crime which, in the determination of the
- director of the division of youth services, involves violence or
- 19 the threat of violence.
- 20 6. The department proposing the work project shall supply
- 21 all plans, tools and equipment necessary for the completion of
- 22 work projects developed pursuant to this section.
- 7. The department proposing the work project shall supply
- 24 crew leaders to direct work crews and supervise the completion of
- work projects. Such crew leaders shall be employees of the
- department proposing the work project and shall receive from such
- 27 department and the division of youth services at least twenty
- 28 hours of training per year, which shall be designed to instruct

the crew leaders in the skills necessary to perform their duties.

- 8. The department proposing the work project and the division of youth services may promulgate rules to effectuate the purposes of this section pursuant to chapter 536, RSMo, and section 217.040, RSMo.
 - 227.100. 1. All contracts for the construction of said work shall be let to the lowest responsible bidder or bidders after notice and publication of an advertisement in a newspaper published in the county where the work is to be done, and in such other publications as the commission may determine.
 - 2. Each bid shall be accompanied by a certified check or a cashier's check or a bid bond, guaranteed by a surety company authorized by the director of the department of insurance, financial and professional regulation to conduct surety business in the state of Missouri, equal to five percent of the bid, which certified check, cashier's check, or bid bond shall be deposited with the commissioner as a guaranty and forfeited to the state treasurer to the credit of the state road fund in the event the successful bidder fails to comply with the terms of the proposal, and return to the successful bidder on execution and delivery of the performance bond provided for in subsection 4. The checks of the unsuccessful bidders shall be returned to them in accordance with the terms of the proposal.
 - 3. All notices of the letting of contracts under this section shall state the time and place when and where bids will be received and opened, and all bids shall be sealed and opened only at the time and place mentioned in such notice and in the presence of some member of the commission or some person named by

- 1 the commission for such purpose.
- 2 4. The successful bidders for the construction of said work
- 3 shall enter into contracts furnished and prescribed by the
- 4 commission and shall give good and sufficient bond, in a sum
- 5 equal to the contract price, to the state of Missouri, with
- 6 sureties approved by the commission and to ensure the proper and
- 7 prompt completion of said work in accordance with the provisions
- 8 of said contracts, and plans and specifications; provided, that
- 9 if, in the opinion of the majority of the members of the
- 10 commission, the lowest bid or bids for the construction of any of
- 11 the roads, or parts of roads, herein authorized to be
- 12 constructed, shall be excessive, then, and in that event, said
- commission shall have the right, and it is hereby empowered and
- 14 authorized to reject any or all bids, and to construct, under its
- own direction and supervision, all of such roads and bridges, or
- 16 any part thereof.
- 17 256.453. As used in sections 256.450 to 256.483, the
- 18 following words and phrases shall mean:
- 19 (1) "Board of geologist registration" or "board", the board
- of geologist registration created in section 256.459;
- 21 (2) "Certificate of registration", a license issued by the
- 22 board of geologist registration granting its licensee the
- 23 privilege to conduct geologic work and make interpretations,
- 24 reports, and other actions in accordance with the provisions of
- 25 sections 256.450 to 256.483;
- 26 (3) "Division [of professional registration]", the division
- of professional registration [within the department of economic
- 28 development];

(4) "Geologist", a person who has met or exceeded the minimum geological educational requirements and who can interpret and apply geologic data, principles, and concepts and who can conduct field or laboratory geological investigations;

- (5) "Geologist-registrant in-training", a person who meets the requirements of subsection 7 of section 256.468;
- (6) "Geology", that profession based on the investigation and interpretation of the earth, including bedrock, overburden, groundwater and other liquids, minerals, gases, and the history of the earth and its life;
- (7) "Practice of geology", the practice of or the offer to practice geology for others, such practice including, but not limited to, geological investigations to describe and interpret the natural processes acting on earth materials, including gases and fluids; predicting and interpreting mineral distribution, value, and production; predicting and interpreting geologic factors affecting planning, design, construction, and maintenance of engineered facilities such as waste disposal sites or dams; and the teaching of the science of geology;
- (8) "Public health, safety and welfare" shall include the following: protection of groundwater; buildings and other construction projects including dams, highways and foundations; waste disposal or causes of waste pollution including human, animal, and other wastes including radionuclides; stability of the earth's surface such as could be affected by earthquakes, landslides, or collapse; the depth, casing, grouting, and other recommendations for the construction of wells or other borings into earth that intersect one or more aquifers; and excavation

- 1 into the earth's materials where stability or other factors are
- 2 at risk. "Public health, safety, and welfare" does not refer to
- 3 geologic work conducted to determine mineral resources or other
- 4 resources as could be available for various uses, teaching, or
- 5 basic geologic work including making geologic maps, cross
- 6 sections, stratigraphic determinations, and associated reports or
- 7 other presentations;
- 8 (9) "Qualified geologist" or "professional geologist", a
- 9 geologist who satisfies the educational requirements of
- subsection 2 of section 256.468 and who has at least three years
- of experience in the practice of geology subsequent to satisfying
- 12 such educational requirements;
- 13 (10) "Registered geologist", a geologist who has met the
- 14 qualifications established by the board and has been issued a
- certificate of registration by the board of geologist
- 16 registration;
- 17 (11) "Responsible charge of work", the independent control
- and direction of geological work or the supervision of such work
- 19 pertaining to the practice of geology;
- 20 (12) "Specialty", a branch of geologic study and work such
- 21 as engineering geology, environmental geology, hydrogeology,
- 22 mineral resources, and other related work requiring geologic
- 23 education and experience.
- 24 256.459. 1. The "Board of Geologist Registration" is
- 25 hereby created to administer the provisions of sections 256.450
- to 256.483. The official domicile of the board of geologist
- 27 registration is the division of professional registration. The
- division shall provide necessary staff support services, but all

- administrative costs of board operation shall be paid, upon appropriation, by moneys in the board of geologist registration fund created in section 256.465.
 - 2. The board shall be composed of eight members, seven of whom shall be voting members appointed by the governor with the advice and consent of the senate. The state geologist shall serve as "ex officio" nonvoting member.

- 3. Five of the appointed members shall be registered geologists, except that this requirement shall not apply for the initially appointed geologist members. Four members shall be chosen to represent experience in different geologic specialties. The fifth member shall be a geologist employed by the state or a city or county. The initially appointed geologist members must be eligible for registration pursuant to sections 256.450 to 256.483 and must be registered pursuant to sections 256.450 to 256.483 within twelve months following appointment to the board to maintain eligibility as a member of the board.
 - 4. Two of the appointed members shall be public members. Each public member shall, at the time of appointment, be a citizen of the United States, a resident of Missouri for at least three years immediately preceding appointment, a registered voter, a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person and a person who does not have and never has had a material, financial interest in either the providing of professional services regulated by this chapter or any activity or organization directly related to any profession licensed or regulated pursuant to this chapter. The duties of the public

members shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

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- 5. Each geologist member of the board shall be a citizen of the United States and shall have been a resident of Missouri for at least three years immediately preceding appointment.
- 6. Appointed members of the board shall serve terms of three years except that two of the first appointed members shall be appointed to one-year terms and two of the first appointed members shall be appointed to two-year terms. Members shall hold office until the expiration of the terms for which they were appointed and until their successors have been appointed and duly qualified unless removed for cause by the governor. No person may serve more than two consecutive terms.
- 7. The board shall not be required to give any appeal bond in any cause arising under application of sections 256.450 to 256.483. The attorney general shall represent the board in all actions and proceedings to enforce the provisions of sections 256.450 to 256.483.
- 8. Notwithstanding any other provision of law to the contrary, any appointed member of the board shall receive as compensation an amount established [by the director of the division of professional registration not to exceed seventy dollars] under section 324.015, RSMo, per day for board business plus actual and necessary expenses. The director of the division of professional registration shall establish by rule guidelines for payment.

- 1 285.230. 1. As used in this section, "transient employer"
- 2 means an employer as defined in sections 143.191, RSMo, 287.030,
- 3 RSMo, and 288.032, RSMo, making payment of wages taxable under
- 4 chapters 143, RSMo, 287, RSMo, and 288, RSMo, who is not
- 5 domiciled in this state and who temporarily transacts any
- 6 business within the state, but shall not include any employer who
- 7 is not subject to Missouri income tax because of the provisions
- 8 of 15 U.S.C. 381. The transaction of business shall be
- 9 considered temporary at any time it cannot be reasonably expected
- 10 to continue for a period of twenty-four consecutive months.
- 11 Professional athletic teams and professional entertainers
- domiciled in a state other than Missouri shall be deemed a
- 13 "transient employer" for the purposes of this section, unless the
- 14 person or entity who pays compensation to the nonresident
- 15 entertainer has fully complied with the provisions of section
- 16 143.183, RSMo, in which case the nonresident entertainer shall
- 17 not be considered a transient employer.
- 2. Employers meeting the following criteria shall not be
- 19 required to file a financial assurance instrument as required by
- 20 this section:
- 21 (1) The principal place of business of the employer must be
- 22 in a county of another state which is contiguous to the state of
- 23 Missouri; and
- 24 (2) The employer must have been under contract to perform
- work in Missouri for at least sixty days cumulatively out of
- twelve months during each of the two calendar years immediately
- 27 preceding the employer's initial application for exemption from
- 28 the provisions of this section; and

(3) The employer must have in his possession a tax clearance from the department of revenue and the division of employment security stating that the employer has faithfully complied with the tax laws of this state during the period set out in subdivision (2) of this subsection.

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- Within ninety days of August 13, 1988, such employers must obtain initial tax clearances in accordance with subdivision (3) of this subsection. Any tax clearance issued under the provisions of this section by the division of employment security shall be submitted to the department of revenue. On or before January thirty-first of each year, except January thirty-first following the year during which the employer first meets these criteria, the employer shall submit application to the department of revenue and division of employment security for a renewed tax clearance. Failure to submit such renewal applications or failure to comply with applicable Missouri taxing and employment security laws during the period between annual renewal dates or removal of the employer's principal place of business from a county in another state which is contiquous to Missouri to a state other than Missouri shall immediately subject the employer to all provisions of this section. An employer meeting the requirements of this subsection shall still be subject to the provisions of subsection 5 of this section.
- 3. Every transient employer shall file with the director of revenue a financial assurance instrument including, but not limited to, a cash bond, a surety bond, or an irrevocable letter of credit as defined in section 400.5-103, RSMo, issued by any

state or federal financial institution. The financial assurance instrument shall be in an amount not less than the average estimated quarterly withholding tax liability of the applicant, but in no case less than five thousand dollars nor more than twenty-five thousand dollars. Any corporate surety shall be licensed to do such business in this state and approved by the director of revenue to act as a surety. The transient employer shall be the principal obligor and the state of Missouri shall be the oblique. The financial assurance instrument shall be conditioned upon the prompt filing of true reports and the payment by such employer to the director of revenue of any and all withholding taxes which are now or which hereafter may be levied or imposed by the state of Missouri, upon the employer, together with any and all penalties and interest thereon, and generally upon the faithful compliance with the provisions of chapters 143, RSMo, 287, RSMo, and 288, RSMo.

4. Any transient employer who is already otherwise required to file a financial assurance instrument as a condition of any contract, provided said financial assurance instrument guarantees payment of all applicable state taxes and all withholding taxes levied or imposed by the state and provided that such financial assurance instrument is delivered by certified mail to the department of revenue by the applicable awarding entity at least fourteen days before the execution of the contract for the performance of work, may use the same financial assurance instrument to comply with the provisions of this section. Before such financial assurance instrument is approved by the awarding entity, the director of revenue shall be satisfied that such

- 1 financial assurance instrument is sufficient to cover all taxes
- 2 imposed by this state and the director shall so notify the
- 3 awarding entity of the decision within the fourteen days prior to
- 4 the execution of the contract. Failure to do so by the director
- 5 shall waive any right to disapprove such financial assurance
- 6 instrument. Before a financial assurance instrument is released
- 7 by the entity awarding the contract, a tax clearance shall be
- 8 obtained from the director of revenue that such transient
- 9 employer has faithfully complied with all the tax laws of this
- 10 state.
- 5. Every transient employer shall certify to the director
- of revenue that such employer has sufficient workers'
- compensation insurance either through a self-insurance program or
- 14 a policy of workers' compensation insurance issued by an approved
- workers' compensation carrier. The self-insurance program shall
- be approved by the division of workers' compensation pursuant to
- 17 section 287.280, RSMo. The insurance policy shall be in a
- 18 contract form approved by the department of insurance, financial
- 19 and professional regulation.
- 20 6. In the event that liability upon the financial assurance
- 21 instrument thus filed by the transient employer shall be
- 22 discharged or reduced, whether by judgment rendered, payment made
- or otherwise, or if in the opinion of the director of revenue any
- surety on a bond theretofore given or financial institution shall
- 25 have become unsatisfactory or unacceptable, then the director of
- 26 revenue may require the employer to file a new financial
- 27 assurance instrument in the same form and amount. If such new
- 28 financial assurance instrument shall be furnished by such

employer as above provided, the director of revenue shall upon satisfaction of any liability that has accrued, release the surety on the old bond or financial institution issuing the irrevocable letter of credit.

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- Any surety on any bond or financial institution issuing an irrevocable letter of credit furnished by any transient employer as provided in this section shall be released and discharged from any and all liability to the state of Missouri accruing on such bond or irrevocable letter of credit after the expiration of sixty days from the date upon which such surety or financial institution shall have lodged with the director of revenue a written request to be released and discharged; but the request shall not operate to relieve, release or discharge such surety or financial institution from any liability already accrued or which shall accrue during and before the expiration of said sixty-day period. The director of revenue shall promptly on receipt of notice of such request notify the employer who furnished such bond or irrevocable letter of credit and such employer shall on or before the expiration of such sixty-day period file with the director of revenue a new financial assurance instrument satisfactory to the director of revenue in the amount and form provided in this section.
 - 8. Notwithstanding the limitation as to the amount of any financial assurance instrument fixed by this section, if a transient employer becomes delinquent in the payment of any tax or tenders a check in payment of tax which check is returned unpaid because of insufficient funds, the director may demand an additional instrument of such employer in an amount necessary, in

- 1 the judgment of the director, to protect the revenue of the
- 2 state. The penal sum of the additional instrument and the
- 3 instrument furnished under the provisions of the law requiring
- 4 such instrument may not exceed two quarters' estimated tax
- 5 liability.
- 6 9. For any period when a transient employer fails to meet
- 7 the requirements of this section, there shall be added to any
- 8 deficiency assessed against a transient employer, in addition to
- 9 any other addition, interest, and penalties, an amount equal to
- 10 twenty-five percent of the deficiency.
- 10. A taxpayer commits the crime of failure to file a
- 12 financial assurance instrument if he knowingly fails to comply
- with the provisions of this section.
- 14 11. Failure to file a financial assurance instrument is a
- 15 class A misdemeanor. Pursuant to section 560.021, RSMo, a
- 16 corporation found guilty of failing to file a financial assurance
- instrument may be fined up to five thousand dollars or any higher
- amount not exceeding twice the amount the employer profited from
- 19 the commission of the offense.
- 20 12. Failing to register with the department of revenue and
- 21 execute the financial assurance instrument herein provided, prior
- 22 to beginning the performance of any contract, shall prohibit the
- employer from performing on such contract until he complies with
- 24 such requirements.
- 25 13. Each employer shall keep full and accurate records
- 26 clearly indicating the names, occupations, and crafts, if
- applicable, of every person employed by him together with an
- 28 accurate record of the number of hours worked by each employee

- and the actual wages paid. The payroll records required to be so kept shall be open to inspection by any authorized representative of the department of revenue at any reasonable time and as often as may be necessary and such records shall not be destroyed or removed from the state for a period of one year following the completion of the contract in connection with which the records are made.
- The entering into of any contract for the performance of work in the state of Missouri by any such employer shall be deemed to constitute an appointment of the secretary of state as registered agent of such employer for purposes of accepting service of any process, or of any notice or demand required or permitted by law. The service of any such process, notice or demand, when served on the secretary of state shall have the same legal force and validity as if served upon the employer personally within the state.
 - 15. In addition, any employer who fails to file a financial assurance instrument as required by this section shall be prohibited from contracting for or performing labor on any public works project in this state for a period of one year.

- 16. Whenever a transient employer ceases to engage in activity within the state it shall be the duty of such transient employer to notify the director of revenue in writing at least ten days prior to the time the discontinuance takes effect.
- 287.035. 1. The benefits provided by this chapter resulting from work-related injuries shall apply to partners or sole proprietors, only when such partners or sole proprietors have individually elected to procure insurance policy protection

- for themselves against injuries sustained while in the pursuit of their vocation, profession or business.
- 2. An election by partners or sole proprietors to secure the protection of the benefits authorized by this chapter for themselves shall include their employees, if any, who are not eligible for compensation benefits except as provided by this section.

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- 3. As respects the extension of benefits to employees pursuant to this section, there shall be general application of the compensation law; provided, however, section 287.030 shall be construed to encompass the limited application of this section to employers having less than five employees.
- 4. Insurers who underwrite the protection authorized by this section shall be directly and primarily liable for the benefits provided by this chapter.
- It is the expressed intent of this section to allow the 16 5. 17 optional purchase of the protection for workers' injuries 18 sustained by partners or sole proprietors, including their 19 employees, while in the pursuit of their vocation, profession or 20 business. As provided in this chapter, administrative and appellant jurisdiction shall be extended in regard to 21 22 disagreements between injured individuals and their insurers, but 23 any provision of this chapter requiring an employer-employee 24 status, where none exists, is hereby waived to accomplish the limited application of this section. 25
 - 6. (1) This chapter shall apply to any employee who is related to a partner or sole proprietor within the third degree of affinity or consanguinity unless such employee is withdrawn by

- the partner or sole proprietor from the coverage of the
 provisions of this chapter;
- Any partner or sole proprietor who wishes to withdraw from coverage any employee set forth in subdivision (1) of this subsection from the provisions of this chapter may do so by indicating such withdrawal from coverage under the provisions of a valid workers' compensation insurance policy by listing such employees to be withdrawn. The notice of withdrawal shall be in a manner and on a form as determined by the director of the department of insurance, financial and professional regulation. Such form shall require a list of those family member employees to be withdrawn, as described in subdivision (1) of this subsection. The withdrawal shall take effect and continue from the effective date of the insurance policy and any endorsements thereto up until the expiration date of the insurance policy or by written notice to the group self-insurer of which the employer is a member.
 - 287.037. Notwithstanding any other provision of law to the contrary, beginning January 1, 1997, those insurance companies providing coverage pursuant to chapter 287, to a limited liability company, as defined in section 347.015, RSMo, shall provide coverage for the employees of the limited liability company who are not members of the limited liability company. Members of the limited liability company, as defined in section 347.015, RSMo, shall also be provided coverage pursuant to chapter 287, but such members may individually elect to reject such coverage by providing a written notice of such rejection on a form developed by the department of insurance, financial and

- professional regulation to the limited liability company and its 1 2 insurer. Failure to provide notice to the limited liability company shall not be grounds for any member to claim that the 3 rejection of such coverage is not legally effective. A member 5 who elects to reject such coverage shall not thereafter be 6 entitled to workers' compensation benefits under the policy, even 7 if serving or working in the capacity of an employee of the limited liability company, at least until such time as said 8 9 member provides the limited liability company and its insurer 10 with a written notice which rescinds the prior rejection of such 11 coverage. The written notice which rescinds the prior rejection 12 of such coverage shall be on a form developed by the department 13 of insurance, financial and professional regulation. 14 rescission shall be prospective in nature and shall entitle the 15 member only to such benefits which accrue on or after the date the notice of rescission form is received by the insurance 16 17 company.
 - 287.123. 1. Each insurance carrier writing workers' compensation insurance in this state shall establish a program whereby the carrier shall have available and shall provide to each employer obtaining workers' compensation coverage from such insurance carrier comprehensive safety engineering and management services upon a request made by the employer for such services.

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2. Each insurance carrier writing workers' compensation insurance in this state shall provide the director of the department of labor and industrial relations with a written outline of the safety engineering and management program required to be established under subsection 1 of this section. Such

program required to be established pursuant to subsection 1 of this section shall require certification by the director as to its adequacy in providing safety management and loss control to the employer. An insurance carrier's program required to be established pursuant to subsection 1 of this section shall be reviewed by the director at least annually to determine that it is delivering comprehensive services for safety education and the elimination of and protection against unsafe acts in the workplace and frequently recognized compensable worker injuries. An insurance carrier may establish such program required to be established pursuant to subsection 1 of this section through contracts with private safety engineering and management service companies in the state. Each insurance carrier shall collect annual data on what impact its program required to be established pursuant to subsection 1 of this section has had on compensable losses of the employers it insures, and such data shall be made available to the department of insurance, financial and professional regulation and the department of labor and industrial relations. When the employer requests services under such program and the insurance carrier provides such services, the insurance carrier shall report such services to the division.

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3. At each time the division of workers' compensation receives notice from an employer that the employer has purchased workers' compensation insurance coverage from a different insurance carrier or has made an initial purchase of workers' compensation coverage, the division shall notify the employer in writing of publicly or privately administered worker safety programs available in the state, unless such notice has been

- 1 given in the prior twelve months.
- 2 4. The division shall maintain a registry of safety
- 3 consultants and safety engineers certified by the department of
- 4 labor and industrial relations and such registry shall be
- 5 available for inspection by any employer in this state.
- 6 Standards and requirements for certificates of safety consultants
- 7 and safety engineers shall be determined by the department of
- 8 labor and industrial relations by rule.
- 9 287.129. 1. A health care provider commits a fraudulent
- 10 workers' compensation insurance act if he knowingly and with
- intent to defraud presents, causes to be presented, or prepares
- 12 with knowledge or belief that it will be presented, to or by an
- insurer, purported insurer, broker, or any agent thereof, any
- 14 claim for payment or other benefit which involves any one or more
- of the following false billing practices:
- 16 (1) "Unbundling" an insurance claim by claiming a number of
- medical procedures were performed instead of a single
- 18 comprehensive procedure;
- 19 (2) "Upcoding" a medical, hospital or rehabilitative
- 20 insurance claim by claiming that a more serious or extensive
- 21 procedure was performed than was actually performed;
- 22 (3) "Exploding" a medical, hospital or rehabilitative
- insurance claim by claiming a series of tests were performed on a
- single sample of blood, urine, or other bodily fluid, when
- 25 actually the series of tests were part of one battery of tests;
- 26 or
- 27 (4) "Duplicating" a medical, hospital or rehabilitative
- insurance claim made by a health care provider by resubmitting

1 the claim through another health care provider in which the

2 original health care provider has an ownership interest.

- 4 Nothing in this section shall prohibit providers from making good
- 5 faith efforts to ensure that claims for reimbursement are coded
- 6 to reflect the proper diagnosis and treatment.
- 7 2. If, by its own inquiries or as a result of complaints,
- 8 the department of insurance, financial and professional
- 9 <u>regulation</u> has reason to believe that a person has engaged in, or
- 10 is engaging in, any fraudulent workers' compensation insurance
- act contained in this section, it may administer oaths and
- 12 affirmations, serve subpoenas ordering the attendance of
- witnesses or proffering of matter, and collect evidence.
- 3. If the matter that the department of insurance,
- 15 financial and professional regulation seeks to obtain by request
- is located outside the state, the person so requested may make it
- 17 available to the division or its representative to examine the
- 18 matter at the place where it is located. The department may
- 19 designate representatives, including officials of the state in
- which the matter is located, to inspect the matter on its behalf,
- 21 and it may respond to similar requests from officials of other
- 22 states.
- 4. Any person violating any of the provisions of subsection
- 1 of this section is guilty of a class A misdemeanor and the
- 25 person shall be liable to the state of Missouri for a fine up to
- twenty thousand dollars. Any person who has previously pled
- 27 guilty to or has been found guilty of violating any of the
- provisions of subsection 1 of this section and who subsequently

violates any of the provisions of subsection 1 of this section is quilty of a class D felony.

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287.135. 1. The department of insurance, financial and professional regulation shall establish a program whereby managed care organizations in this state shall be certified by the department for the provision of managed care services to employers who voluntarily choose to use such organizations. The department shall report to the division of workers' compensation all managed care organizations certified pursuant to the provisions of this section. The division shall maintain a registry of certified managed care organizations that can be readily accessed by employers for the provision of managed care services. For the purposes of this section, the term "managed care organizations" shall mean organizations such as preferred provider organizations, health maintenance organizations and other direct employer/provider arrangements which have been certified by the department designed to provide incentives to medical care providers to manage the cost and use of care associated with claims covered by workers' compensation insurance.

2. The director of the department of insurance, financial and professional regulation shall promulgate rules which set out the approval criteria for certification of a managed care organization. Approval criteria shall take into consideration the adequacy of services that the organization will be able to offer the employer, the geographic area to be served, staff size and makeup of the organization in relation to both services offered and geographic location, access to health care providers,

the adequacy of internal management and oversight, the adequacy of procedures for peer review, utilization review, and internal dispute resolution, including a method to resolve complaints by injured employees, medical providers, and insurers over the cost, necessity and appropriateness of medical services, the availability of case management services, and any other criteria as determined by the director. Thirty days prior to the annual anniversary of any current certification granted by the director, any managed care organization seeking continued certification shall file an application for recertification with the director, on a form approved by the director, accompanied by a filing fee established by the director by rule and any other materials specified by the director.

and professional regulation shall promulgate rules which set out the criteria under which the fees charged by a managed care organization shall be reimbursed by an employer's workers' compensation insurer and which establish criteria providing for the coordination and integration between the managed care organization and the insurer of their respective internal operational systems relating to such matters as claim reporting and handling, medical case management procedures and billing. Such criteria shall require any such reimbursable fees to be reasonable in relation both to the managed care services provided and to the savings which result from those services. Such criteria shall discourage the use of fee arrangements which result in unjustified costs being billed for either medical services or managed care services. Insurers and managed care

organizations shall be permitted to voluntarily negotiate and utilize alternative fee arrangements. Notwithstanding any provision of this subsection to the contrary, if an insurer and a managed care organization enter into a voluntary agreement that accomplishes the same purposes as this subsection, that insurer and that managed care organization with respect to that agreement shall not be required to meet the requirements of this subsection or regulations promulgated by the department pursuant to this subsection.

- 4. Any managed care organization, including any managed care organization that has been established or selected by or has contracted with a workers' compensation insurance carrier to provide managed care services to insured employers, that has previously been certified prior to August 28, 1993, by the director of the department of insurance, financial and professional regulation shall be deemed to have met the criteria set forth in this section.
- 5. The necessity and appropriateness of medical care services recommended or provided by providers shall be subject to review by the division of workers' compensation, upon application, following a decision by the managed care organization's utilization review and dispute resolution review and appeal procedure. The decision of the managed care organization relating to payment for such medical care services shall be subject to modification by the division of workers' compensation, after mediation conference or hearing, only upon showing that it was unreasonable, arbitrary or capricious.

- enter into a structured settlement which provides for different weekly benefits than provided in section 287.240. Any such settlement must be secured by indemnity insurance issued by a company approved by the Missouri department of insurance, financial and professional regulation.
- 6 287.280. 1. Every employer subject to the provisions of 7 this chapter shall, on either an individual or group basis, insure his entire liability thereunder, except as hereafter 8 9 provided, with some insurance carrier authorized to insure such 10 liability in this state, except that an employer or group of 11 employers may themselves carry the whole or any part of the 12 liability without insurance upon satisfying the division of their 13 ability so to do. If an employer or group of employers have 14 qualified to self-insure their liability under this chapter, the 15 division of workers' compensation may, if it finds after a hearing that the employer or group of employers are willfully and 16 17 intentionally violating the provisions of this chapter with 18 intent to defraud their employees of their right to compensation, 19 suspend or revoke the right of the employer or group of employers 20 to self-insure their liability. If the employer or group of employers fail to comply with this section, an injured employee 21 22 or his dependents may elect after the injury either to bring an 23 action against such employer or group of employers to recover 24 damages for personal injury or death and it shall not be a defense that the injury or death was caused by the negligence of 25 26 a fellow servant, or that the employee had assumed the risk of 27 the injury or death, or that the injury or death was caused to 28 any degree by the negligence of the employee; or to recover under

- this chapter with the compensation payments commuted and 1 2 immediately payable; or, if the employee elects to do so, he or 3 she may file a request with the division for payment to be made for medical expenses out of the second injury fund as provided in subsection 5 of section 287.220. If the employer or group of 5 6 employers are carrying their own insurance, on the application of 7 any person entitled to compensation and on proof of default in the payment of any installment, the division shall require the 8 9 employer or group of employers to furnish security for the 10 payment of the compensation, and if not given, all other 11 compensation shall be commuted and become immediately payable; 12 provided, that employers engaged in the mining business shall be 13 required to insure only their liability hereunder to the extent 14 of the equivalent of the maximum liability under this chapter for 15 ten deaths in any one accident, but the employer or group of employers may carry their own risk for any excess liability. 16 17 When a group of employers enter into an agreement to pool their 18 liabilities under this chapter, individual members will not be 19 required to qualify as individual self-insurers.
 - 2. Groups of employers qualified to insure their liability pursuant to chapter 537, RSMo, or this chapter, shall utilize a uniform experience rating plan promulgated by an approved advisory organization. Such groups shall develop experience ratings for their members based on the plan. Nothing in this section shall relieve an employer from remitting, without any charge to the employer, the employer's claims history to an approved advisory organization.

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3. For every entity qualified to group self-insure their

- 1 liability pursuant to this chapter or chapter 537, RSMo, each
- 2 entity shall not authorize total discounts for any individual
- 3 member exceeding twenty-five percent beginning January 1, 1999.
- 4 All discounts shall be based on objective quantitative factors
- 5 and applied uniformly to all trust members.
- 6 Any group of employers that have qualified to 7 self-insure their liability pursuant to this chapter shall file with the division premium rates, based on pure premium rate data, 8 9 adjusted for loss development and loss trending as filed by the 10 advisory organization with the department of insurance pursuant 11 to section 287.975, plus any estimated expenses and other factors 12 or based on average rate classifications calculated by the 13 department of insurance, financial and professional regulation as 14 taken from the premium rates filed by the twenty insurance 15 companies providing the greatest volume of workers' compensation insurance coverage in this state. The rate is inadequate if 16 17 funds equal to the full ultimate cost of anticipated losses and 18 loss adjustment expenses are not produced when the prospective 19 loss costs are applied to anticipated payrolls. The provisions 20 of this subsection shall not apply to those political subdivisions of this state that have qualified to self-insure 21 22 their liability pursuant to this chapter as authorized by section 23 537.620, RSMo, on an assessment plan. Any such group may file 24 with the division a composite rate for all coverages provided under that section. 25
- 5. Any finding or determination made by the division under this section may be reviewed as provided in sections 287.470 and 28 287.480.

1 6. No rule or portion of a rule promulgated under the
2 authority of this section shall become effective unless it has
3 been promulgated pursuant to the provisions of section 536.024,
4 RSMo.

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- 7. Any records submitted pursuant to this section, and pursuant to any rule promulgated by the division pursuant to this section, shall be considered confidential and not subject to chapter 610, RSMo. Any party to a workers' compensation case involving the party that submitted the records shall be able to subpoena the records for use in a workers' compensation case, if the information is otherwise relevant.
 - 287.282. 1. Notwithstanding the provisions of subsection 1 of section 287.280, every employer who obtains part of his work force from another entity through an employee leasing arrangement, or who employs the services of an entity through an employee leasing arrangement, may be required to cover his liability under the provisions of this chapter, through separate coverages or separate self-insurance on his leased employees and his nonleased employees. The director of the department of insurance, financial and professional regulation may, by rule, establish the standards and procedures by which insurance coverage shall be provided to employers using only leased employees, and to employers using both leased and nonleased employees. The director of the division of workers' compensation may, by a rule, establish the standards and procedures for qualification for self-insurance for employers using only leased employees and for employers using both leased and nonleased employees.

2. Such rules shall include, but not be limited to, the registration of employee leasing arrangements prior to their eligibility for insurance, or self-insurance, the information reporting requirements for both employee leasing arrangements and for employers who use such arrangements, the extent to which a client employer's experience shall determine the premium or bond or other security amount for coverage on leased employees, and the procedures by which such coverage or self-insurance on leased employees shall be issued, endorsed, audited, cancelled and nonrenewed.

- 3. For purposes of this section, the term "employee leasing arrangement" shall not include temporary help service arrangements which assign their employees to clients for a finite period of time to support or supplement the client's work force in special work situations, such as employee absences, temporary skill shortages and seasonal workloads, and which are not knowingly utilized as a mechanism of depriving one or more insurers of premiums which otherwise are properly payable.
- 4. When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of workers' compensation through insurance or self-insurance.
- 287.335. 1. There is hereby established the "Workers' Compensation Determinations Review Board" within the department of insurance, financial and professional regulation which shall exist to review determinations by an insurer or advisory

- 1 organization regarding uniform code classifications, basic manual
- 2 rule interpretations, uniform experience rating plan rule
- 3 interpretations, calculations of an individual employer's
- 4 modification factor, Missouri assigned risk plan underwriting
- 5 rule interpretations, and any other related uniform rule
- 6 interpretations not addressed by department rule or regulation.
- 7 The board shall consist of five persons who shall be voting
- 8 members appointed by the governor, with the advice and consent of
- 9 the senate, who shall serve at the pleasure of the governor.
- 10 Three members shall be representative of the interests of
- 11 employers with at least one being representative of employers
- whose employees are represented by a labor union and at least one
- being representative of employers whose employees are not
- 14 represented by a labor union. One member shall be a
- 15 representative of the interests of insurers, and one member shall
- be a representative of the interests of independent insurance
- 17 agents. One member representing employers shall act as chairman
- of the board elected by the board. Not more than three members
- 19 of the board shall belong to the same political party. Each
- 20 member shall serve for a term of three years, except that of the
- 21 members first appointed, two shall be appointed for a term of one
- 22 year, two for a term of two years, and one for a term of three
- 23 years. Vacancies on the board shall be filled for the unexpired
- term in the same manner as original appointments are made. The
- 25 state actuary and a representative of a rating organization
- licensed by the state shall be nonvoting members of the board,
- 27 and their duties shall include advising the board on matters
- 28 relating to code classifications, including the creation of new

- code classifications. The board members shall not receive any compensation, except that such members shall be reimbursed for actual and necessary expenses incurred in the performance of their duties. In addition, the board may employ staff to perform the administrative duties of the board. The department of insurance, financial and professional regulation may charge a fee against the classification agent as the director deems appropriate.
- 9 Upon application of any employer, the board shall review 10 the code classification made on that employer. If the board 11 determines that the classification was erroneous, it may change 12 the classification by placing the employer under a different code 13 classification already established or by creating a new classification code, if the board determines that there is 14 15 sufficient experience to merit a new classification code. establishment of the rate for a new classification code shall be 16 17 filed with the director of the department of insurance by either 18 the affected employer or employers or by any recognized rating 19 organization within ninety days of the establishment of the new 20 classification code by the board. The director of the department of insurance shall review the filed rate according to section 21 22 287.955. Upon application of any employer, the board shall 23 review the calculation of an employer's experience modification 24 factor and may order a recalculation in the experience 25 modification factor if calculated erroneously under the formula 26 as approved by the director of insurance, including an adjustment 27 for any recovery from a third party pursuant to the employer's 28 right of subrogation. An appeal from the determination of an

- appropriate classification by the board may be made to the director of the department of insurance. The board may review code classifications of individual self-insured employers and self-insured employers in a group insurance arrangement.
 - 3. The board may also recommend changes to the uniform classification system.

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- 4. The advisory organization that makes a uniform classification system for use in setting rates in this state shall provide to the affected party or his designated agent, at a reasonable charge, information used or considered in determining the development purpose, scope and intended application of any classification comprising such uniform classification system.
- 287.690. 1. Prior to December 31, 1993, for the purpose of providing for the expense of administering this chapter and for the purpose set out in subsection 2 of this section, every person, partnership, association, corporation, whether organized under the laws of this or any other state or country, the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured, company, mutual company, the parties to any interindemnity contract, or other plan or scheme, and every other insurance carrier, insuring employers in this state against liability for personal injuries to their employees, or for death caused thereby, under this chapter, shall pay, as provided in this chapter, tax upon the net deposits, net premiums or net assessments received, whether in cash or notes in this state, or on account of business done in this state, for such insurance in

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this state at the rate of two percent in lieu of all other taxes
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      on such net deposits, net premiums or net assessments, which
      amount of taxes shall be assessed and collected as herein
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      provided. Beginning October 31, 1993, and every year thereafter,
      the director of the division of workers' compensation shall
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      estimate the amount of revenue required to administer this
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      chapter and the director shall determine the rate of tax to be
      paid in the following calendar year pursuant to this section
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      commencing with the calendar year beginning on January 1, 1994.
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      If the balance of the fund estimated to be on hand on December
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      thirty-first of the year each tax rate determination is made is
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      less than one hundred ten percent of the previous year's expenses
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      plus any additional revenue required due to new statutory
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      requirements given to the division by the general assembly, then
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      the director shall impose a tax not to exceed two percent in lieu
      of all other taxes on net deposits, net premiums or net
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      assessments, rounded up to the nearest one-half of a percentage
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      point, which amount of taxes shall be assessed and collected as
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      herein provided. The net premium equivalent for individual
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      self-insured employers and any group of political subdivisions of
      this state qualified to self-insure their liability pursuant to
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      this chapter as authorized by section 537.620, RSMo, shall be
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      based on average rate classifications calculated by the
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      department of insurance, financial and professional regulation as
      taken from premium rates filed by the twenty insurance companies
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      providing the greatest volume of workers' compensation insurance
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      coverage in this state. For employers qualified to self-insure
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      their liability pursuant to this chapter, the rates filed by such
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group of employers in accordance with subsection 2 of section 287.280 shall be the net premium equivalent. Every entity required to pay the tax imposed pursuant to this section and section 287.730 shall be notified by the division of workers' compensation within ten calendar days of the date of the determination of the rate of tax to be imposed for the following year. Net premiums, net deposits or net assessments are defined as gross premiums, gross deposits or gross assessments less canceled or returned premiums, premium deposits or assessments and less dividends or savings, actually paid or credited.

- 2. After January 1, 1994, the director of the division shall make one or more loans to the Missouri employers mutual insurance company in an amount not to exceed an aggregate amount of five million dollars from the fund maintained to administer this chapter for start-up funding and initial capitalization of the company. The board of the company shall make application to the director for the loans, stating the amount to be loaned to the company. The loans shall be for a term of five years and, at the time the application for such loans is approved by the director, shall bear interest at the annual rate based on the rate for linked deposit loans as calculated by the state treasurer pursuant to section 30.758, RSMo.
- 287.710. 1. Every such insurance carrier or self-insurer, on or before the first day of March of each year, shall make a return, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, financial and professional regulation, stating the amount of all such gross premiums or deposits and

- 1 credits during the year ending on the thirty-first day of 2 December, next preceding.
- The amount of the tax due for each calendar year shall 3 be paid in four approximately equal estimated quarterly 5 installments, and a fifth reconciling installment. The first 6 four installments shall be based upon the application of the 7 current calendar year's tax rate to the premium for the 8 immediately preceding taxable year ending on the thirty-first day 9 of December, next preceding. The quarterly installments shall be 10 made on the first day of March, the first day of June, the first 11 day of September and the first day of December. Immediately 12 after receiving certification from the director of the department 13 of insurance, financial and professional regulation of the amount of tax due from the various companies or self-insurers, the 14 15 director of revenue shall notify and assess each company or self-insurer the amount of taxes on its premiums for the calendar 16 17 year ending on the thirty-first day of December, next preceding. 18 The director of revenue shall also notify and assess each company or self-insurer the amount of the estimated quarterly 19 20 installments to be made for the calendar year. If the amount of 21 the actual tax due for any year exceeds the total of the 22 installments made for such year, the balance of the tax due shall 23 be paid on the first day of June of the year following, together 24 with the regular quarterly payment due at that time. If the total amount of the tax actually due is less than the total 25 26 amount of the installments actually paid, the amount by which the 27 amount paid exceeds the amount due shall be credited against the

tax for the following year and deducted from the quarterly

- installment otherwise due on the first day of June. If the March first quarterly installment made by a company or self-insurer is less than the amount assessed by the director of revenue, the difference will be due on June first, but no interest will accrue to the state on the difference unless the amount paid by the company or self-insurer is less than eighty percent of one-fourth of the total amount of tax assessed by the director of revenue for the immediately preceding taxable year.
- 9 Upon the receipt of the returns and verification by the 10 director of the division of workers' compensation as to the 11 percent of tax to be imposed, the director of the department of 12 insurance, financial and professional regulation shall certify 13 the amount of tax due from the various insurance carriers or 14 self-insurers on the basis and at the rate provided in section 15 287.690, and make a schedule thereof, duplicate copies of which, properly certified by the director, shall be filed in the offices 16 17 of the revenue department, the state treasurer, and the division 18 of workers' compensation on or before the thirtieth day of April of each year. If the taxes provided for in this section are not 19 20 paid, the department of revenue shall certify the fact to the director of the department of insurance who shall thereafter 21 22 suspend the delinquent carriers of insurance or self-insurers 23 from the further transaction of business in this state until the 24 taxes are paid.
 - 4. Upon receipt of the money all such moneys shall be deposited to the credit of the fund for the support of the division of workers' compensation.

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5. The tax collected for implementing the workers'

- 1 compensation fund, and any interest accruing thereon, under the
- 2 police power of the state from those specified in sections
- 3 287.690, 287.715, and 287.730 shall be used for the purpose of
- 4 making effective the law to relieve victims of industrial
- 5 injuries from having individually to bear the burden of
- 6 misfortune or becoming charges upon society and for the further
- 7 purpose of providing for the physical rehabilitation of the
- 8 victims of industrial injuries, and for no other purposes. It is
- 9 hereby made the express duty of every person exercising any
- official authority or responsibility in and for the state of
- 11 Missouri sacredly to safeguard and preserve all funds collected,
- and any interest accruing thereon, under and by virtue of
- 13 sections 287.690, 287.715, and 287.730 for the purposes
- 14 hereinabove declared.
- 15 6. The funds created by virtue of sections 287.220,
- 16 287.690, 287.715, and 287.730 shall be exempt from the provisions
- of section 33.080, RSMo, specifically as they relate to the
- 18 transfer of fund balances and any interest thereon to the
- 19 ordinary revenue, and the director of the division of workers'
- 20 compensation may direct the state treasurer to invest all or part
- of these funds in interest-bearing accounts as provided in
- 22 article IV, section 15 of the Constitution of the state of
- 23 Missouri, and any unexpended balance in the second injury fund at
- the end of any appropriation period shall be a credit in the
- 25 second injury fund and shall be the amount of the fund at the
- beginning of the appropriation period next immediately following.
- 27 287.715. 1. For the purpose of providing for revenue for
- the second injury fund, every authorized self-insurer, and every

workers' compensation policyholder insured pursuant to the provisions of this chapter, shall be liable for payment of an annual surcharge in accordance with the provisions of this The annual surcharge imposed under this section shall apply to all workers' compensation insurance policies and self-insurance coverages which are written or renewed on or after April 26, 1988, including the state of Missouri, including any of its departments, divisions, agencies, commissions, and boards or any political subdivisions of the state who self-insure or hold themselves out to be any part self-insured. Notwithstanding any law to the contrary, the surcharge imposed pursuant to this section shall not apply to any reinsurance or retrocessional transaction.

2. Beginning October 31, 2005, and each year thereafter, the director of the division of workers' compensation shall estimate the amount of benefits payable from the second injury fund during the following calendar year and shall calculate the total amount of the annual surcharge to be imposed during the following calendar year upon all workers' compensation policyholders and authorized self-insurers. The amount of the annual surcharge percentage to be imposed upon each policyholder and self-insured for the following calendar year commencing with the calendar year beginning on January 1, 2006, shall be set at and calculated against a percentage, not to exceed three percent, of the policyholder's or self-insured's workers' compensation net deposits, net premiums, or net assessments for the previous policy year, rounded up to the nearest one-half of a percentage point, that shall generate, as nearly as possible, one hundred

ten percent of the moneys to be paid from the second injury fund 1 2 in the following calendar year, less any moneys contained in the fund at the end of the previous calendar year. All policyholders 3 and self-insurers shall be notified by the division of workers' 5 compensation within ten calendar days of the determination of the 6 surcharge percent to be imposed for, and paid in, the following 7 calendar year. The net premium equivalent for individual self-insured employers and any group of political subdivisions of 8 9 this state qualified to self-insure their liability pursuant to 10 this chapter as authorized by section 537.620, RSMo, shall be 11 based on average rate classifications calculated by the 12 department of insurance, financial and professional regulation as 13 taken from premium rates filed by the twenty insurance companies providing the greatest volume of workers' compensation insurance 14 15 coverage in this state. For employers qualified to self-insure their liability pursuant to this chapter, the rates filed by such 16 17 group of employers in accordance with subsection 2 of section 18 287.280 shall be the net premium equivalent. The director may 19 advance funds from the workers' compensation fund to the second 20 injury fund if surcharge collections prove to be insufficient. Any funds advanced from the workers' compensation fund to the 21 22 second injury fund must be reimbursed by the second injury fund 23 no later than December thirty-first of the year following the 24 advance. The surcharge shall be collected from policyholders by each insurer at the same time and in the same manner that the 25 26 premium is collected, but no insurer or its agent shall be 27 entitled to any portion of the surcharge as a fee or commission 28 for its collection. The surcharge is not subject to any taxes,

1 licenses or fees.

- 3. All surcharge amounts imposed by this section shall be deposited to the credit of the second injury fund.
- Such surcharge amounts shall be paid quarterly by insurers and self-insurers, and insurers shall pay the amounts not later than the thirtieth day of the month following the end of the quarter in which the amount is received from policyholders. If the director of the division of workers' compensation fails to calculate the surcharge by the thirty-first day of October of any year for the following year, any increase in the surcharge ultimately set by the director shall not be effective for any calendar quarter beginning less than sixty days from the date the director makes such determination.
 - 5. If a policyholder or self-insured fails to make payment of the surcharge or an insurer fails to make timely transfer to the division of surcharges actually collected from policyholders, as required by this section, a penalty of one-half of one percent of the surcharge unpaid, or untransferred, shall be assessed against the liable policyholder, self-insured or insurer. Penalties assessed under this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.
 - 287.717. 1. Beginning January 1, 2004, the administrative surcharge established pursuant to section 287.716 shall be collected from deductible plan policyholders by each insurer at the same time and in the same manner that the premium is collected, but no insurer or its agent shall be entitled to any portion of the administrative surcharge as a fee or commission

- for its collection. The administrative surcharge is not subject to any taxes, licenses, or fees.
- 2. All administrative surcharges imposed pursuant to

 4 section 287.716 shall be paid to the Missouri director of revenue

 5 and shall be deposited to the workers' compensation

 6 administrative fund.

- 3. The amount of the administrative surcharge due for the current calendar year shall be paid in four approximately equal estimated quarterly installments, and a fifth reconciling installment. The first four installments shall be based upon the amount of administrative surcharge payable in the calendar year for which the surcharge is imposed. The quarterly installments shall be made on the first day of March, the first day of June, the first day of September, and the first day of December. On or before the first day of March of each year, every such insurer shall submit a report, verified by the affidavit of its president and secretary or other chief officers or agents, to the director of the department of insurance, financial and professional regulation, stating the amount of all such total premiums which would have been paid for the deductible portion.
 - 4. If after the end of any calendar year, the amount of the actual administrative surcharge due is less than the total amount of the installments actually paid, the amount by which the amount paid exceeds the amount due shall only be credited against the administrative surcharge for the following year and deducted from the quarterly installment due on June first and any other payments required by this section until the credit is exhausted. In the event no such payments are due and upon application of the

insurer, the director of revenue may refund the amount of credit 1 2 if no other obligation is owed to the state.

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- If a deductible plan policyholder fails to make payment of the administrative surcharge, or an insurer fails to make timely transfer to the director of revenue of administrative surcharges actually collected from deductible plan policyholders, as required by this section, a late charge of one-half of one percent of the administrative surcharge unpaid, or transferred, shall be assessed against the liable deductible plan policyholder or insurer. Late charges assessed pursuant to this subsection shall be collected in a civil action by a summary proceeding brought by the director of the division of workers' compensation.
 - If the administrative surcharges imposed by this section are not paid when due, the deductible plan policyholder or insurer shall be required to pay, as part of such administrative surcharge, interest thereon at the rate of one and one-half percent per month for each month or fraction thereof delinquent. In the event the state prevails in any dispute concerning an assessment of the administrative surcharge, which has not been paid by the policyholder or insurer, interest shall be paid upon the amount found due to the state at the rate of one and one-half percent per month for each month or fraction thereof delinquent.
 - The division may authorize electronic transfer of all forms, reports, payments, and other information deemed appropriate by the division as required pursuant to this section and sections 287.690, 287.710, 287.715, and 287.716. Information filed pursuant to this section and sections 287.690, 287.710,

- division pursuant to this section and sections 287.690, 287.710,
- 2 287.715, and 287.716 shall be confidential and not subject to
- 3 chapter 610, RSMo.
- 4 8. This section shall not apply to any employer or group of
- 5 employers authorized by the division to self-insure their
- 6 liability pursuant to this chapter.
- 7 287.730. Wherever the employer carries his risk or whatever
- 8 substitute schemes for insurance provided for in section 287.370
- 9 have been approved, the division shall inform the director of the
- department of insurance, financial and professional regulation,
- 11 who, thereupon, shall assess and in like manner a similar tax
- shall be collected from the employer carrying his own risk at the
- same rate and on the same basis as taxes are assessed against
- insurance carriers, of any character, carrying like risks in this
- 15 state under the provisions of this chapter.
- 16 287.892. All workers' compensation insurers or their
- 17 designated agents, self-insurers and state agencies responsible
- for the collection or maintenance of workers' compensation
- 19 related data shall report claims information necessary to
- determine and analyze costs of the workers' compensation system
- 21 to the director of the department of insurance, financial and
- 22 professional regulation or to such agents as the director may
- 23 designate. The director may promulgate all reasonable rules and
- 24 regulations necessary to implement this section.
- 25 287.894. 1. All commercial insurance carriers licensed to
- 26 sell workers' compensation insurance in the state shall provide
- 27 to the Missouri division of workers' compensation at least every
- 28 six months workers' compensation medical claims history data as

- required by the division. Such data shall be on electronic media and shall include the current procedural and medical terminology codes relating to the medical treatment, dates of treatment, demographic characteristics of the worker, type of health care provider rendering care, and charges for treatment. The division may require a statistically valid sample of claims. Companies failing to provide such information as required by the division are subject to section 287.740. The division may, for purposes of verification, collect data from health care providers relating to the treatment of workers' compensation injuries.
 - 2. The Missouri consolidated health care plan as established in section 103.005, RSMo, shall, upon request of the division, provide data comparable to that provided by the insurance carriers as required in subsection 1 of this section.

- 3. The data required in subsections 1 and 2 of this section shall be used by the division to determine historical and statistical trends, variations and changes in health care costs associated with workers' compensation patients compared with nonworkers' compensation patients with similar injuries and conditions. Such data shall be readily available for review by users of the workers' compensation system, members of the general assembly, the Missouri division of workers' compensation and the department of insurance, financial and professional regulation. Any data released by the division shall not identify a patient or health care provider.
- 4. Any additional personnel or equipment needed by the division to meet the requirements of this section shall be paid for by the workers' compensation fund.

287.896. 1. Within forty-five days of August 28, 1993, the director of the department of insurance, financial and professional regulation shall approve a plan of operation for a new residual market that will guarantee insurance coverage and quality loss prevention and control services for employers seeking coverage through the plan. The new residual market shall begin operation January 1, 1994.

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2. All insurers authorized to write workers' compensation and employers' liability insurance shall participate in such plan providing for the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods, except that all employers that have expiring annual premiums greater than two hundred fifty thousand dollars must negotiate a retrospective rating plan with their insurer that is acceptable to the director of the department of insurance. rates, supplementary rate information and policy forms to be used in such a plan and any future modification thereof must be submitted to the director for approval at least seventy-five days prior to their effective date. Such rates shall be set by the director after hearing so that the amount required in premiums, together with reasonable investment income earned on those premiums, is not excessive, inadequate or unfairly discriminatory and is actuarially sufficient to apply claims and losses and reasonable operating expenses of the insurers. Nothing contained herein shall prevent the director from including a merit rating plan for nonexperienced rated employers within the residual market plan. The director shall adopt within the plan a system

to distribute any residual market deficit through an assessment on insurance carriers authorized to write workers' compensation insurance in proportion to the respective share of voluntary market premium written by such carrier.

- 3. The director shall disapprove any filing that does not meet the requirements of this section. A filing shall be deemed to meet such requirements unless approved, disapproved or modified by the director within seventy-five days after the filing is made. In disapproving a filing made pursuant to this section, the director shall have the same authority and follow the same procedures as in disapproving a rate filing pursuant to the requirements for filings in the voluntary market. The designated advisory organization may make and file the plan of operation, rates, rating plans, rules and policy forms under this section.
- 4. The director shall establish by rule standards to assure that any employer insured through the plan shall receive the same quality of service in the areas of employee classification, safety engineering, loss control, claims handling and claim reserving practices as do employers which are voluntarily insured as provided in section 287.123. The standards established by the director pursuant to this subsection shall also specify the procedures and grounds under which an employer insured through the plan shall be assigned an insurer, and the method by which such employers shall be informed of such procedures and grounds. All insurers of the residual market shall process applications, conduct safety engineering or other loss control services and provide claims handling within the state of Missouri or adjoining

1 states.

2 287.902. The "Missouri Employers Mutual Insurance Company" is created as an independent public corporation for the purpose 3 of insuring Missouri employers against liability for workers' 5 compensation, occupational disease and employers' liability 6 coverage. The company shall be organized and operated as a 7 domestic mutual insurance company and it shall not be a state 8 agency. The company shall have the powers granted a general 9 not-for-profit corporation pursuant to section 355.090, RSMo, to the extent the provisions of such section do not conflict with 10 11 the provisions of sections 287.900 to 287.920. The company shall 12 be a member of the Missouri property and casualty guaranty 13 association, sections 375.771 to 375.779, RSMo, and as such will be subject to assessments therefrom, and the members of such 14 15 association shall bear responsibility in the event of the insolvency of the company. The company shall be established 16 17 pursuant to the provisions of sections 287.900 to 287.920. 18 Preference shall be given to Missouri employers that develop an 19 annual premium of not greater than ten thousand dollars. 20 company shall use flexibility and experimentation in the development of types of policies and coverages offered to 21 22 employers, subject to the approval of the director of the 23 department of insurance, financial and professional regulation. 24 287.920. 1. The board shall cause an annual audit of the books of accounts, funds and securities of the company to be made 25 26 by a competent and independent firm of certified public 27 accountants, the cost of the audit to be charged against the 28 company. A copy of the audit report shall be filed with the

director of the department of insurance, financial and
professional regulation and the administrator. The audit shall
be open to the public for inspection.

- 2. The board shall submit an annual independently audited report in accordance with procedures governing annual reports adopted by the National Association of Insurance Commissioners by March first of each year and the report shall be delivered to the governor and the general assembly and shall indicate the business done by the company during the previous year and contain a statement of the resources and liabilities of the company.
- 3. The administrator shall annually submit to the board for its approval an estimated budget of the entire expense of administering the company for the succeeding calendar year having due regard to the business interests and contract obligations of the company.
- 4. The incurred loss experience and expense of the company shall be ascertained each year to include but not be limited to estimates of outstanding liabilities for claims reported to the company but not yet paid and liabilities for claims arising from injuries which have occurred but have not yet been reported to the company. If there is an excess of assets over liabilities, necessary reserves and a reasonable surplus for the catastrophe hazard, then a cash dividend may be declared or a credit allowed to an employer who has been insured with the company in accordance with criteria approved by the board, which may account for the employer's safety record and performance.
- 5. The department of insurance, financial and professional regulation shall conduct an examination of the company in the

manner and under the conditions provided by the statutes of the insurance code for the examination of insurance carriers. The board shall pay the cost of the examination as an expense of the company. The company is subject to all provisions of the statutes which relate to private insurance carriers and to the jurisdiction of the department of insurance in the same manner as private insurance carriers, except as provided by the director.

- 6. For the purpose of ascertaining the correctness of the amount of payroll reported, the number of employees on the employer's payroll and for such other information as the administrator may require in the proper administration of the company, the records and payrolls of each employer insured by the company shall always be open to inspection by the administrator or his duly authorized agent or representative.
- 7. Every employer provided insurance coverage by the company, upon complying with the underwriting standards adopted by the company, and upon completing the application form prescribed by the company, shall be furnished with a policy showing the date on which the insurance becomes effective.
- 287.930. As used in sections 287.930 to 287.975, the following terms mean:
- (1) "Accepted actuarial standards", the standards adopted by the Casualty Actuarial Society in its Statement of Principles Regarding Property and Casualty Insurance Ratemaking, and the Standards of Practice adopted by the Actuarial Standards Board;
- (2) "Advisory organization", any entity which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers and which assists insurers in

- 1 ratemaking related activities. Two or more insurers which have a
- 2 common ownership or operate in this state under common management
- 3 or control constitute a single insurer for the purpose of this
- 4 definition. "Advisory organization" does not include a joint
- 5 underwriting association, any actuarial or legal consultant, any
- 6 employee of an insurer or insurers under common control or
- 7 management or their employees or manager;
- 8 (3) "Classification system" or "classification", the plan,
- 9 system or arrangement for recognizing differences in exposure to
- 10 hazards among industries, occupations or operations of insurance
- 11 policyholders;
- 12 (4) "Competitive market", a market which has not been found
- to be noncompetitive pursuant to section 287.942;
- 14 (5) "Director", the director of the department of
- insurance, financial and professional regulation;
- 16 (6) "Expenses", that portion of any rate attributable to
- acquisition and field supervision; collection expenses and
- 18 general expenses; and taxes, licenses and fees;
- 19 (7) "Experience rating", a rating procedure using past
- 20 insurance experience of the individual policyholder to forecast
- 21 future losses by measuring the policyholder's loss experience
- 22 against the loss experience of policyholders in the same
- 23 classification to produce a prospective premium credit, debit or
- 24 unity modification;
- 25 (8) "Loss trending", any procedure for projecting developed
- losses to the average date of loss for the period during which
- 27 the policies are to be effective;
- 28 (9) "Market", the interaction between buyers and sellers of

- workers' compensation insurance within this state pursuant to the provisions of sections 287.930 to 287.975;
- 3 (10) "Noncompetitive market", a market for which there is a 4 ruling in effect pursuant to section 287.942 that a reasonable 5 degree of competition does not exist;

- (11) "Prospective loss costs", that portion of a rate that does not include provisions for expenses, other than loss adjustment expenses, or profit. "Prospective loss costs" are developed losses projected through loss trending to a future point in time, including any assessments that are loss-based, and ascertained by accepted actuarial standards;
- (12) "Pure premium rate", that portion of the rate which represents the loss cost per unit of exposure including loss adjustments expense;
- (13) "Rate", the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums;
 - (14) "Residual market", the plan, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods;
 - (15) "Statistical plan", the plan, system or arrangement used in collecting data;
- 26 (16) "Supplementary rate information", any manual or plan 27 of rates, classifications system, rating schedule, minimum 28 premium, policy fee, rating rule, rating plan, and any other

- similar information needed to determine the applicable premium for an insured;
- 3 (17) "Supporting information", the experience and judgment 4 of the filer and the experience or data of other insurers or 5 organizations relied on by the filer, the interpretation of any 6 statistical data relied on by the filer, descriptions of methods 7 used in making the rates and any other similar information 8 required to be filed by the director.

- 287.945. In determining whether or not a competitive market exists pursuant to section 287.942, the director shall monitor the degree of competition in this state. In doing so, the director shall use existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the department of insurance, financial and professional regulation, in cooperation with other state insurance departments, through outside contractors or in any other appropriate manner.
 - 287.975. 1. The advisory organization shall file with the director every pure premium rate, every manual of rating rules, every rating schedule and every change or amendment, or modification of any of the foregoing, proposed for use in this state no more than thirty days after it is distributed to members, subscribers or others.
- 2. The advisory organization which makes a uniform classification system for use in setting rates in this state shall collect data for two years after January 1, 1994, on the

- 1 payroll differential between employers within the construction
- 2 group of code classifications, including, but not limited to,
- 3 payroll costs of the employer and number of hours worked by all
- 4 employees of the employer engaged in construction work. Such
- 5 data shall be transferred to the department of insurance_
- 6 <u>financial and professional regulation</u> in a form prescribed by the
- 7 director of the department of insurance, financial and
- 8 professional regulation, and the department shall compile the
- 9 data and develop a formula to equalize premium rates for
- 10 employers within the construction group of code classifications
- 11 based on such payroll differential within three years after the
- data is submitted by the advisory organization.
- 303.025. 1. No owner of a motor vehicle registered in this
- state, or required to be registered in this state, shall operate,
- 15 register or maintain registration of a motor vehicle, or permit
- another person to operate such vehicle, unless the owner
- 17 maintains the financial responsibility which conforms to the
- 18 requirements of the laws of this state. Furthermore, no person
- shall operate a motor vehicle owned by another with the knowledge
- that the owner has not maintained financial responsibility unless
- 21 such person has financial responsibility which covers the
- 22 person's operation of the other's vehicle; however, no owner
- shall be in violation of this subsection if he or she fails to
- 24 maintain financial responsibility on a motor vehicle which is
- inoperable or being stored and not in operation. The director
- 26 may prescribe rules and regulations for the implementation of
- 27 this section.

2. A motor vehicle owner shall maintain the owner's

financial responsibility in a manner provided for in section 303.160, or with a motor vehicle liability policy which conforms to the requirements of the laws of this state.

- 3. Any person who violates this section is guilty of a class C misdemeanor. However, no person shall be found guilty of violating this section if the operator demonstrates to the court that he or she met the financial responsibility requirements of this section at the time the peace officer, commercial vehicle enforcement officer or commercial vehicle inspector wrote the citation. In addition to any other authorized punishment, the court shall notify the director of revenue of any person convicted pursuant to this section and shall do one of the following:
- Enter an order suspending the driving privilege as of the date of the court order. If the court orders the suspension of the driving privilege, the court shall require the defendant to surrender to it any driver's license then held by such person. The length of the suspension shall be as prescribed in subsection 2 of section 303.042. The court shall forward to the director of revenue the order of suspension of driving privilege and any license surrendered within ten days;
 - (2) Forward the record of the conviction for an assessment of four points; or
 - (3) In lieu of an assessment of points, render an order of supervision as provided in section 302.303, RSMo. An order of supervision shall not be used in lieu of points more than one time in any thirty-six-month period. Every court having jurisdiction pursuant to the provisions of this section shall

- 1 forward a record of conviction to the Missouri state highway
- 2 patrol, or at the written direction of the Missouri state highway
- 3 patrol, to the department of revenue, in a manner approved by the
- 4 director of the department of public safety. The director shall
- 5 establish procedures for the record keeping and administration of
- 6 this section.
- 7 4. Nothing in sections 303.010 to 303.050, 303.060,
- 8 303.140, 303.220, 303.290, 303.330 and 303.370 shall be construed
- 9 as prohibiting the department of insurance, financial and
- 10 <u>professional regulation</u> from approving or authorizing those
- 11 exclusions and limitations which are contained in automobile
- 12 liability insurance policies and the uninsured motorist
- provisions of automobile liability insurance policies.
- 14 5. If a court enters an order of suspension, the offender
- may appeal such order directly pursuant to chapter 512, RSMo, and
- the provisions of section 302.311, RSMo, shall not apply.
- 17 303.026. 1. The director shall inform each owner who
- 18 registers a motor vehicle of the following:
- 19 (1) The existence of the requirement that every motor
- vehicle owner in the state must maintain his financial
- 21 responsibility;
- 22 (2) The requirement that every motor vehicle owner show an
- insurance identification card, or a copy thereof, or other proof
- of financial responsibility at the time of vehicle registration;
- 25 this notice shall be given at least thirty days prior to the
- 26 month for renewal and shall be shown in bold, colored print;
- 27 (3) The penalties which apply to violations of the
- 28 requirement to maintain financial responsibility;

- 1 (4) The benefits of maintaining coverages in excess of those which are required;
- 3 (5) The director's authority to conduct samples of Missouri 4 motor vehicle owners to ensure compliance.
- No motor vehicle owner shall be issued registration for 6 a vehicle unless the owner, or his authorized agent, signs an 7 affidavit provided by the director of revenue at the time of registration of the vehicle certifying that such owner has and 8 9 will maintain, during the period of registration, financial 10 responsibility with respect to each motor vehicle that is owned, 11 licensed or operated on the streets or highways. The affidavit 12 need not be notarized, but it shall be acknowledged by the person 13 processing the form. The affidavit shall state clearly and in 14 bold print the following: "Any false affidavit is a crime under 15 section 575.050 of Missouri law.". In addition, every motor vehicle owner shall show proof of such financial responsibility 16 17 by presenting his or her insurance identification card, as 18 described in section 303.024, or a copy thereof, or some other 19 proof of financial responsibility in the form prescribed by the 20 director of revenue at the time of registration unless such owner registers his vehicle in conjunction with a reciprocity agreement 21 22 entered into by the Missouri highway reciprocity commission pursuant to sections 301.271 to 301.279, RSMo, or unless the 23 24 owner insures the vehicle according to the requirements of the 25 division of motor carrier and railroad safety pursuant to section 26 390.126, RSMo.
 - 3. To ensure compliance with this chapter, the director may utilize a variety of sampling techniques including but not

limited to random samples of registrations subject to this section, uniform traffic tickets, insurance information provided to the director at the time of motor vehicle registration, and persons who during the preceding year have received a disposition of court-ordered supervision or suspension. The director may verify the financial responsibility of any person sampled or reported.

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- Beginning January 1, 2001, the director may require 8 9 such information, as in his or her discretion is necessary to 10 enforce the requirements of subdivision (1) of subsection 1 of 11 this section, to be submitted from the person's insurer or 12 insurance company. When requested by the director of revenue, 13 all licensed insurance companies in this state which sell private passenger (noncommercial) motor vehicle insurance policies shall 15 report information regarding the issuance, nonrenewal and cancellation of such policies to the director, excluding policies 16 issued to owners of fleet or rental vehicles or issued on 17 18 vehicles that are insured pursuant to a commercial line policy. 19 Such information shall be reported electronically in a format as 20 prescribed by the director of the department of revenue by rule except that such rule shall provide for an exemption from 21 22 electronic reporting for insurers with a statistically 23 insignificant number of policies in force.
 - The director may require the data described in subsection 2 of section 303.412 to be reported by insurance companies and require reporting periods of at least once per When required by the director of revenue, each insurance month. company shall provide to the department a record of each policy

- 1 issued, canceled, terminated or revoked during the period since
- 2 the previous report. Nothing in this section shall prohibit
- 3 insurance companies from reporting more frequently than once per
- 4 month.
- 5 (3) The director may use reports described in subdivision
- 6 (1) of this subsection for sampling purposes as provided in this
- 7 section.
- 4. Information provided to the department by an insurance
- 9 company for use in accordance with this section is the property
- of the insurer and is not subject to disclosure pursuant to
- 11 chapter 610, RSMo. Such information may be utilized by the
- department for enforcement of this chapter but may not be
- disclosed except that the department shall disclose whether an
- individual is maintaining the required insurance coverage upon
- request of the following individuals and agencies only:
- 16 (1) The individual;
- 17 (2) The parent or legal guardian of an individual if the
- individual is an unemancipated minor;
- 19 (3) The legal guardian of the individual if the individual
- 20 is legally incapacitated;
- 21 (4) Any person who has power of attorney from the
- 22 individual;
- 23 (5) Any person who submits a notarized release from the
- 24 individual that is dated no more than ninety days before the
- 25 request is made;
- 26 (6) Any person claiming loss or injury in a motor vehicle
- 27 accident in which the individual is involved;
- 28 (7) The office of the state auditor, for the purpose of

conducting any audit authorized by law.

- 5. The director, after consultation with the working group as provided for in section 303.406, may adopt any rules and regulations necessary to carry out the provisions of subdivisions (1) through (3) of subsection 3 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2000, shall be invalid and void.
- 6. Any person or agency who knowingly discloses information received from insurance companies pursuant to this section for any purpose, or to a person, other than those authorized in this section is guilty of a class A misdemeanor. No insurer shall be liable to any person for performing its duties pursuant to this section unless and to the extent the insurer commits a willful and wanton act of omission.
- 7. The department of revenue shall notify the department of insurance, financial and professional regulation of any insurer who violates any provisions of this section. The department of insurance, financial and professional regulation may, against any insurer who knowingly fails to comply with this section, assess

an administrative penalty up to five hundred dollars per day of noncompliance. The department of insurance, financial and professional regulation may excuse the administrative penalty if an assessed insurer provides acceptable proof that such insurer's noncompliance was inadvertent, accidental or the result of excusable neglect. The penalty provisions of this section shall become effective six months after the rule issued pursuant to subsections 3 and 5 of this section is published in the code of state regulations.

- 8. To verify that financial responsibility is being maintained, the director shall notify the owner or operator of the need to provide, within fifteen days, proof of the existence of the required financial responsibility. The request shall require the owner or the operator to state whether or not the motor vehicle was insured on the verification date stated in the director's request. The request may include but not be limited to a statement of the names and addresses of insurers, policy numbers and expiration date of insurance coverage. Failure to provide such information shall result in the suspension of the registration of the owner's motor vehicle, and where applicable, the owner's or the operator's driving privilege, for failing to meet such requirements, as is provided in this chapter.
- 303.406. 1. The "Motorist Insurance Identification

 Database" is hereby created for the purpose of establishing a

 database to use to verify compliance with the motor vehicle

 financial responsibility requirements of this chapter. The

 program shall be administered by the department and shall receive

 funding from the "Motorist Insurance Identification Database

July 1, 2002, the state treasurer shall credit to and deposit in the motorist insurance identification database fund six percent

Fund", which is hereby created in the state treasury. Effective

- 4 of the net general revenue portion received from collections of
- 5 the insurance premiums tax levied and collected pursuant to
- 6 sections 148.310 to 148.461, RSMo.

- 7 2. To implement the program, the department may by July 1, 8 2002, contract with a designated agent which shall monitor
- 9 compliance with the motor vehicle financial responsibility
- 10 requirements of this chapter, except that the program shall not
- 11 be implemented to notify owners of registered motor vehicles
- 12 until the department certifies that the accuracy rate of the
- 13 program exceeds ninety-five percent in correctly identifying
- 14 owners of registered motor vehicles as having maintained or
- 15 failed to maintain financial responsibility. After the
- department has entered into a contract with a designated agent,
- 17 the department shall convene a working group for the purpose of
- 18 facilitating the implementation of the program.
- 19 3. The designated agent, using its own computer network,
- shall, no later than December 31, 2002, develop, deliver and
- 21 maintain a computer database with information provided by:
- 22 (1) Insurers, pursuant to sections 303.400 to 303.415;
- except that, any person who qualifies as self-insured pursuant to
- 24 this chapter, or provides proof of insurance to the director
- 25 pursuant to the provisions of section 303.160, shall not be
- required to provide information to the designated agent, but the
- 27 state shall supply these records to the designated agent for
- inclusion in the database; and

1 (2) The department, which shall provide the designated
2 agent with the name, date of birth and address of all persons in
3 its computer database, and the make, year and vehicle
4 identification number of all registered motor vehicles.

- 4. The department shall establish guidelines for the designated agent's development of the computer database so the database can be easily accessed by state and local law enforcement agencies within procedures already established, and shall not require additional computer keystrokes or other additional procedures by dispatch or law enforcement personnel. Once the database is operational, the designated agent shall, at least monthly, update the database with information provided by insurers and the department, and compare then-current motor vehicle registrations against the database.
 - 5. Information provided to the designated agent by insurers and the department for inclusion in the database established pursuant to this section is the property of the insurer or the department, as the case may be, and is not subject to disclosure pursuant to chapter 610, RSMo. Such information may not be disclosed except as follows:
 - (1) The designated agent shall verify a person's insurance coverage upon request by any state or local government agency investigating, litigating or enforcing such person's compliance with the motor vehicle financial responsibility requirements of this chapter;
 - (2) The department shall disclose whether an individual is maintaining the required insurance coverage upon request of the following individuals and agencies only:

1 (a) The individual;

- 2 (b) The parent or legal guardian of an individual if the
- 3 individual is an unemancipated minor;
- 4 (c) The legal guardian of the individual if the individual 5 is legally incapacitated;
- 6 (d) Any person who has power of attorney from the individual:
 - (e) Any person who submits a notarized release from the individual that is dated no more than ninety days before the request is made;
- 11 (f) Any person claiming loss or injury in a motor vehicle 12 accident in which the individual is involved;
 - (g) The office of the state auditor, for the purpose of conducting any audit authorized by law.
 - 6. Any person or agency who knowingly discloses information from the database for any purpose, or to a person, other than those authorized in this section is guilty of a class A misdemeanor. The state shall not be liable to any person for gathering, managing or using information in the database pursuant to this section. The designated agent shall not be liable to any person for performing its duties pursuant to this section unless and to the extent such agent commits a willful and wanton act or omission or is negligent. The designated agent shall be liable to any insurer damaged by the designated agent's negligent failure to protect the confidentiality of the information and data disclosed by the insurer to the designated agent. The designated agent shall provide to this state an errors and omissions insurance policy covering such agent in an appropriate

- amount. No insurer shall be liable to any person for performing its duties pursuant to this section unless and to the extent the insurer commits a willful and wanton act of omission.
- The department shall review the operation and performance of the motorist insurance identification database program to determine whether the number of uninsured motorists has declined during the first three years following implementation and shall submit a report of its findings to the general assembly no later than January fifteenth of the year following the third complete year of implementation. department shall make copies of its report available to each member of the general assembly.
 - 8. This section shall not supersede other actions or penalties that may be taken or imposed for violation of the motor vehicle financial responsibility requirements of this chapter.

- 9. The working group as provided for in subsection 2 of this section shall consist of representatives from the insurance industry, department of insurance, financial and professional regulation, department of public safety and the department of revenue. The director of revenue, after consultation with the working group, shall promulgate any rules and regulations necessary to administer and enforce this section. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.
- 303.412. 1. Beginning March 1, 2003, before the seventh working date of each calendar month, all licensed insurance companies in this state shall provide to the designated agent a

- 1 record of all policies in effect on the last day of the preceding
- 2 month. This subsection shall not prohibit more frequent
- 3 reporting.

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- 4 2. The record pursuant to subsection 1 of this section
- 5 shall include the following:

of excusable neglect.

- 6 (1) The name, date of birth, driver's license number and address of each insured:
 - (2) The make, year and vehicle identification number of each insured motor vehicle;
- 10 (3) The policy number and effective date of the policy.
- 11 The department of revenue shall notify the department of 12 insurance, financial and professional regulation of any insurer 13 who violates any provisions of this act. The department of 14 insurance may, against any insurer who fails to comply with this 15 section, assess a fine not greater than one thousand dollars per day of noncompliance. The department of revenue may assess a 16 17 fine not greater than one thousand dollars per day against the 18 designated agent for failure to complete the project by the dates 19 designated in sections 303.400 to 303.415 unless the delay is 20 deemed beyond the control of the designated agent or the 21 designated agent provides acceptable proof that such a 22 noncompliance was inadvertent, accidental or the result of 23 excusable neglect. The department of insurance, financial and 24 professional regulation shall excuse the fine against any insurer if an assessed insurer provides acceptable proof that such 25
- 28 319.131. 1. Any owner or operator of one or more petroleum

insurer's noncompliance was inadvertent, accidental or the result

- 1 storage tanks may elect to participate in the petroleum storage
- 2 tank insurance fund to partially meet the financial
- 3 responsibility requirements of sections 319.100 to 319.137.
- 4 Subject to regulations of the board of trustees, owners or
- 5 operators may elect to continue their participation in the fund
- 6 subsequent to the transfer of their property to another party.
- 7 Current or former refinery sites or petroleum pipeline or marine
- 8 terminals are not eligible for participation in the fund.
- 9 2. The board shall establish an advisory committee which
- shall be composed of insurers and owners and operators of
- 11 petroleum storage tanks. The advisory committee established
- 12 pursuant to this subsection shall report to the board. The
- 13 committee shall monitor the fund and recommend statutory and
- 14 administrative changes as may be necessary to assure efficient
- 15 operation of the fund. The committee, in consultation with the
- board and the department of insurance, financial and professional
- 17 regulation, shall annually report to the general assembly on the
- availability and affordability of the private insurance market as
- 19 a viable method of meeting the financial responsibilities
- 20 required by state and federal law in lieu of the petroleum
- 21 storage tank insurance fund.
- 22 3. (1) Except as otherwise provided by this section, any
- 23 person seeking to participate in the insurance fund shall submit
- 24 an application to the board of trustees and shall certify that
- 25 the petroleum tanks meet or exceed and are in compliance with all
- 26 technical standards established by the United States
- 27 Environmental Protection Agency, except those standards and
- 28 regulations pertaining to spill prevention control and

counter-measure plans, and rules established by the Missouri 1 2 department of natural resources and the Missouri department of agriculture. The applicant shall submit proof that the applicant 3 has a reasonable assurance of the tank's integrity. Proof of 5 tank integrity may include but not be limited to any one of the 6 following: tank tightness test, electronic leak detection, 7 monitoring wells, daily inventory reconciliation, vapor test or any other test that may be approved by the director of the 8 9 department of natural resources or the director of the department 10 of agriculture. The applicant shall submit evidence that the 11 applicant can meet all applicable financial responsibility 12 requirements of this section.

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A creditor, specifically a person who, without participating in and not otherwise primarily engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily for the purpose of, or in connection with, securing payment or performance of a loan or to protect a security interest in or lien on the tank or the property where the tank is located, or serves as trustee or fiduciary upon transfer or receipt of the property, may be a successor in interest to a debtor pursuant to this section, provided that the creditor gives notice of the interest to the insurance fund by certified mail, return receipt requested. Part of such notice shall include a copy of the lien, including but not limited to a security agreement or a deed of trust as appropriate to the property. term "successor in interest" as provided in this section means a creditor to the debtor who had qualified real property in the insurance fund prior to the transfer of title to the creditor,

- and the term is limited to access to the insurance fund. 1 2 creditor may cure any of the debtor's defaults in payments 3 required by the insurance fund, provided the specific real property originally qualified pursuant to this section. creditor, or the creditor's subsidiary or affiliate, who 5 6 forecloses or otherwise obtains legal title to such specific real 7 property held as collateral for loans, guarantees or other credit, and which includes the debtor's aboveground storage tanks 8 9 or underground storage tanks, or both such tanks shall provide 10 notice to the fund of any transfer of creditor to subsidiary or 11 affiliate. Liability pursuant to sections 319.100 to 319.137 12 shall be confined to such creditor or such creditor's subsidiary 13 or affiliate. A creditor shall apply for a transfer of coverage 14 and shall present evidence indicating a lien, contractual right, 15 or operation of law permitting such transfer, and may utilize the creditor's affiliate or subsidiary to hold legal title to the 16 17 specific real property taken in satisfaction of debts. Creditors 18 may be listed as insured or additional insured on the insurance 19 fund, and not merely as mortgagees, and may assign or otherwise 20 transfer the debtor's rights in the insurance fund to the creditor's affiliate or subsidiary, notwithstanding any 21 22 limitations in the insurance fund on assignments or transfer of 23 the debtor's rights.
 - (3) Any person participating in the fund shall annually submit an amount established pursuant to subsection 1 of section 319.133 which shall be deposited to the credit of the petroleum storage tank insurance fund.

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4. Any person making a claim pursuant to this section and

sections 319.129 and 319.133 shall be liable for the first ten 1 2 thousand dollars of the cost of cleanup associated with a release from a petroleum storage tank without reimbursement from the 3 The petroleum storage tank insurance fund shall assume all costs, except as provided in subsection 5 of this section, which 5 6 are greater than ten thousand dollars but less than one million 7 dollars per occurrence or two million dollars aggregate per year. The liability of the petroleum storage tank insurance fund is not 8 the liability of the state of Missouri. The provisions of 9 10 sections 319.100 to 319.137 shall not be construed to broaden the 11 liability of the state of Missouri beyond the provisions of 12 sections 537.600 to 537.610, RSMo, nor to abolish or waive any 13 defense which might otherwise be available to the state or to any The presence of existing contamination at a site where a 14 15 person is seeking insurance in accordance with this section shall not affect that person's ability to participate in this program, 16 17 provided the person meets all other requirements of this section. 18 Any person who qualifies pursuant to sections 319.100 to 319.137 19 and who has requested approval of a project for remediation from 20 the fund, which request has not yet been decided upon shall annually be sent a status report including an estimate of when 21 22 the project may expect to be funded and other pertinent 23 information regarding the request.

5. The fund shall provide coverage for third-party claims involving property damage or bodily injury caused by leaking petroleum storage tanks whose owner or operator is participating in the fund at the time the release occurs or is discovered. Coverage for third-party bodily injury shall not exceed one

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- 1 million dollars per occurrence. Coverage for third-party
- 2 property damage shall not exceed one million dollars per
- 3 occurrence. The fund shall not compensate an owner or operator
- 4 for repair of damages to property beyond that required to contain
- 5 and clean up a release of a regulated substance or compensate an
- 6 owner or operator or any third party for loss or damage to other
- 7 property owned or belonging to the owner or operator, or for any
- 8 loss or damage of an intangible nature, including, but not
- 9 limited to, loss or interruption of business, pain and suffering
- of any person, lost income, mental distress, loss of use of any
- 11 benefit, or punitive damages.
- 12 6. The fund shall, within limits specified in this section,
- assume costs of third-party claims and cleanup of contamination
- caused by releases from petroleum storage tanks. The fund shall
- provide the defense of eligible third-party claims including the
- 16 negotiations of any settlement.
- 7. Nothing contained in sections 319.100 to 319.137 shall
- be construed to abrogate or limit any right, remedy, causes of
- 19 action, or claim by any person sustaining personal injury or
- 20 property damage as a result of any release from any type of
- 21 petroleum storage tank, nor shall anything contained in sections
- 22 319.100 to 319.137 be construed to abrogate or limit any
- liability of any person in any way responsible for any release
- from a petroleum storage tank or any damages for personal injury
- or property damages caused by such a release.
- 26 8. (1) The fund shall provide moneys for cleanup of
- 27 contamination caused by releases from petroleum storage tanks,
- the owner or operator of which is participating in the fund or

- the owner or operator of which has made application for 1
- 2 participation in the fund by December 31, 1997, regardless of
- when such release occurred, provided that those persons who have 3
- made application are ultimately accepted into the fund.
- Applicants shall not be eligible for fund benefits until they are 5
- 6 accepted into the fund. This section shall not preclude the
- 7 owner or operator of petroleum storage tanks coming into service
- after December 31, 1997, from making application to and 8

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- participating in the petroleum storage tank insurance fund. 9
 - Notwithstanding the provisions of section 319.100 and the provisions of subdivision (1) of this section, the fund shall provide moneys for cleanup of contamination caused by releases from petroleum storage tanks owned by school districts all or part of which are located in a county of the third classification without a township form of government and having a population of more than ten thousand seven hundred but less than eleven thousand inhabitants, and which make application for
- 17
- 18 participation in the fund by August 28, 1999, regardless of when
- 19 such release occurred. Applicants shall not be eligible for fund
- 20 benefits until they are accepted into the fund, and costs
- incurred prior to that date shall not be eligible expenses. 21
 - The fund shall provide moneys for cleanup of contamination caused by releases from underground storage tanks which contained petroleum and which have been taken out of use prior to December 31, 1997, provided such sites have been documented by or reported to the department of natural resources prior to December 31, 1997, and provided further that the fund
- 28 shall make no reimbursements for expenses incurred prior to

- 1 August 28, 1995. The fund shall also provide moneys for cleanup
- of contamination caused by releases from underground storage
- 3 tanks which contained petroleum and which have been taken out of
- 4 use prior to December 31, 1985, if the current owner of the real
- 5 property where the tanks are located purchased such property
- 6 before December 31, 1985, provided such sites are reported to the
- fund on or before June 30, 2000. The fund shall make no payment
- 8 for expenses incurred at such sites prior to August 28, 1999.
- 9 Nothing in sections 319.100 to 319.137 shall affect the validity
- of any underground storage tank fund insurance policy in effect
- 11 on August 28, 1996.
- 12 (2) An owner or operator who submits a request as provided
- in this subsection is not required to bid the costs and expenses
- 14 associated with professional environmental engineering services.
- The board may disapprove all or part of the costs and expenses
- associated with the environmental engineering services if the
- 17 costs are excessive based upon comparable service costs or
- 18 current market value of similar services. The owner or operator
- 19 shall solicit bids for actual remediation and cleanup work as
- 20 provided by rules of the board.
- 21 10. The fund shall provide moneys for cleanup of
- 22 contamination caused by releases from aboveground storage tanks
- utilized for the sale of products regulated by chapter 414, RSMo,
- 24 which have been taken out of use prior to December 31, 1997,
- 25 provided such sites have been documented by or reported to the
- department of natural resources prior to December 31, 1997, and
- 27 provided further that the fund shall make no reimbursements for
- 28 expenses incurred prior to July 1, 1997.

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           320.082. Every insurance company doing the business of fire
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      insurance within this state which shall have reason to believe
      that any fire loss reported to it is the result of arson or
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      incendiarism shall forthwith report the same along with all
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      relevant facts thereof to the prosecuting or circuit attorney of
      the city or county in which said fire loss occurred and the
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     prosecuting or circuit attorney shall acknowledge receipt. The
     prosecuting or circuit attorney shall give notification of
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      receipt and shall provide such report, upon request, to the state
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      fire marshal, the [division] department of insurance, financial
     and professional regulation and the law enforcement agency having
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     jurisdiction over the fire loss.
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          324.001. 1. For the purposes of this section, the
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     following terms mean:
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          (1) "Department", the department of insurance, financial
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     and professional regulation;
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          (2) "Director", the director of the division of
     professional registration; and
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      (3) "Division", the division of professional registration.
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          2. There is hereby established a "Division of Professional
     Registration" assigned to the department of insurance, financial
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     and professional regulation as a type III transfer, headed by a
     director appointed by the governor with the advice and consent of
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     the senate. All of the general provisions, definitions and
     powers enumerated in section 1 of the Omnibus State
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     Reorganization Act of 1974 and Executive Order 6-04 shall apply
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     to this department and its divisions, agencies and personnel.
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3. The director of the division of professional

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registration shall promulgate rules and regulations which
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      designate for each board or commission assigned to the division
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      the renewal date for licenses or certificates. After the initial
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      establishment of renewal dates, no director of the division shall
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      promulgate a rule or regulation which would change the renewal
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      date for licenses or certificates if such change in renewal date
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      would occur prior to the date on which the renewal date in effect
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      at the time such new renewal date is specified next occurs. Each
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      board or commission shall by rule or regulation establish
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      licensing periods of one, two, or three years. Registration fees
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      set by a board or commission shall be effective for the entire
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      licensing period involved, and shall not be increased during any
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      current licensing period. Persons who are required to pay their
      first registration fees shall be allowed to pay the pro rata
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      share of such fees for the remainder of the period remaining at
      the time the fees are paid. Each board or commission shall
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      provide the necessary forms for initial registration, and
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      thereafter the director may prescribe standard forms for renewal
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      of licenses and certificates. Each board or commission shall by
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      rule and regulation require each applicant to provide the
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      information which is required to keep the board's records
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      current. Each board or commission shall issue the original
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      license or certificate.
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          4. The division shall provide clerical and other staff
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      services relating to the issuance and renewal of licenses for all
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      the professional licensing and regulating boards and commissions
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      assigned to the division. The division shall perform the
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      financial management and clerical functions as they each relate
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- 1 <u>to issuance and renewal of licenses and certificates. "Issuance</u>
- 2 and renewal of licenses and certificates" means the ministerial
- 3 <u>function of preparing and delivering licenses or certificates</u>,
- 4 and obtaining material and information for the board or
- 5 commission in connection with the renewal thereof. It does not
- 6 include any discretionary authority with regard to the original
- 7 review of an applicant's qualifications for licensure or
- 8 certification, or the subsequent review of licensee's or
- 9 <u>certificate holder's qualifications</u>, or any disciplinary action
- 10 contemplated against the licensee or certificate holder. The
- division may develop and implement microfilming systems and
- 12 <u>automated or manual management information systems.</u>
- 13 5. The director of the division shall maintain a system of
- 14 accounting and budgeting, in cooperation with the director of the
- department, the office of administration, and the state auditor's
- office, to ensure proper charges are made to the various boards
- for services rendered to them. The general assembly shall
- appropriate to the division and other state agencies from each
- board's funds, moneys sufficient to reimburse the division and
- 20 other state agencies for all services rendered and all facilities
- and supplies furnished to that board.
- 22 6. For accounting purposes, the appropriation to the
- 23 division and to the office of administration for the payment of
- 24 rent for quarters provided for the division shall be made from
- 25 <u>the "Professional Registration Fees Fund", which is hereby</u>
- created, and is to be used solely for the purpose defined in
- 27 subsection 5 of this section. The fund shall consist of moneys
- deposited into it from each board's fund. Each board shall

contribute a prorated amount necessary to fund the division for 1 2 services rendered and rent based upon the system of accounting 3 and budgeting established by the director of the division as provided in subsection 5 of this section. Transfers of funds to 4 5 the professional registration fees fund shall be made by each 6 board on July first of each year; provided, however, that the 7 director of the division may establish an alternative date or 8 dates of transfers at the request of any board. Such transfers shall be made until they equal the prorated amount for services 9 rendered and rent by the division. The provisions of section 10 11 33.080, RSMo, to the contrary notwithstanding, money in this fund 12 shall not be transferred and placed to the credit of general 13 revenue. 7. The director of the division shall be responsible for 14 15 collecting and accounting for all moneys received by the division or its component agencies. Any money received by a board or 16 commission shall be promptly given, identified by type and 17 18 source, to the director. The director shall keep a record by 19 board and state accounting system classification of the amount of 20 revenue the director receives. The director shall promptly 21 transmit all receipts to the department of revenue for deposit in 22 the state treasury to the credit of the appropriate fund. The 23 director shall provide each board with all relevant financial 24 information in a timely fashion. Each board shall cooperate with 25 the director by providing necessary information. 26 8. All educational transcripts, test scores, complaints, 27 investigatory reports, and information pertaining to any person

who is an applicant or licensee of any agency assigned to the

- 1 division of professional registration by statute or by the
- 2 department are confidential and may not be disclosed to the
- 3 public or any member of the public, except with the written
- 4 consent of the person whose records are involved. The agency
- 5 which possesses the records or information shall disclose the
- 6 records or information if the person whose records or information
- 7 is involved has consented to the disclosure. Each agency is
- 8 entitled to the attorney-client privilege and work-product
- 9 privilege to the same extent as any other person. Provided,
- 10 however, that any board may disclose confidential information
- 11 without the consent of the person involved in the course of
- 12 <u>voluntary interstate exchange of information, or in the course of</u>
- any litigation concerning that person, or pursuant to a lawful
- 14 request, or to other administrative or law enforcement agencies
- acting within the scope of their statutory authority.
- 16 Information regarding identity, including names and addresses,
- 17 registration, and currency of the license of the persons
- 18 possessing licenses to engage in a professional occupation and
- the names and addresses of applicants for such licenses is not
- 20 confidential information.
- 9. Any deliberations conducted and votes taken in rendering
- 22 a final decision after a hearing before an agency assigned to the
- 23 <u>division shall be closed to the parties and the public. Once a</u>
- final decision is rendered, that decision shall be made available
- 25 to the parties and the public.
- 26 10. (1) The following boards and commissions are assigned
- 27 by specific type transfers to the division of professional
- 28 registration: Missouri state board of accountancy, chapter 326,

- 1 RSMo; board of cosmetology and barber examiners, chapters 328 and
- 2 329, RSMo; state board of registration for architects,
- 3 professional engineers and professional land surveyors and
- 4 landscape architects, chapter 327, RSMo; state board of
- 5 chiropractic examiners, chapter 331, RSMo; state board of
- 6 registration for the healing arts, chapter 334, RSMo; Missouri
- 7 dental board, chapter 332, RSMo; state board of embalmers and
- 8 funeral directors, chapter 333, RSMo; state board of optometry,
- 9 chapter 336, RSMo; state board of nursing, chapter 335, RSMo;
- 10 board of pharmacy, chapter 338, RSMo; state board of podiatry,
- chapter 330, RSMo; Missouri real estate commission, chapter 339,
- 12 RSMo; and Missouri veterinary medical board chapter 340, RSMo.
- 13 The governor shall appoint members of these boards by and with
- 14 <u>the advice and consent of the senate.</u>
- 15 (2) The boards and commissions assigned to the division
- shall exercise all their respective statutory duties and powers,
- 17 except those clerical and other staff services involving
- 18 collecting and accounting for moneys and financial management
- 19 relating to the issuance and renewal of licenses, which services
- shall be provided by the division, within the appropriation
- 21 therefor. All clerical and other staff services pertaining to
- 22 collecting and accounting for moneys and to financial management
- 23 <u>relative to the issuance and renewal of licenses of the</u>
- 24 individual boards and commissions are abolished. Nothing herein
- 25 <u>shall prohibit employment of professional examining or testing</u>
- 26 services from professional associations or others as required by
- 27 the boards or commissions on contract. Nothing herein shall be
- 28 construed to affect the power of a board or commission to expend

- 1 <u>its funds as appropriated.</u> However, the division shall review
- 2 the expense vouchers of each board. The results of such review
- 3 shall be submitted to the board reviewed and to the house and
- 4 senate appropriations committees annually.
- 5 (3) Notwithstanding any other provisions of law, the
- 6 director of the division shall exercise only those management
- 7 <u>functions of the boards and commissions specifically provided in</u>
- 8 the Reorganization Act of 1974, and those relating to the
- 9 <u>allocation and assignment of space</u>, personnel other than board
- 10 personnel, and equipment.
- 11 (4) "Board personnel", as used in this section or chapters
- 12 317, 324, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336,
- 13 337, 338, 339, 340, and 345, RSMo, shall mean personnel whose
- 14 functions and responsibilities are in areas not related to the
- 15 clerical duties involving the issuance and renewal of licenses,
- to the collecting and accounting for moneys, or to financial
- 17 management relating to issuance and renewal of licenses;
- specifically included are executive secretaries (or comparable
- 19 positions), consultants, inspectors, investigators, counsel, and
- secretarial support staff for these positions; and such other
- 21 positions as are established and authorized by statute for a
- 22 particular board or commission. Boards and commissions may retain
- legal counsel or representation as authorized by law or by
- 24 agreement with the attorney general or with the director of the
- department, who may employ such personnel or make agreement with
- 26 private counsel. Boards and commissions may employ temporary
- 27 personnel if the board is unable to meet its responsibilities
- with the employees authorized above. Any board or commission

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1 which hires temporary employees shall annually provide the
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- 2 division director and the appropriation committees of the general
- 3 assembly with a complete list of all persons employed in the
- 4 previous year, the length of their employment, the amount of
- 5 their remuneration and a description of their responsibilities.
- 6 (5) Board personnel for each board or commission shall be
- 7 employed by and serve at the pleasure of the board or commission,
- 8 shall be supervised as the board or commission designates, and
- 9 shall have their duties and compensation prescribed by the board
- or commission, within appropriations for that purpose, except
- that compensation for board personnel shall not exceed that
- 12 <u>established for comparable positions as determined by the board</u>
- or commission pursuant to the job and pay plan of the department
- of insurance, financial and professional regulation. Nothing
- herein shall be construed to permit salaries for any board
- 16 personnel to be lowered except by board action.
- 17 11. All the powers, duties and functions of the division of
- 18 athletics, chapter 317, RSMo, and others, are assigned by type I
- 19 transfer to the division of professional registration.
- 20 12. Wherever the laws, rules or regulations of this state
- 21 make reference to the "division of professional registration of
- 22 the department of economic development", such references shall be
- 23 deemed to refer to the division of professional registration.
- 24 324.002. Each board or commission shall receive complaints
- concerning its licensees' business or professional practices.
- 26 Each board or commission shall establish by rule a procedure for
- 27 the handling of such complaints prior to the filing of formal
- 28 complaints before the administrative hearing commission. The

rule shall provide, at a minimum, for the logging of each 1 2 complaint received, the recording of the licensee's name, the name of the complaining party, the date of the complaint, and a 3 4 brief statement of the complaint and its ultimate disposition. 5 The rule shall provide for informing the complaining party of the 6 progress of the investigation, the dismissal of the charges or 7 the filing of a complaint before the administrative hearing 8 commission. 324.015. The director of the division of professional 9 10 registration shall establish by rule the compensation amount for 11 each member of the boards and committees in the division of 12 professional registration. Each member shall receive as 13 compensation for their services an amount not to exceed one hundred dollars per day while discharging their duties, and shall 14 15 be entitled to receive their necessary traveling and other expenses incurred while actually engaged in the performance of 16 17 their duties as such members. 18 324.016. No new licensing activity or other statutory 19 requirements assigned to the division of professional 20 registration shall become effective until expenditures or personnel are specifically appropriated for the purpose of 21 22 conducting the business as required and the initial rules filed, if appropriate, have become effective. The director of the 23 24 division of professional registration shall have the authority to borrow funds from any agency within the division to commence 25 26 operations upon appropriation for such purpose. This authority 27 shall cease at such time that a sufficient fund has been

established by the agency to fund its operations and repay the

- 1 amount borrowed.
- 2 324.017. 1. Contrary provisions of the law
- 3 notwithstanding, no complaint, investigatory report or
- 4 information received from any source must be disclosed prior to
- 5 <u>its review by the appropriate agency.</u>
- 6 <u>2. At its discretion an agency may disclose complaints,</u>
- 7 completed investigatory reports and information obtained from
- 8 state administrative and law enforcement agencies to a licensee
- 9 <u>or license applicant in order to further an investigation or to</u>
- 10 facilitate settlement negotiations.
- 11 <u>3. Information obtained from a federal administrative or</u>
- 12 <u>law enforcement agency shall be disclosed only after the agency</u>
- has obtained written consent to the disclosure from the federal
- 14 <u>administrative or law enforcement agency.</u>
- 15 4. At its discretion an agency may disclose complaints and
- 16 investigatory reports in the course of a voluntary interstate
- 17 exchange of information, or in the course of any litigation
- 18 concerning a licensee or license applicant, or pursuant to a
- 19 lawful request, or to other state or <u>federal administrative or</u>
- 20 law enforcement agencies.
- 21 5. Except as disclosure is specifically provided above and
- in section 610.021, RSMo, deliberations, votes or minutes of
- 23 <u>closed proceedings of agencies shall not be subject to disclosure</u>
- 24 or discovery.
- 25 <u>324.021. When making appointments to the boards governed by</u>
- 26 sections 209.270 to 209.339, RSMo, sections 256.010 to 256.453,
- 27 RSMo, and chapters 317, 324, 326, 327, 328, 329, 330, 331, 332,
- 28 333, 334, 335, 336, 337, 338, 339, 340, 345, and 346, RSMo, the

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1 governor shall take affirmative action to appoint women and
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- 2 members of minority groups. In addition, the governor shall not
- 3 discriminate against or in favor of any person on the basis of
- 4 race, sex, religion, national origin, ethnic background, or
- 5 language.
- 6 324.022. Any rule or portion of a rule, as that term is
- 7 defined in section 536.010, RSMo, that is created under the
- 8 <u>authority delegated in chapters 326, 327, 328, 329, 330, 331,</u>
- 9 332, 333, 334, 335, 336, 337, 338, 339, 340, 345, and 346, RSMo,
- shall become effective only if it complies with and is subject to
- all of the provisions of chapter 536, RSMo, and, if applicable,
- section 536.028, RSMo. This section and chapter 536, RSMo, are
- nonseverable and if any of the powers vested with the general
- 14 <u>assembly pursuant to chapter 536, RSMo, to review, to delay the</u>
- 15 effective date, or to disapprove and annul a rule are
- subsequently held unconstitutional, then the grant of rulemaking
- authority and any rule proposed or adopted after August 28, 2007,
- 18 shall be invalid and void.
- 19 324.024. Notwithstanding any provision of law to the
- 20 contrary, every application for a license, certificate,
- 21 registration, or permit, or renewal of a license, certificate,
- 22 registration, or permit issued in this state shall contain the
- 23 Social Security number of the applicant. This provision shall
- 24 not apply to an original application for a license, certificate,
- 25 <u>registration</u>, or permit submitted by a citizen of a foreign
- 26 country who has never been issued a Social Security number and
- 27 who previously has not been licensed by any other state, United
- 28 States territory, or federal agency. A citizen of a foreign

- 1 country applying for licensure with the division of professional
- 2 registration shall be required to submit his or her visa or
- 3 passport identification number in lieu of the Social Security
- 4 number.
- 5 324.026. An orientation program for appointees to all
- 6 boards or commissions in the division of professional
- 7 registration shall be prepared under the direction of the
- 8 director of the division, which shall acquaint new appointees
- 9 with their duties and provide available information on subject
- 10 <u>matters of concern to the board or commission to which each</u>
- 11 <u>public member has been appointed.</u>
- 12 324.028. 1. Any public member authorized under the
- 13 provisions of sections 326.160, RSMo, 327.031, RSMo, 328.030,
- 14 RSMo, 329.190, RSMo, 330.110, RSMo, 331.090, RSMo, 332.021, RSMo,
- 333.151, RSMo, 334.120, RSMo, 335.021, RSMo, 336.130, RSMo,
- 337.050, RSMo, 338.110, RSMo, 339.120, RSMo, 340.120, RSMo, and
- 17 346.120, RSMo, who misses three consecutive regularly scheduled
- 18 meetings of the board or council on which he serves shall forfeit
- 19 his membership on that board or council. A new public member
- shall be appointed to the respective board or council by the
- 21 governor with the advice and consent of the senate.
- 22 2. Each public member authorized under the provisions of
- 23 <u>law cited in subsection 1 of this section shall, at the</u>
- 24 conclusion of each meeting of his respective board or council,
- 25 <u>make a report on that meeting to at least one major newspaper and</u>
- one major radio station which serves the city or town in which
- 27 <u>the meeting occurred.</u>
- 28 324.029. Except as otherwise specifically provided by law,

- 1 <u>no license for any occupation or profession shall be denied</u>
- 2 <u>solely on the grounds that an applicant has been previously</u>
- 3 convicted of a felony.
- 4 324.031. 1. All fees charged by each board assigned to the
- 5 division of professional registration shall be collected by that
- 6 <u>division and promptly transmitted to the department of revenue</u>
- 7 for deposit in the state treasury, credited to the proper account
- 8 as provided by law.
- 9 <u>2. The division and its component agencies shall permit any</u>
- 10 <u>licensee to submit payment for fees established by rule in the</u>
- form of personal check, money order, or cashier's check. All
- checks or money orders shall be made payable to the appropriate
- board. Any check or financial instrument which is returned to
- 14 the division or one of its agencies due to insufficient funds, a
- 15 closed account, or for other circumstances in which the check or
- 16 financial instrument is not honored may subject an individual to
- 17 additional costs, substantial penalties, or other actions by the
- division or one of its agencies. In such cases involving renewal
- 19 of licenses, the renewal license may be withheld, and if issued,
- is not valid until the appropriate fee and any additional costs
- 21 are collected. The division may require the payment of collection
- 22 costs or other expenses. The affected board may establish penalty
- fees by rule and may suspend or revoke a license if such behavior
- 24 is repetitive or the licensee fails to pay required penalty fees.
- 25 <u>3. License renewal fees are generally nonrefundable.</u>
- Overpayments or other incorrect fees may be refundable. The
- 27 division shall establish a refund reserve through the
- 28 appropriation to the professional registration fees fund.

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4. Notwithstanding any other provision of law to the
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      contrary, no board, commission or any other registration,
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      licensing or certifying agency of the division of professional
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      registration shall be required to collect or distribute any fee
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      which is required for administering any test to qualify for a
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      license, registration or certificate, if any portion of the fee
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      is to be remitted to a private testing service.
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           324.032. The division of professional registration shall
      maintain, for each board in the division, a registry of each
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      person holding a current license, permit or certificate issued by
      that board. The registry shall contain the name, Social Security
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      number and address of each person licensed or registered together
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      with other relevant information as determined by the board. The
      registry for each board shall at all times be available to the
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      board and copies shall be supplied to the board on request.
      Copies of the registry, except for the registrant's Social
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17
      Security number, shall be available from the division or the
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      board to any individual who pays the reasonable copying cost.
19
      Any individual may copy the registry during regular business
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      hours. The information in the registry shall be furnished upon
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      request to the division of child support enforcement. Questions
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      concerning the currency of license of any individual shall be
      answered, without charge, by the appropriate board. Each year
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24
      each board may publish, or cause to be published, a directory
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      containing the name and address of each person licensed or
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      registered for the current year together with any other
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      information the board deems necessary. Any expense incurred by
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      the state relating to such publication shall be charged to the
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- 1 board. An official copy of any such publication shall be filed
- 2 with the director.
- 3 324.034. 1. Notwithstanding other provisions of law, the
- 4 director of the division of professional registration may destroy
- 5 records and documents of the division or the boards in the
- 6 division at any time if such records and documents have been
- 7 photographed, microphotographed, imaged, electronically
- 8 generated, electronically recorded, photostatted, reproduced on
- 9 film or other process capable of producing a clear, accurate and
- 10 permanent copy of the original. Such film or reproducing material
- shall be of durable material and the device used to reproduce the
- 12 records, reports, returns and other related documents on film or
- material shall be such as to accurately reproduce and perpetuate
- the original records and documents in all details.
- 15 2. The reproductions so made may be used as permanent
- records of the original. When microfilm, electronic image, or a
- 17 similar reproduction is used as a permanent record by the
- director of revenue, one copy shall be stored in a fireproof
- 19 vault and other copies may be made for use by any person entitled
- 20 thereto. All reproductions shall retain the same confidentiality
- as is provided in the law regarding the original record.
- 22 3. Such photostatic copy, photograph, microphotograph,
- image, electronically generated, electronically recorded or other
- 24 process copy shall be deemed to be an original record for all
- 25 purposes, and shall be admissible in evidence in all courts or
- 26 administrative agencies. A transcript, exemplification or
- 27 certified copy of any records or documents made from such
- 28 photostatic copy, photograph, microphotograph, electronically

- 1 generated, electronically recorded or other process copy shall,
- 2 for all purposes be deemed to be a transcript, exemplification or
- 3 certified copy of the original and shall be admissible in
- 4 evidence in all courts or administrative agencies. No document
- 5 shall be admissible pursuant to this section unless the offeror
- 6 shall comply with section 490.692, RSMo, when applicable.
- 7 4. "Records and documents" include, but are not limited to,
- 8 papers, documents, facsimile information, microphotographic
- 9 process, electronically generated or electronically recorded
- image or information, deposited or filed with the division of
- 11 professional registration or any of the boards in the division.
- 12 <u>324.036.</u> Notwithstanding any other law to the contrary, the
- director of the division of professional registration is
- 14 <u>authorized to contract with third parties to collect, account for</u>
- and deposit fees on behalf of the division and licensing agencies
- 16 within the division.
- 17 324.038. 1. Whenever a board within or assigned to the
- division of professional registration, including the division
- 19 itself when so empowered, may refuse to issue a license for
- 20 reasons which also serve as a basis for filing a complaint with
- 21 <u>the administrative hearing commission seeking disciplinary action</u>
- against a holder of a license, the board, as an alternative to
- 23 <u>refusing to issue a license, may, at its discretion, issue to an</u>
- 24 applicant a license subject to probation.
- 25 2. The board shall notify the applicant in writing of the
- terms of the probation imposed, the basis therefor, and the date
- 27 <u>such action shall become effective. The notice shall also advise</u>
- 28 the applicant of the right to a hearing before the administrative

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      hearing commission, if the applicant files a complaint with the
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      administrative hearing commission within thirty days of the date
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      of delivery or mailing by certified mail of written notice of the
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      probation. If the board issues a probated license, the applicant
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      may file, within thirty days of the date of delivery or mailing
 6
      by certified mail of written notice of the probation, a written
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      complaint with the administrative hearing commission seeking
      review of the board's determination. Such complaint shall set
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9
      forth that the applicant or licensee is qualified for nonprobated
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      licensure pursuant to the laws and administrative regulations
      relating to his or her profession. Upon receipt of such
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      complaint the administrative hearing commission shall cause a
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      copy of such complaint to be served upon the board by certified
      mail or by delivery of such copy to the office of the board,
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      together with a notice of the place of and the date upon which
      the hearing on such complaint will be held. Hearings shall be
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      held pursuant to chapter 621, RSMo. The burden shall be on the
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      board to demonstrate the existence of the basis for imposing
      probation on the licensee. If no written request for a hearing
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      is received by the administrative hearing commission within the
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      thirty-day period, the right to seek review of the board's
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      decision shall be considered waived.
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           3. If the probation imposed includes restrictions or
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      limitations on the scope of practice, the license issued shall
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      plainly state such restriction or limitation. When such
      restriction or limitation is removed, a new license shall be
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      issued.
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324.039. There shall be established in each board within

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the division of professional registration, including the division
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      itself when empowered with licensing authority, which was on
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      August 28, 1998, required or authorized to revoke a license for
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      failure to submit an application for renewal, failure to provide
 5
      information required for renewal or nonpayment of the required
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      renewal fee, a classification for a licensee who, desires to
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      remove himself or herself from participating in the licensing
      system of the board or division. This classification shall be
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      distinguished from revocation of a license and from surrender of
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      a license pursuant to an agreement between the board or division
      and the licensee filed with and approved by the administrative
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      hearing commission. This classification shall not be available
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      to a licensee during the time there is an investigation of the
      licensee or the licensee's practices or during the pendency of a
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      disciplinary complaint filed with the administrative hearing
      commission. Each board within the division or the division when
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      empowered with licensing authority shall establish by rule
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      qualifications for such classification and procedures for a
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      licensee to request an inactive license as provided in this
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      section. Notwithstanding any other law to the contrary, no board
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      within the division or the division shall be required to revoke a
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      license when the licensee qualifies for the classification
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      authorized by this section, as provided by rule. An inactive
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      license authorized by this section shall be subject to the same
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      requirements for reinstatement or restoration as a lapsed,
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      expired or revoked license due to failure to renew the license.
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      This section shall not affect those boards which are otherwise
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      authorized to classify a license as inactive.
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           324.041. For the purpose of determining whether cause for
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      discipline or denial exists under the statutes of any board,
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      commission or committee within the division of professional
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      registration, any licensee, registrant, permittee or applicant
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      that test positive for a controlled substance, as defined in
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      chapter 195, RSMo, is presumed to have unlawfully possessed the
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      controlled substance in violation of the drug laws or rules and
      regulations of this state, any other state or the federal
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      government unless he or she has a valid prescription for the
      controlled substance. The burden of proof that the controlled
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      substance was not unlawfully possessed in violation of the drug
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      laws or rules and regulations of this state, any other state or
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      the federal government is upon the licensee, registrant,
14
      permittee or applicant.
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           324.042. Any board, commission or committee within the
      division of professional registration may impose additional
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      discipline when it finds after hearing that a licensee,
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      registrant or permittee has violated any disciplinary terms
19
      previously imposed or agreed to pursuant to settlement. The
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      board, commission or committee may impose as additional
      discipline, any discipline it would be authorized to impose in an
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22
      initial disciplinary hearing.
           324.043. 1. Except as provided in this section, no
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      disciplinary proceeding against any person or entity licensed,
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      registered or certified to practice a profession within the
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      division of professional registration shall be initiated unless
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      such action is commenced within three years of the date upon
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      which the licensing, registering or certifying agency received
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1 notice of an alleged violation of an applicable statute or 2 regulation. 2. For the purpose of this section, notice shall be limited 3 4 to: 5 (1) A written complaint; (2) Notice of final disposition of a malpractice claim, 6 7 including exhaustion of all extraordinary remedies and appeals; 8 (3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this 9 10 state, any other state or the federal government; 11 (4) Notice of exhaustion of all extraordinary remedies and 12 appeals in a disciplinary action by a hospital, state licensing, 13 registering or certifying agency, or an agency of the federal 14 government. 15 3. For the purposes of this section, an action is commenced when a complaint is filed by the agency with the administrative 16 17 hearing commission, any other appropriate agency or in a court; 18 or when a complaint is filed by the agency's legal counsel with 19 the agency in respect to an automatic revocation or a probation 20 violation. 4. Disciplinary proceedings based upon repeated negligence 21 22 shall be exempt from all limitations set forth in this section. 23 5. Disciplinary proceedings based upon a complaint 24 involving sexual misconduct shall be exempt from all limitations 25 set forth in this section. 6. Any time limitation provided in this section shall be 26 27 tolled:

(1) During any time the accused licensee, registrant or

- 1 certificant is practicing exclusively outside the state of
- 2 Missouri or residing outside the state of Missouri and not
- 3 practicing in Missouri;
- 4 (2) As to an individual complainant, during the time when
- 5 such complainant is less than eighteen years of age;
- 6 (3) During any time the accused licensee, registrant or
- 7 certificant maintains legal action against the agency; or
- 8 (4) When a settlement agreement is offered to the accused
- 9 licensee, registrant or certificant, in an attempt to settle such
- disciplinary matter without formal proceeding pursuant to section
- 11 <u>621.045</u>, RSMo, until the accused licensee, registrant or
- certificant rejects or accepts the settlement agreement.
- 7. The licensing agency may, in its discretion, toll any
- 14 time limitation when the accused licensee, registrant or
- 15 certificant enters into and participates in a treatment program
- 16 for chemical dependency or mental impairment.
- 17 324.050. 1. Sections 324.050 to 324.089 shall be known and
- 18 may be cited as the "Occupational Therapy Practice Act".
- 19 2. For the purposes of sections 324.050 to 324.089, the
- 20 following terms mean:
- 21 (1) "Board", the Missouri board of occupational therapy;
- 22 (2) "Certifying entity", the nongovernmental agency or
- 23 association which certifies or registers individuals who have
- 24 completed academic and training requirements;
- 25 (3) "Director", the director of the division of
- 26 professional registration;
- 27 (4) "Division", the division of professional registration
- [of the department of economic development];

- 1 (5) "Occupational therapist", a person licensed to practice 2 occupational therapy as defined in this section and whose license 3 issued pursuant to sections 324.050 to 324.089;
- "Occupational therapy", the use of purposeful activity or interventions designed to achieve functional outcomes which 5 6 promote health, prevent injury or disability and which develop, 7 improve, sustain or restore the highest possible level of independence of any individual who has an injury, illness, 8 9 cognitive impairment, psychosocial dysfunction, mental illness, 10 developmental or learning disability, physical disability or other disorder or condition. It shall include assessment by 11 12 means of skill observation or evaluation through the 13 administration and interpretation of standardized or 14 nonstandardized tests and measurements. Occupational therapy 15 services include, but are not limited to:
 - (a) The assessment and provision of treatment in consultation with the individual, family or other appropriate persons;

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- (b) Interventions directed toward developing, improving, sustaining or restoring daily living skills, including self-care skills and activities that involve interactions with others and the environment, work readiness or work performance, play skills or leisure capacities or enhancing educational performances skills;
- (c) Developing, improving, sustaining or restoring sensorimotor, oral-motor, perceptual or neuromuscular functioning; or emotional, motivational, cognitive or psychosocial components of performance; and

1 (d) Education of the individual, family or other
2 appropriate persons in carrying out appropriate interventions.

- Such services may encompass assessment of need and the design, development, adaptation, application or training in the use of assistive technology devices; the design, fabrication or application of rehabilitative technology such as selected orthotic devices, training in the use of orthotic or prosthetic devices; the application of ergonomic principles; the adaptation of environments and processes to enhance functional performance; or the promotion of health and wellness;
- (7) "Occupational therapy aide", a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant at all times and whose activities require an understanding of occupational therapy but do not require training in the basic anatomical, biological, psychological and social sciences involved in the practice of occupational therapy;
- (8) "Occupational therapy assistant", a person who is licensed as an occupational therapy assistant by the division, in collaboration with the board. The function of an occupational therapy assistant is to assist an occupational therapist in the delivery of occupational therapy services in compliance with federal regulations and rules promulgated by the division, in collaboration with the Missouri board of occupational therapy.
- 324.065. 1. The board shall elect annually a chairperson and a vice chairperson from their number.
 - 2. The division, in collaboration with the board, shall

- 1 adopt, implement, rescind, amend and administer such rules and
- 2 regulations as may be necessary to carry out the provisions of
- 3 sections 324.050 to 324.089. The division, in collaboration with
- 4 the board, may promulgate necessary rules compatible with
- 5 sections 324.050 to 324.089, including, but not limited to, rules
- 6 relating to professional conduct, continuing competency
- 7 requirements for renewal of licenses, approval of continuing
- 8 competency programs and to the establishment of ethical standards
- 9 of practice for persons holding a license or permit to practice
- 10 occupational therapy in this state.
- 11 3. The board shall convene at the request of the director
- or as the board shall determine. The board shall hold regular
- meetings at least four times per year.
- 4. Each member of the board shall receive as compensation,
- an amount set [by the division not to exceed fifty dollars per
- day,] <u>under section 324.015</u> for each day devoted to the affairs
- of the board and may be reimbursed for actual and necessary
- 18 expenses incurred in the performance of the member's official
- 19 duties.
- 20 5. No rule or portion of a rule promulgated pursuant to the
- 21 authority of sections 324.050 to 324.089 shall become effective
- 22 unless it has been promulgated pursuant to the provisions of
- 23 section 536.024, RSMo.
- 24 324.128. As used in sections 324.125 to 324.183, the
- 25 following terms mean:
- 26 (1) "Board", the state board of registration for the
- 27 healing arts;
- 28 (2) "Division", the division of professional registration

- 1 [of the department of economic development];
- 2 (3) "Extracorporeal circulation", the diversion of a
- 3 patient's blood through a heart-lung machine or a similar device
- 4 that assumes the functions of the patient's heart, lungs, kidney,
- 5 liver or other organs;
- 6 (4) "Licensed clinical perfusionist", a person licensed
- 7 pursuant to sections 324.125 to 324.183;
- 8 (5) "Perfusion", the functions necessary for the support,
- 9 treatment, measurement or supplementation of the cardiovascular,
- 10 circulatory, respiratory systems or other organs, or a
- 11 combination of such activities, and to ensure the safe management
- of physiologic functions by monitoring and analyzing the
- parameters of the systems under an order and under the
- supervision of a licensed physician, including:
- 15 (a) The use of extracorporeal circulation, long-term
- 16 cardiopulmonary support techniques including extracorporeal
- 17 carbon-dioxide removal and extracorporeal membrane oxygenation
- and associated therapeutic and diagnostic technologies;
- 19 (b) Counterpulsation, ventricular assistance,
- 20 autotransfusion, blood conservation techniques, myocardial and
- 21 organ preservation, extracorporeal life support and isolated limb
- 22 perfusion;
- 23 (c) The use of techniques involving blood management,
- 24 advanced life support and other related functions; and
- 25 (d) In the performance of the acts described in this
- 26 subdivision:

- 27 a. The administration of:
 - i. Pharmacological and therapeutic agents;

- ii. Blood products or anesthetic agents through the
- 2 extracorporeal circuit or through an intravenous line as ordered
- 3 by a physician;
- 4 b. The performance and use of:
- 5 i. Anticoagulation monitoring and analysis;
- 6 ii. Physiologic monitoring and analysis;
- 7 iii. Blood gas and chemistry monitoring and analysis;
- 8 iv. Hematologic monitoring and analysis;
- 9 v. Hypothermia and hyperthermia;
- 10 vi. Hemoconcentration and hemodilution;
- 11 vii. Hemodialysis;
- 12 c. The observation of signs and symptoms related to
- 13 perfusion services, the determination of whether the signs and
- 14 symptoms exhibit abnormal characteristics and the implementation
- of appropriate reporting, clinical perfusion protocols or changes
- in, or the initiation of, emergency procedures;
- 17 (6) "Perfusion protocols", perfusion-related policies and
- 18 protocols developed or approved by a licensed health care
- 19 facility or a physician through collaboration with
- 20 administrators, licensed clinical perfusionists and other health
- 21 care professionals;
- 22 (7) "Provisional clinical licensed perfusionist", a person
- provisionally licensed pursuant to sections 324.125 to 324.183.
- 24 324.159. The board shall:
- 25 (1) Adopt and publish a code of ethics;
- 26 (2) Establish the qualifications and fitness of applicants
- of licenses, renewal of licenses and reciprocal licenses;
- 28 (3) Revoke, suspend or deny a license, suspend a license or

- reprimand a license holder for a violation of sections 324.125 to 324.183, the code of ethics or the rules adopted by the board;
- 3 (4) Provide for the expenditure of funds necessary for the 4 proper administration of its assigned duties;

- (5) Establish reasonable and necessary fees for the administration and implementation of sections 324.125 to 324.183. Fees shall be established at a rate that does not significantly exceed the cost of administering the provisions of sections 324.125 to 324.183;
- (6) Establish continuing professional education requirements for licensed clinical perfusionists and provisional licensed clinical perfusionists, the standards of which shall be at least as stringent as those of the American Board of Cardiovascular Perfusion or its successor agency;
- (7) Within the limits of its appropriation, employ and remove board personnel, as defined in subdivision (4) of subsection [15] 10 of section [620.010] 324.001, RSMo, as may be necessary for the efficient operation of the board;
- established by the department of health and senior services through hospital licensing regulations promulgated pursuant to chapter 197, RSMo. The provisions of sections 324.125 to 324.183 to the contrary notwithstanding, the board shall not regulate a perfusionist's training, education or fitness to practice except as specifically provided by the hospital licensing regulations of the department of health and senior services. In promulgating such regulations, the department of health and senior services shall adopt the standards of the American Board of Cardiovascular

- 1 Perfusion, or its successor organization, or comparable standards
- 2 for training and experience. The department shall by rule and
- 3 regulation provide that individuals providing perfusion services
- 4 who do meet such standards may continue their employment in
- 5 accordance with section 324.130. The department shall also
- 6 establish standards for provisional licensed clinical
- 7 perfusionists pursuant to section 324.147.
- 8 324.177. 1. There is hereby established an "Advisory
- 9 Commission for Clinical Perfusionists" which shall guide, advise
- and make recommendations to the board. The commission shall
- approve the examination required by section 324.133 and shall
- 12 assist the board in carrying out the provisions of sections
- 13 324.125 to 324.183.
- 14 2. The advisory commission shall consist of five
- perfusionist members and two public members which shall be
- appointed by the governor with the advice and consent of the
- 17 senate. The members of the commission shall be appointed for
- 18 terms of six years; except those first appointed, of which one
- 19 shall be appointed for a term of one year, one shall be appointed
- for a term of two years, one shall be appointed for a term of
- 21 three years, one shall be appointed for a term of four years, one
- 22 shall be appointed for a term of five years and one shall be
- 23 appointed for a term of six years. The nonpublic commission
- 24 members shall be residents of the state of Missouri for at least
- one year, shall be United States citizens and shall meet all the
- 26 requirements for licensing provided in sections 324.125 to
- 324.183, shall be licensed pursuant to sections 324.125 to
- 324.183, except the members of the first commission, who shall be

- licensed within six months of their appointment and are actively 1 2 engaged in the practice of perfusion. If a member of the commission shall, during the member's term as a commission 3 member, remove the member's domicile from the state of Missouri, 5 then the commission shall immediately notify the governor and the seat of that commission member shall be declared vacant. All 6 7 such vacancies shall be filled by appointment as in the same 8 manner as the preceding appointment. The public members shall be at the time of the members' appointment citizens of the United 9 10 States; residents of the state for a period of at least one year 11 and registered voters; persons who are not and never were members 12 of any profession licensed or regulated pursuant to sections 13 324.125 to 324.183 or the spouse of such person; persons who do not have and never have had a material, financial interest in 14 15 either the provision of the professional services regulated by sections 324.125 to 324.183, or an activity or organization 16 17 directly related to any profession licensed or regulated by 18 sections 324.125 to 324.183.
 - 3. Notwithstanding any other provision of law to the contrary, any appointed member of the commission shall receive as compensation an amount established [by the director of the division of professional registration not to exceed seventy dollars] under section 324.015 per day for commission business plus actual and necessary expenses. The director of the division of professional registration shall establish by rule guidelines for payment. All staff for the commission shall be provided by the division of professional registration.

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4. A member of the commission may be removed if the member:

1 (1) Does not have, at the time of appointment, the 2 qualifications required for appointment to the commission;

- 3 (2) Does not maintain during service on the commission the 4 qualifications required for appointment to the commission;
 - (3) Violates any provision of sections 324.125 to 324.183;
- 6 (4) Cannot discharge the member's duties for a substantial 7 part of the term for which the member is appointed because of 8 illness or disability; or
- 9 (5) Is absent from more than half of the regularly
 10 scheduled commission meetings that the member is eligible to
 11 attend during a calendar year, unless the absence is excused by a
 12 majority vote of the commission.
- 324.200. 1. Sections 324.200 to 324.225 shall be known and may be cited as the "Dietitian Practice Act".
- 2. As used in sections 324.200 to 324.225, the following terms shall mean:
- 17 (1) "Commission on Accreditation for Dietetics Education
 18 (CADE)", the American Dietetic Association's accrediting agency
 19 for education programs preparing students for professions as
 20 registered dietitians;
- 21 (2) "Committee", the state committee of dietitians 22 established in section 324.203;
- 23 (3) "Dietetics practice", the application of principles
 24 derived from integrating knowledge of food, nutrition,
 25 biochemistry, physiology, management, and behavioral and social
 26 science to achieve and maintain the health of people by providing
 27 nutrition assessment and nutrition care services. The primary
 28 function of dietetic practice is the provision of nutrition care

- 1 services that shall include, but not be limited to:
- 2 (a) Assessing the nutrition needs of individuals and groups
- 3 and determining resources and constraints in the practice
- 4 setting;
- 5 (b) Establishing priorities, goals, and objectives that
- 6 meet nutrition needs and are consistent with available resources
- 7 and constraints;
- 8 (c) Providing nutrition counseling or education in health
- 9 and disease;
- 10 (d) Developing, implementing, and managing nutrition care
- 11 systems;
- 12 (e) Evaluating, making changes in, and maintaining
- 13 appropriate standards of quality and safety in food and in
- 14 nutrition services;
- 15 (f) Engaged in medical nutritional therapy as defined in
- 16 subdivision (8) of this section;
- 17 (4) "Dietitian", one engaged in dietetic practice as
- defined in subdivision (3) of this section;
- 19 (5) "Director", the director of the division of
- 20 professional registration [in the department of economic
- 21 development];
- 22 (6) "Division", the division of professional registration
- 23 [of economic development];
- 24 (7) "Licensed dietitian", a person who is licensed pursuant
- 25 to the provisions of sections 324.200 to 324.225 to engage in the
- 26 practice of dietetics or medical nutrition therapy;
- 27 (8) "Medical nutrition therapy", nutritional diagnostic,
- therapy, and counseling services which are furnished by a

1 registered dietitian;

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- 2 (9) "Registered dietitian", a person who:
- 3 (a) Has completed a minimum of a baccalaureate degree 4 granted by a United States regionally accredited college or 5 university or foreign equivalent;
- 6 (b) Completed the academic requirements of a didactic 7 program in dietetics, as approved by CADE;
 - (c) Successfully completed the registration examination for dietitians; and
- 10 (d) Accrued seventy-five hours of approved continuing 11 professional units every five years; as determined by the 12 committee on dietetic registration.
- 13 324.203. 1. There is hereby created within the division of professional registration, a committee to be known as the "State 14 15 Committee of Dietitians". The committee shall assist the division in administering and enforcing the provisions of 16 17 sections 324.200 to 324.225, adopt, publish, and enforce such 18 rules and regulations within the scope and purview of the 19 provisions of sections 324.200 to 324.225 as may be considered to 20 be necessary or proper for the effective administration and interpretation of the provisions of sections 324.200 to 324.225, 21 22 and for the conduct of its business and management of its 23 internal affairs.
- 24 2. The committee shall approve the examination required by section 324.210.
- 26 3. The committee shall consist of six members including one 27 public member, appointed by the governor with the advice and 28 consent of the senate. Each member of the committee shall be a

- citizen of the United States and a resident of this state, and, 1 2 except as provided in this section and except for the first members appointed, shall be licensed as a dietitian by this 3 state. Beginning with the first appointments made after August 5 28, 1998, two members shall be appointed for four years, two 6 members shall be appointed for three years and two members shall 7 be appointed for two years. Thereafter, all members shall be 8 appointed to serve four-year terms. No person shall be eligible 9 for reappointment who has served as a member of the committee for 10 a total of eight years. The membership of the committee shall 11 reflect the differences in levels of education and work 12 experience with consideration being given to race, gender, and 13 ethnic origins. No more than three members shall be from the 14 same political party. The membership shall be representative of
- 4. A vacancy in the office of a member shall be filled by appointment by the governor for the remainder of the unexpired term.

the various geographic regions of the state.

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19 Each member of the committee shall receive as 20 compensation an amount set [by the division not to exceed fifty 21 dollars,] under section 324.015 for each day devoted to the 22 affairs of the committee and shall be reimbursed for necessary and actual expenses incurred in the performance of the member's 23 24 official duties. The director[, in collaboration with the 25 department of economic development, 1 of the division of 26 professional registration shall establish by rule, quidelines for 27 payment. All staff for the committee shall be provided by the 28 division.

6. The committee shall hold an annual meeting at which it shall elect from its membership a chairperson and secretary. The committee may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least three days prior to the date of the meeting. A quorum of the committee shall consist of a majority of its members.

- 7. The governor may remove a committee member for misconduct, incompetency, neglect of the member's official duties, or for cause.
- 8. The public member shall be at the time of the person's appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated by sections 324.200 to 324.225, or the spouse of such a person; and a person who does not have and never has had a material financial interest in either the providing of the professional services regulated by sections 324.200 to 324.225, or an activity or organization directly related to any profession licensed or regulated by sections 324.200 to 324.225. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.
- 26 324.240. As used in sections 324.240 to 324.275, the following terms shall mean:
 - (1) "Board", the board of therapeutic massage;

- 1 (2) "Certified mentor", a practitioner who is qualified for
 2 license in this state pursuant to sections 324.240 to 324.275 and
 3 who has practiced professionally for five years, with an average
 4 of four hundred fifty hours per year of teaching and massage
 5 hours and who has been approved by the board as a massage therapy
 6 instructor;
 - (3) "Director", the director of the division of professional registration [of the department of economic development];

- 10 (4) "Division", the division of professional registration
 11 [of the department of economic development];
 - (5) "Massage business", any place of business in which massage therapy is practiced;
 - (6) "Massage therapist", a health care practitioner who provides or offers to provide massage therapy, as provided in sections 324.240 to 324.275, to any person at no cost or for a fee, monetary or otherwise, implying that the massage therapist is trained, experienced and licensed in massage therapy, and who holds a current, valid license to practice massage therapy;
 - (7) "Massage therapy", a health care profession which involves the treatment of the body's tonus system through the scientific or skillful touching, rubbing, pressing or other movements of the soft tissues of the body with the hands, forearms, elbows, or feet, or with the aid of mechanical apparatus, for relaxation, therapeutic, remedial or health maintenance purposes to enhance the mental and physical well-being of the client, but does not include the prescription of medication, spinal or joint manipulation, the diagnosis of

- 1 illness or disease, or any service or procedure for which a
- 2 license to practice medicine, chiropractic, physical therapy, or
- 3 podiatry is required by law, or to those occupations defined in
- 4 chapter 329, RSMo;
- 5 (8) "Massage therapy instructor", an individual who
- 6 possesses teaching credentials satisfactory to the board for the
- 7 purpose of teaching massage therapy;
- 8 (9) "Person", an individual, corporation, association or
- 9 other legal entity.
- 10 324.243. 1. There is hereby established in the division of
- 11 professional registration [in the department of economic
- development] the "Board of Therapeutic Massage" which shall
- 13 quide, advise and make recommendations to the division and
- fulfill other responsibilities designated by sections 324.240 to
- 15 324.275. The board shall approve the examination required by
- section 324.265 and shall assist the division in carrying out the
- 17 provisions of sections 324.240 to 324.275.
- 18 2. The board shall consist of seven voting members,
- 19 including one public member, and one nonvoting member, appointed
- 20 by the governor with the advice and consent of the senate. Each
- 21 member of the board shall be a citizen of the United States and a
- resident of this state and, except for the members first
- appointed, shall be licensed as a massage therapist by this
- state. The nonvoting member shall be a member of the massage
- 25 education community in the state and shall serve a four-year
- term. Beginning with the appointments made after August 28,
- 27 1998, three voting members shall be appointed for four years, two
- voting members shall be appointed for three years and two voting

- members shall be appointed for two years. Thereafter, all voting
 members shall be appointed to serve four-year terms. No person
 shall be eligible for reappointment who has served as a member of
 the board for a total of eight years. The membership of the
 board shall reflect the differences in work experience and the
 professional affiliations of therapists with consideration being
 qiven to race, gender and ethnic origins.
 - 3. A vacancy in the office of a member shall be filled by appointment by the governor for the remainder of the unexpired term.

- 4. The board shall hold an annual meeting at which it shall elect from its membership a chairperson, vice chairperson and secretary. The board may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least three days prior to the date of the meeting. A quorum of the board shall consist of a majority of its voting members.
- 5. The governor may remove a board member for misconduct, incompetence or neglect of official duties after giving the board member written notice of the charges and allowing the board member an opportunity to be heard.
- 6. The public member shall be, at the time of appointment, a citizen of the United States; a resident of this state for a period of one year and a registered voter; but may not have been a member of any profession licensed or regulated pursuant to sections 324.240 to 324.275 or an immediate family member of such a person; and may not have had a material, financial interest in either the providing of massage therapy as defined in sections

2 related to any profession licensed or regulated pursuant to

324.240 to 324.275 or in an activity or organization directly

- 3 sections 324.240 to 324.275. The duties of the public member
- 4 shall not include any determination of the technical requirements
- 5 to be met for licensure, whether a candidate for licensure meets
- 6 such technical requirements, or of the technical competence or
- 7 technical judgment of a licensee or a candidate for licensure.
- 7. The professional members shall not be officers in a
- 9 professional massage organization, nor may they be the owners or
- managers of any massage educational entity.
- 8. Notwithstanding any other provision of law to the
- 12 contrary, any appointed member of the board shall receive as
- compensation an amount established [by the director of the
- 14 division of professional registration not to exceed seventy
- dollars] <u>under section 324.015</u> per day for commission business
- 16 plus actual and necessary expenses. The director of the division
- of professional registration shall establish by rule guidelines
- 18 for payment. All staff for the board shall be provided by the
- 19 division.

- 20 324.400. As used in sections 324.400 to 324.439, the
- 21 following terms mean:
- 22 (1) "Council", the interior design council created in
- 23 section 324.406;
- 24 (2) "Department", the department of [economic development]
- 25 <u>insurance</u>, financial and professional regulation;
- 26 (3) "Division", the division of professional registration
- 27 [of the department of economic development];
- 28 (4) "Registered interior designer", a design professional

who provides services including preparation of documents and 1 2 specifications relative to nonload-bearing interior construction, furniture, finishes, fixtures and equipment and who meets the 3 criteria of education, experience and examination as provided in

sections 324.400 to 324.439.

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- 6 324.406. 1. There is hereby created within the division of 7 professional registration a council to be known as the "Interior Design Council". The council shall consist of four interior 8 9 designers and one public member appointed by the governor with 10 the advice and consent of the senate. The governor shall give 11 due consideration to the recommendations by state organizations 12 of the interior design profession for the appointment of the 13 interior design members to the council. Council members shall be appointed to serve a term of four years; except that of the 15 members first appointed, one interior design member and the public member shall be appointed for terms of four years, one 16 17 member shall be appointed for a term of three years, one member 18 shall be appointed for a term of two years and one member shall 19 be appointed for a term of one year. No member of the council 20 shall serve more than two terms.
 - Each council member, other than the public member, shall be a citizen of the United States, a resident of the state of Missouri for at least one year, meet the qualifications for professional registration, practice interior design as the person's principal livelihood and, except for the first members appointed, be registered pursuant to sections 324.400 to 324.439 as an interior designer.
 - The public member shall be, at the time of such person's

- 1 appointment, a citizen of the United States, a registered voter,
- 2 a person who is not and never was a member of the profession
- 3 regulated by sections 324.400 to 324.439 or the spouse of such a
- 4 person and a person who does not have and never has had a
- 5 material financial interest in the providing of the professional
- 6 services regulated by sections 324.400 to 324.439. The duties of
- 7 the public member shall not include the determination of the
- 8 technical requirements for the registration of persons as
- 9 interior designers. The provisions of section [620.132, RSMo,]
- 10 324.028, pertaining to public members of certain state boards and
- 11 commissions shall apply to the public member of the council.
- 4. Members of the council may be removed from office for
- cause. Upon the death, resignation or removal from office of any
- member of the council, the appointment to fill the vacancy shall
- be for the unexpired portion of the term so vacated and shall be
- 16 filled in the same manner as the first appointment and due notice
- be given to the state organizations of the interior design
- 18 profession prior to the appointment.
- 5. Each member of the council may receive as compensation
- an amount set [by the division not to exceed fifty dollars per
- 21 day under section 324.015 for each day devoted to the affairs of
- 22 the council and shall be reimbursed for the member's reasonable
- and necessary expenses incurred in the official performance of
- the member's duties as a member of the council. The director[,
- in collaboration with the department of economic development,]
- shall establish by rule, guidelines for payment.
- 27 6. The council shall meet at least twice each year and
- 28 advise the division on matters within the scope of sections

- 1 324.400 to 324.439. The organization of the council shall be 2 established by the members of the council.
- 7. The council may sue and be sued as the interior design council and the council members need not be named as parties.
- 5 Members of the council shall not be personally liable either
- 6 jointly or severally for any act committed in the performance of
- 7 their official duties as council members. No council member
- 8 shall be personally liable for any costs which accrue in any
- 9 action by or against the council.
- 10 324.475. For the purposes of sections 324.475 to 324.499,
- 11 the following terms mean:
- 12 (1) "Acupuncture", the use of needles inserted into the
- body by piercing of the skin and related modalities, for the
- 14 assessment, evaluation, prevention, treatment or correction of
- any abnormal physiology or pain by means of controlling and
- regulating the flow and balance of energy in the body so as to
- 17 restore the body to its proper functioning and state of health;
- 18 (2) "Acupuncturist", any person licensed as provided in
- sections 324.475 to 324.499, to practice acupuncture as defined
- 20 in subdivision (1) of this section;
- 21 (3) "Auricular detox technician", a person trained solely
- in, and who performs only, auricular detox treatment. An
- 23 auricular detox technician shall practice under the supervision
- of a licensed acupuncturist. Such treatment shall take place in
- a hospital, clinic or treatment facility which provides
- 26 comprehensive substance abuse services, including counseling, and
- 27 maintains all licenses and certifications necessary and
- 28 applicable;

- 1 (4) "Auricular detox treatment", a very limited procedure 2 consisting of acupuncture needles inserted into specified points 3 in the outer ear of a person undergoing treatment for drug or
 - (5) "Board", the state board of chiropractic examiners established in chapter 331, RSMo;
 - (6) "Committee", the Missouri acupuncture advisory committee;

alcohol abuse or both drug and alcohol abuse;

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- (7) "Department", the [Missouri] department of [economic development] <u>insurance</u>, <u>financial and professional regulation</u>;
- (8) "Director", the director of the division of professional registration;
- (9) "Division", the division of professional registration
 [of the department of economic development];
- 15 (10) "License", the document of authorization issued by the 16 board for a person to engage in the practice of acupuncture.
- professional registration a committee to be known as the

 "Missouri Acupuncturist Advisory Committee". The committee shall

 consist of five members, all of whom shall be citizens of the

 United States and registered voters of the state of Missouri.

324.478. 1. There is hereby created within the division of

- The governor shall appoint the members of the committee with the
- advice and consent of the senate for terms of four years; except
- 24 as provided in subsection 2 of this section. Three committee
- 25 members shall be acupuncturists. Such members shall at all times
- 26 be holders of licenses for the practice of acupuncture in this
- 27 state; except for the members of the first committee who shall
- meet the requirements for licensure pursuant to sections 324.475

- 1 to 324.499. One member shall be a current board member of the
- 2 Missouri state board for chiropractic examiners. The remaining
- 3 member shall be a public member. All members shall be chosen
- 4 from lists submitted by the director of the division of
- 5 professional registration. The president of the Acupuncture
- 6 Association of Missouri in office at the time shall, at least
- 7 ninety days prior to the expiration of the term of a board
- 8 member, other than the public member, or as soon as feasible
- 9 after a vacancy on the board otherwise occurs, submit to the
- 10 director of the division of professional registration a list of
- five acupuncturists qualified and willing to fill the vacancy in
- 12 question, with the request and recommendation that the governor
- appoint one of the five persons so listed, and with the list so
- 14 submitted, the president of the Acupuncture Association of
- 15 Missouri shall include in his or her letter of transmittal a
- description of the method by which the names were chosen by that
- 17 association.
- 18 2. The initial appointments to the committee shall be one
- 19 member for a term of one year, one member for a term of two
- years, one member for a term of three years and two members for a
- 21 term of four years.
- 22 3. The public member of the committee shall not be and
- 23 never has been a member of any profession regulated by the
- provisions of sections 324.475 to 324.499, or the spouse of any
- such person; and a person who does not have and never has had a
- 26 material financial interest in either the providing of the
- 27 professional services regulated by the provisions of sections
- 28 324.475 to 324.499 or an activity or organization directly

- related to the profession regulated pursuant to sections 324.475 to 324.499.
- 4. Any member of the committee may be removed from the
 committee by the governor for neglect of duty required by law,
 for incompetency or for unethical or dishonest conduct. Upon the
 death, resignation, disqualification or removal of any member of
 the committee, the governor shall appoint a successor. A vacancy
 in the office of any member shall only be filled for the
- 10 5. The acupuncturist advisory committee shall:
- 11 (1) Review all applications for licensure;

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unexpired term.

- 12 (2) Advise the board on all matters pertaining to the licensing of acupuncturists;
 - (3) Review all complaints and/or investigations wherein there is a possible violation of sections 324.475 to 324.499 or regulations promulgated pursuant thereto and make recommendations and referrals to the board on complaints the committee determines to warrant further action;
- 19 (4) Follow the provisions of the board's administrative 20 practice procedures in conducting all official duties;
- 21 (5) Recommend for prosecution violations of sections 22 324.475 to 324.499 to an appropriate prosecuting or circuit 23 attorney;
- 24 (6) Assist the board, as needed and when requested by the 25 board, in conducting any inquiry or disciplinary proceedings 26 initiated as a result of committee recommendation and referral 27 pursuant to subdivision (3) of this subsection.
- 28 <u>6. Each member of the advisory committee shall receive as</u>

- 1 compensation an amount established under section 324.005 for each
- 2 day devoted to the affairs of the committee, and shall be
- 3 entitled to receive their necessary traveling and other expenses
- 4 incurred while actually engaged in the performance of their
- 5 duties as such members.
- 6 324.526. 1. Notwithstanding any other law to the contrary,
- 7 the director of the division of professional registration shall
- 8 issue a temporary license to practice tattooing, body piercing,
- 9 or branding under the following requirements:
- 10 (1) The applicant for temporary licensure is entering the
- 11 state for the sole purpose of participating in a state or
- 12 national convention at which the applicant will be practicing the
- profession of tattooing, body piercing, or branding;
- 14 (2) The applicant files a completed application with the
- division at least two days prior to the start of the convention
- and tenders a fee of fifty dollars; and
- 17 (3) The applicant is otherwise qualified for licensure
- under sections 324.520 to 324.526 and the rule promulgated under
- 19 the authority of this statute.
- 20 2. A temporary license to practice tattooing, body
- 21 piercing, or branding issued under this section shall be valid
- 22 for a period not to exceed fourteen days and shall not be
- 23 renewable.
- 3. Notwithstanding the requirements of sections [620.127]
- 25 324.024 and [620.145] 324.032, RSMo, an applicant for temporary
- licensure under this section shall not be required to provide a
- 27 Social Security number if the application is submitted by a
- 28 citizen of a foreign country who has not yet been issued a Social

- 1 Security number and who previously has not been licensed by any
- other state, United States territory, or federal agency. A
- 3 citizen of a foreign country who applies for a temporary permit
- 4 under this section shall provide the division of professional
- 5 registration with his or her visa or passport identification
- 6 number in lieu of the Social Security number.
- 7 325.010. As used in sections 325.010 to 325.055, unless the
- 8 context clearly requires another meaning, the following words and
- 9 phrases mean:
- 10 (1) "Director", the director of the [division] department
- of insurance, financial and professional regulation of the state
- 12 of Missouri;
- 13 (2) "Public adjuster", any person, partnership, association
- or corporation engaging in the adjustment or settlement of claims
- for losses or damages arising out of policies of fire or allied
- lines of insurances; but does not include persons, partnerships,
- associations or corporations engaged in the adjustment or
- settlement of claims for losses or damages arising out of other
- 19 types of policies for casualty insurance; and does not include
- 20 attorneys at law; and does not include an agent or employee of an
- issuer of policies of insurance against loss or damage by fire or
- 22 allied casualty; nor to an insurance broker acting as an adjuster
- 23 without compensation for a client for whom he is acting as
- 24 broker;
- 25 (3) "Public adjuster solicitor", any person, other than
- 26 clerical employees, employed by a public adjuster who solicits or
- 27 aids in securing any contract for adjustment for a public
- 28 adjuster, or who acts for or with a public adjuster in making

1 settlements or adjustments of claims.

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2 326.265. 1. The board shall elect annually one of its members as president, one as vice president, one as secretary and 3 one as treasurer, and shall make an annual report to the governor and the general assembly. The board shall file and preserve all 5 6 written applications, petitions, complaints, charges or requests 7 made or presented to the board and all affidavits and other 8 verified documents, and shall keep accurate records and minutes 9 of its proceedings. A copy of any entry in the register, or of any records or minutes of the board, certified by the president 10 11 or secretary of the board under its seal shall constitute and

have the full force and effect of the original.

- 2. The board may employ legal counsel and board personnel as defined in subdivision (4) of subsection [15] 10 of section [620.010] 324.001, RSMo, and incur such travel and other expense as in its judgment shall be necessary for the effective administration of this chapter.
- 3. The board may also appoint a continuing education committee of not less than five members consisting of certified public accountants of this state. Such committee shall:
- (1) Evaluate continuing education programs to determine if they meet continuing education regulations adopted by the board;
- (2) Consider applications for exceptions to continuing education regulations adopted pursuant to the provisions of section 326.271; and
- 26 (3) Consider other matters regarding continuing education 27 as may be assigned by the board.
- 326.268. 1. The board may prescribe by rule the dates and

places for holding regular meetings and regulate the call, notice and holding of special meetings. Four members of the board shall constitute a quorum at any regular meeting or special meeting.

- 2. The board shall determine by rule the dates and times of examination of applicants. Examination of applicants shall be held at least twice annually. The board may determine by rule the method for publicizing the times and places of the examination. The board may require any or all applicants to appear in person before the board to answer questions regarding their qualifications and may, in the board's discretion, require evidence in support of the statements of the applicant.
- 3. The required examination shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the board may specify by rule, including but not limited to business law and taxation. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading and passing grades; provided, however, that the board shall, to the extent possible, ensure the examination, grading of the examination and the passing grades are uniform with those applicable in other states. The board may make use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform administrative services with respect to the examination as the board deems appropriate.
 - 4. The board may determine by rule the examination fee.
 - 5. Each member of the board shall receive as compensation

section 324.015, RSMo, for each day devoted to the affairs of the board, and shall be reimbursed for necessary and actual expenses incurred in the performance of the member's official duties. All claims for compensation and expenses shall be presented and

an amount set [by the board not to exceed seventy dollars] under

- allowed in open meetings of the board. No compensation or
 expenses of members of the board, its officers or employees shall
 be charged against the general funds of the state, but shall be
 paid out of the state board of accountancy fund.
- 327.011. As used in this chapter, the following words and terms shall have the meanings indicated:
 - (1) "Accredited degree program from a school of architecture", a degree from any school or other institution which teaches architecture and whose curricula for the degree in question have been, at the time in question, certified as accredited by the National Architectural Accrediting Board;
 - (2) "Accredited school of landscape architecture", any school or other institution which teaches landscape architecture and whose curricula on the subjects in question are or have been at the times in question certified as accredited by the Landscape Architecture Accreditation Board of the American Society of Landscape Architects;
 - (3) "Accredited school of engineering", any school or other institution which teaches engineering and whose curricula on the subjects in question are or have been, at the time in question certified as accredited by the engineering accreditation commission of the accreditation board for engineering and technology or its successor organization;

- 1 (4) "Architect", any person authorized pursuant to the 2 provisions of this chapter to practice architecture in Missouri, 3 as the practice of architecture is defined in section 327.091;
- 4 (5) "Board", the Missouri board for architects,
 5 professional engineers, professional land surveyors and landscape
 6 architects;
- 7 (6) "Corporation", any general business corporation, 8 professional corporation or limited liability company;

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- (7) "Department", the department of [economic development] insurance, financial and professional regulation;
- (8) "Division", the division of professional registration
 [in the department of economic development];
 - (9) "Landscape architect", any person licensed pursuant to the provisions of sections 327.600 to 327.635 who is qualified to practice landscape architecture by reason of special knowledge and the use of biological, physical, mathematical and social sciences and the principles and methods of analysis and design of the land, has demonstrated knowledge and ability in such areas, and has been duly licensed as a landscape architect by the board on the basis of professional education, examination and experience in landscape architecture;
- 22 (10) "Partnership", any partnership or limited liability 23 partnership;
- 24 (11) "Person", any person, corporation, firm, partnership, 25 association or other entity;
- 26 (12) "Professional engineer", any person authorized
 27 pursuant to the provisions of this chapter to practice as a
 28 professional engineer in Missouri, as the practice of engineering

- 1 is defined in section 327.181;
- 2 (13) "Professional land surveyor", any person authorized
- 3 pursuant to the provisions of this chapter to practice as a
- 4 professional land surveyor in Missouri as the practice of land
- 5 surveying is defined in section 327.272.
- 6 327.051. 1. The board shall meet at least twice a year at
- 7 such times and places as are fixed by the board.
- 8 2. The board may appoint and employ legal counsel and such
- 9 board personnel, as defined in subdivision (4) of subsection [15]
- 11 within the appropriation therefor.
- 12 3. The board shall keep records of its official acts and
- decisions and certified copies of any such records attested by
- 14 the executive director with the board's seal affixed shall be
- 15 received as evidence in all courts to the same extent as the
- 16 board's original records would be received.
- 17 4. Each member of the board shall receive as compensation
- an amount set [by the board not to exceed fifty dollars] under
- section 324.015, RSMo, for each day devoted to the affairs of the
- 20 board, and shall be entitled to reimbursement of such member's
- 21 expenses necessarily incurred in the discharge of such member's
- 22 official duties.
- 23 328.030. <u>1.</u> A board of examiners consisting of four
- 24 members, including one voting public member, shall be appointed
- 25 by the governor, by and with the advice and consent of the
- 26 senate. Each member of the board shall be a United States
- 27 citizen, shall have been a resident of Missouri for one year and,
- except for the public member, shall have been a registered and

practicing barber for the five years immediately preceding his or 1 2 her initial appointment. The public member shall be a registered voter and a person who is not and never was a member of any 3 profession licensed or regulated pursuant to this chapter or the 5 spouse of such person; and a person who does not have and never 6 has had a material, financial interest in either the providing of 7 the professional services regulated by this chapter, or an activity or organization directly related to any profession 8 9 licensed or regulated pursuant to this chapter. All members, 10 including public members, shall be chosen from lists submitted by 11 the director of the division of professional registration. 12 duties of the public member shall not include the determination 13 of the technical requirements to be met for licensure or whether 14 any person meets such technical requirements or of the technical 15 competence or technical judgment of a licensee or a candidate for licensure. Each member shall serve for a term of four years and 16 17 until his or her successor is appointed and qualified, except 18 that the successors to the members whose terms expire in 1981 19 shall consist of one member whose term shall be for two years, 20 one member whose term shall be for three years, and one member 21 whose term shall be for four years. Each member shall take the 22 oath provided by law for public officers. Vacancies on the board 23 shall be filled by appointment by the governor.

2. Each member of the board shall receive as compensation an amount set under section 324.015, RSMo, for each day devoted to the affairs of the board; and shall be entitled to reimbursement of their expenses necessarily incurred in the discharge of their official duties.

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1 328.050. 1. Each member of the board shall receive as 2 compensation an amount set by the board not to exceed fifty dollars for each day devoted to the affairs of the board, and 3 shall be entitled to reimbursement of his expenses necessarily incurred in the discharge of his official duties. All money 5 6 payable under this chapter shall be collected by the division of 7 professional registration [in the department of economic 8 development] which shall transmit them to the department of 9 revenue for deposit in the state treasury to the credit of a 10 "Board of Barbers Fund". Warrants shall be drawn upon the 11 treasurer out of this fund only for the payment of the salaries, 12 office and other necessary expenses of the board. A detailed 13 statement of the expenses incurred by the board, approved by the secretary-treasurer of the board, shall be filed with the commissioner of administration before warrants are drawn for 16 their payment.

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- The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.
- 28 329.015. 1. There is hereby created and established a

"Board of Cosmetology and Barber Examiners" for the purpose of licensing all persons engaged in the practice of cosmetology, manicuring, esthetics, and barbering, including but not limited to shaving or trimming the beard or cutting the hair; and to fulfill all other duties and responsibilities delegated by chapter 328, RSMo, as it pertains to barbers and this chapter as it pertains to cosmetologists. The duties and responsibilities of the board of cosmetology and barber examiners as such duties and responsibilities pertain to barbers and cosmetologists shall not take full force and effect until such time as the governor appoints the members of the board of cosmetology and barber examiners and the appointments are confirmed by the senate. such time, the powers and duties of the board of barber examiners and the state board of cosmetology shall be merged into the board under section 329.023.

2. The governor shall appoint members to the board by and with the advice and consent of the senate. The board shall consist of eleven members each of whom are United States citizens and who have been residents of this state for at least one year immediately preceding their appointment. Of these eleven members, three shall be licensed cosmetologists holding a Class CA license classification, one shall be an accredited cosmetology school owner as defined in section 329.010, one shall be the owner of a school licensed under subsection 1 of section 329.040, one shall be a cosmetologist with a license of any type of cosmetology classification, three shall be licensed barbers, and two shall be voting public members. All members, except the public members and the accredited cosmetology school owner

member, shall be cosmetologists and barbers duly registered as such and licensed under the laws of this state and shall have been actively engaged in the lawful practice of their profession for a period of at least five years immediately preceding their appointment. All members of the board, including public members and the accredited cosmetology school owner member, shall be chosen from lists submitted by the director of the division of professional registration.

- 3. Upon the appointment of the initial board members, at least two cosmetologist members and two barber members shall be appointed by the governor to serve a term of four years; two cosmetologist members, one barber member and a public member shall be appointed to serve a term of three years, and the remaining members of the initial board shall be appointed for a term of two years. Thereafter, all members shall be appointed by the governor by and with the advice and consent of the senate to serve four-year terms. The governor shall appoint members to fill any vacancies, whether it occurs by the expiration of a term or otherwise; provided, however, that any board member shall serve until his or her successor is appointed and duly qualified. No person shall be eligible for reappointment that has served as a member of the board for a total of twelve years.
- 4. At the time of appointment, the public members shall be citizens of the United States, residents of this state for a period of at least one year immediately preceding their appointment, and a registered voter. The public members and the spouse of such members shall be persons who are not and never were a member of any profession licensed or regulated by the

- 1 board. The public members and the spouse of such members shall
- 2 be persons who do not have and never have had a material
- 3 financial interest in the provision of the professional services
- 4 regulated by the board, or an activity or organization directly
- 5 related to any professions licensed or regulated by the board.
- 6 The duties of the public members and the accredited school owner
- 7 member shall not include the determination of the technical
- 8 requirements to be met for licensure, or whether any person meets
- 9 such technical requirements, or of the technical competence or
- 10 technical judgment of a licensee or a candidate for licensure.
- 11 5. Any member who is a school owner shall not be allowed
- 12 access to the testing and examination materials nor shall any
- such member be allowed to attend the administration of the
- 14 examinations, except when such member is being examined for
- 15 licensure.
- 16 6. The members of the board shall receive as compensation
- for their services the sum set [by the board not to exceed
- seventy dollars] under section 324.015, RSMo, for each day
- 19 actually spent in attendance at meetings of the board plus actual
- and necessary expenses.
- 21 329.025. 1. The board shall have power to:
- 22 (1) Prescribe by rule for the examination of applicants for
- 23 licensure to practice the classified occupations of barbering and
- 24 cosmetology and issue licenses;
- 25 (2) Prescribe by rule for the inspection of barber and
- 26 cosmetology establishments and schools and appoint the necessary
- inspectors and examining assistants;
- 28 (3) Prescribe by rule for the inspection of establishments

and schools of barbering and cosmetology as to their sanitary conditions and to appoint the necessary inspectors and, if necessary, examining assistants;

- (4) Set the amount of the fees that this chapter and chapter 328, RSMo, authorize and require, by rules promulgated under section 536.021, RSMo. The fees shall be set at a level sufficient to produce revenue that shall not substantially exceed the cost and expense of administering this chapter and chapter 328, RSMo;
- (5) Employ and remove board personnel, as set forth in subdivision (4) of subsection 15 of section [620.010] 324.001, RSMo, including an executive secretary or comparable position, inspectors, investigators, legal counsel and secretarial support staff, as may be necessary for the efficient operation of the board, within the limitations of its appropriation;
- (6) Elect one of its members president, one vice president, and one secretary with the limitation that no single profession can hold the positions of president and vice president at the same time;
- (7) Promulgate rules necessary to carry out the duties and responsibilities designated by this chapter and chapter 328, RSMo;
- 23 (8) Determine the sufficiency of the qualifications of applicants; and
 - (9) Prescribe by rule the minimum standards and methods of accountability for the schools of barbering and cosmetology licensed under this chapter and chapter 328, RSMo.
 - 2. The board shall create no expense exceeding the sum

- received from time to time from fees imposed under this chapter and chapter 328, RSMo.
- 3. A majority of the board, with at least one
 4 representative of each profession being present, shall constitute
 5 a quorum for the transaction of business.
 - 4. The board shall meet not less than six times annually.

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- 7 Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority 8 9 delegated in this chapter and chapter 328, RSMo, shall become 10 effective only if it complies with and is subject to all of the 11 provisions of chapter 536, RSMo, and, if applicable, section 12 536.028, RSMo. This section and chapter 536, RSMo, are 13 nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the 14 15 effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and 16 17 any rule proposed or adopted after August 28, 2001, shall be 18 invalid and void.
 - a fund to be known as the "Board of Cosmetology and Barber Examiners Fund", which shall consist of all moneys collected by the board. All fees provided for in this chapter and chapter 328, RSMo, shall be payable to the director of the division of professional registration [in the department of economic development], who shall keep a record of the account showing the total payments received and shall immediately thereafter transmit them to the department of revenue for deposit in the state treasury to the credit of the board of cosmetology and barber

examiners fund. All the salaries and expenses for the operation of the board shall be appropriated and paid from such fund.

- 2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule license renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.
 - 3. Upon appointment by the governor and confirmation by the senate of the board, all moneys deposited in the board of barbers fund created in section 328.050, RSMo, and the state board of cosmetology fund created in section 329.240, shall be transferred to the board of cosmetology and barber examiners fund created in subsection 1 of this section. The board of barbers fund and the state board of cosmetology fund shall be abolished when all moneys are transferred to the board of cosmetology and barber examiners fund.
 - 329.210. 1. The board shall have power to:
- (1) Prescribe by rule for the examinations of applicants for licensure to practice the classified occupation of cosmetology and issue licenses;
 - (2) Prescribe by rule for the inspection of cosmetology establishments and schools and appoint the necessary inspectors

1 and examining assistants;

2 (3) Prescribe by rule for the inspection of establishments
3 and schools of cosmetology as to their sanitary conditions and to
4 appoint the necessary inspectors and, if necessary, examining
5 assistants; and set the amount of the fees which this chapter
6 authorizes and requires, by rules and regulations promulgated
7 pursuant to section 536.021, RSMo. The fees shall be set at a
8 level sufficient to produce revenue which shall not substantially

exceed the cost and expense of administering this chapter;

- (4) Employ and remove board personnel, as defined in subdivision (4) of subsection [15] 10 of section [620.010] 324.001, RSMo, as may be necessary for the efficient operation of the board, within the limitations of its appropriation;
- (5) Elect one of its members president, one vice president and one secretary;
 - (6) Determine the sufficiency of the qualifications of applicants; and
 - (7) Prescribe by rule the minimum standards and methods of accountability for the schools of cosmetology licensed pursuant to this chapter.
- 2. The board shall create no expense exceeding the sum received from time to time from fees imposed pursuant to this chapter.
 - 3. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This

section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

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330.110. 1. The board shall be composed of five members including one voting public member, to be appointed by the governor with the advice and consent of the senate. Vacancies on the board shall be filled in like manner. The term of office of each member shall be four years. Each member of the board shall receive as compensation an amount set [by the board not to exceed seventy dollars] under section 324.015, RSMo, for each day devoted to the affairs of the board, and shall be entitled to reimbursement of the member's expenses necessarily incurred in the discharge of the member's official duties. All members of the board, except the public member, shall be doctors of surgical podiatric medicine duly registered and licensed pursuant to the laws of this state, shall be United States citizens, shall have been residents of this state for at least one year next preceding their appointment and shall have been engaged in the lawful and ethical practice of podiatric medicine for a period of not less than five years. Not more than two of the podiatrists shall belong to the same political party. Members of the board shall not be directly or indirectly interested in any podiatric medical college or the podiatric medical department of any institution of higher learning or in any podiatric medical supply or shoe business. The president of the Missouri Podiatric Medical

Association in office at the time shall, at least ninety days prior to the expiration of the term of a board member, other than the public member, or as soon as feasible after a vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five doctors of surgical podiatric medicine qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri Podiatric Medical Association shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.

The public member shall be at the time of the member's appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for

- 1 licensure.
- 2 330.190. The board shall investigate all complaints of
- 3 violations of the provisions of this chapter as provided in
- 4 [subdivision (6) of subsection 16 of section 620.010] <u>324.002</u>,
- 5 RSMo, and shall report any such violations to the proper
- 6 prosecuting officers or other public officials charged with the
- 7 enforcement of the provisions of this chapter. The board may
- 8 employ such board personnel, as defined in subdivision (4) of
- 9 subsection [16] $\underline{10}$ of section [620.010] $\underline{324.001}$, RSMo, as it
- 10 deems necessary within appropriations therefor.
- 11 331.100. 1. The board shall elect a president and
- 12 secretary at the first regular meeting held after January first
- of each year. Each member of the board shall receive as
- compensation for his services [the sum of fifty dollars per day]
- 15 <u>under section 324.015, RSMo</u>, while discharging the actual duties
- of the board, and each member shall receive necessary traveling
- expenses while actually engaged in the performance of his duties
- 18 as a member of the board.
- 19 2. The board shall have a common seal, and shall adopt
- 20 rules and regulations for the application and enforcement of this
- 21 chapter. The president and secretary shall have power to
- 22 administer oaths. Four members shall constitute a quorum. They
- 23 shall publish the dates and places for examinations at least
- 24 thirty days prior to the meeting. The board shall create no
- 25 expenses exceeding the sums received from time to time as herein
- 26 provided.
- 3. The board shall employ such board personnel as may be
- 28 necessary to carry out the provisions of this chapter. Board

personnel shall include an executive secretary or comparable position, inspectors, investigators, attorneys, and secretarial support staff for these positions.

- 4. Board personnel shall have their duties and compensation prescribed by the board within appropriations for that purpose, except that compensation for board personnel shall not exceed that established for comparable positions, as determined by the board, under the job and pay plan of the department of [economic development] insurance, financial and professional regulation.
- 5. Members of the board shall not be personally liable either jointly or separately for any act or acts committed in the performance of their official duties as board members except gross negligence.
- 332.041. 1. The board shall meet at least twice a year at such times and places in the state of Missouri as may be fixed by the board. The board shall elect from its membership a president, a vice president, and a secretary-treasurer, each of whom shall be elected at the times and serve for the terms as are determined by the board, and each of whose duties shall be prescribed by the board.
- 2. The board shall keep records of its official acts, and certified copies of any such records attested by a designee of the board with the board's seal affixed shall be received as evidence in all courts to the same extent as the board's original records would be received.
- 3. Each member of the board shall receive as compensation an amount set [by the board not to exceed fifty dollars] under section 324.015, RSMo, for each day devoted to the affairs of the

- 1 board, and shall be entitled to reimbursement of his expenses
- 2 necessarily incurred in the discharge of his official duties.
- 3 The board may employ and pay legal counsel and such board
- 4 personnel, as defined in subdivision (4) of subsection [16] 10 of
- 5 section [620.010] $\underline{324.001}$, RSMo, as it deems necessary within
- 6 appropriations therefor.
- 7 332.302. As used in sections 332.302 to 332.305, the
- 8 following terms shall mean:
- 9 (1) "Committee", the dental hygienist distance learning
- 10 committee created under section 332.303;
- 11 (2) "Department", the department of [economic development]
- insurance, financial and professional regulation;
- 13 (3) "Director", the director of the department of [economic
- development] insurance, financial and professional regulation.
- 15 332.306. 1. As used in this section, "distance dental
- 16 hygienist education program" shall mean a training program for
- dental hygienists accredited by the Commission on Dental
- 18 Accreditation of the American Dental Association that allows
- 19 didactic and clinical course work to be completed offsite of the
- 20 educational institution, including a dental facility regulated
- 21 under this chapter, if such offsite location is a part of an
- accredited dental hygiene program through the Commission on
- 23 Dental Accreditation of the American Dental Association as an
- 24 extended campus facility.
- 25 2. The department of [economic development] insurance,
- financial and professional regulation shall contract with an
- institution of higher education, which meets the standards
- 28 established by the Commission on Dental Accreditation of the

American Dental Association, to establish a distance dental hygienist education program.

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332.327. 1. The board may establish an impaired dentist or dental hygienist committee, to be designated as the well-being committee, to promote the early identification, intervention, treatment and rehabilitation of dentists or dental hygienists who may be impaired by reasons of illness, substance abuse, or as a result of any physical or mental condition. The board may enter into a contractual agreement with a nonprofit corporation or a dental association for the purpose of creating, supporting and maintaining a committee to be designated as the well-being committee. The board may promulgate administrative rules subject to the provisions of this section and chapter 536, RSMo, to effectuate and implement any committee formed pursuant to this The board may expend appropriated funds necessary to section. provide for operational expenses of the committee formed pursuant to this section. Any member of the well-being committee, as well as any administrator, staff member, consultant, agent or employee of the committee, acting within the scope of his or her duties and without actual malice and, all other persons who furnish information to the committee in good faith and without actual malice, shall not be liable for any claim of damages as a result of any statement, decision, opinion, investigation or action taken by the committee, or by any individual member of the committee.

2. All information, interviews, reports, statements, memoranda or other documents furnished to or produced by the well-being committee, as well as communications to or from the

- committee, any findings, conclusions, interventions, treatment, rehabilitation or other proceedings of the committee which in any way pertain to a licensee who may be, or who actually is,
- 4 impaired shall be privileged and confidential.

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- 3. All records and proceedings of the well-being committee which pertain or refer to a licensee who may be, or who actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records pursuant to chapter 610, RSMo, and shall not be subject to court subpoena or subject to discovery or introduction as evidence in any civil, criminal or administrative proceedings except as provided in subsection 4 of this section.
 - 4. The well-being committee may disclose information relative to an impaired licensee only when:
- 16 (1) It is essential to disclose the information to further
 17 the intervention, treatment or rehabilitation needs of the
 18 impaired licensee and only to those persons or organization with
 19 a need to know;
- 20 (2) Its release is authorized in writing by the impaired licensee;
- 22 (3) The committee is required to make a report to the 23 board; or
 - (4) The information is subject to a court order.
 - 5. In lieu of pursuing discipline against a dentist or dental hygienist for violating one or more causes stated in subsection 2 of section 332.321, the board may enter into a diversion agreement with a dentist or dental hygienist to refer

- 1 the licensee to the dental well-being committee under such terms
- 2 and conditions as are agreed to by the board and licensee for a
- 3 period not to exceed five years. The board shall enter into no
- 4 more than two diversion agreements with any individual licensee.
- 5 If the licensee violates a term or condition of a diversion
- 6 agreement entered into pursuant to this section, the board may
- 7 elect to pursue discipline against the licensee pursuant to
- 8 chapter 621, RSMo, for the original conduct that resulted in the
- 9 diversion agreement, or for any subsequent violation of
- subsection 2 of section 332.321. While the licensee participates
- in the well-being committee, the time limitations of section
- 12 [620.154] <u>324.043</u>, RSMo, shall toll pursuant to subsection 7 of
- 13 section [620.154] <u>324.043</u>, RSMo. All records pertaining to
- 14 diversion agreements are confidential and may only be released
- pursuant to [subdivision (7) of] subsection [14] 8 of section
- 16 [620.010] 324.001, RSMo.
- 17 6. The board may disclose information and records to the
- 18 well-being committee to assist the committee in the
- 19 identification, intervention, treatment, and rehabilitation of
- 20 dentists or dental hygienists who may be impaired by reason of
- 21 illness, substance abuse, or as the result of any physical or
- 22 mental condition. The well-being committee shall keep all
- information and records provided by the board confidential to the
- 24 extent the board is required to treat the information and records
- as closed to the public pursuant to chapter [620] 324, RSMo.
- 26 333.221. 1. Each member of the board shall receive as
- compensation an amount set [by the board not to exceed fifty
- dollars] under section 324.015, RSMo, for each day devoted to the

- affairs of the board, and shall be entitled to reimbursement of his expenses necessarily incurred in the discharge of his official duties.
- 2. The board may employ such board personnel, as defined in subdivision (4) of subsection [16] 10 of section [620.010]

 324.001, RSMo, as is necessary for the administration of this chapter.

8 The board shall elect its own president and 334.123. 9 secretary, each to serve for a term of one year, and shall 10 maintain an office and employ an executive director and such 11 other board personnel, as defined in section [620.010] 324.001, 12 RSMo, as the board in its discretion deems necessary. Without 13 limiting the foregoing, the board is specifically authorized to 14 obtain the services of specially trained and qualified persons or 15 organizations to assist in conducting examinations of applicants for licenses and may employ legal counsel. The executive 16 17 director shall have the degree of bachelor of arts or the 18 equivalent combination of education and experience from which 19 comparable knowledge and abilities can be acquired. The board 20 shall meet annually in Jefferson City and at such other times and 21 places as the members of the board may designate, and shall keep 22 a record of its proceedings and shall cause a register to be kept 23 of all applicants for certificates of licensure. The records and 24 register shall be prima facie evidence of all matters recorded 25 therein. Four members of the board shall constitute a quorum, at 26 least one of whom shall be a graduate of a professional school 2.7 approved and accredited as reputable by the American Medical 28 Association or the Liaison Committee on Medical Education, and at

- 1 least one of whom shall be a graduate of a professional school
- 2 approved and accredited as reputable by the American Osteopathic
- 3 Association.
- 4 334.240. Upon receiving information that any provision of
- 5 sections 334.010, 334.190 and 334.250 has been or is being
- 6 violated, the secretary of the board or other person designated
- 7 by the board shall investigate, and upon probable cause
- 8 appearing, the secretary shall, under the direction of the board,
- 9 file a complaint with the administrative hearing commission or
- 10 appropriate official or court. All such complaints shall be
- 11 handled as provided by rule promulgated pursuant to [subdivision
- 12 (6) of subsection 16 of section 620.010] <u>324.002</u>, RSMo.
- 13 334.400. As used in sections 334.400 to 334.430, the
- 14 following terms shall mean:
- 15 (1) "Anesthesiologist", a physician who has completed a
- 16 residency in anesthesiology approved by the American Board of
- 17 Anesthesiology or the American Osteopathic Board of
- 18 Anesthesiology;
- 19 (2) "Anesthesiologist assistant", a person who meets each
- 20 of the following conditions:
- 21 (a) Has graduated from an anesthesiologist assistant
- 22 program accredited by the American Medical Association's
- 23 Committee on Allied Health Education and Accreditation or by its
- 24 successor agency;
- 25 (b) Has passed the certifying examination administered by
- 26 the National Commission on Certification of Anesthesiologist
- 27 Assistants:
- 28 (c) Has active certification by the National Commission on

1 Certification of Anesthesiologist Assistants; and

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- 2 (d) Provides health care services delegated by a licensed 3 anesthesiologist;
 - (3) "Anesthesiologist assistant supervision agreement", a written agreement, jointly agreed upon protocols or standing order between a supervising anesthesiologist and an anesthesiologist assistant, which provides for the delegation of health care services from a supervising anesthesiologist to an anesthesiologist assistant and the review of such services;
 - (4) "Applicant", any individual who seeks to become licensed as an anesthesiologist assistant;
 - (5) "Continuing education", the offering of instruction or information to license holders for the purpose of maintaining or increasing skills necessary for the safe and competent practice of anesthetic care;
 - (6) "Department", the department of [economic development] insurance, financial and professional regulation or a designated agency thereof;
 - (7) "Immediately available", in the same physical location or facility in which the services are provided;
 - (8) "Physician", an individual licensed pursuant to this chapter to practice medicine and surgery or osteopathic medicine and surgery;
- 24 (9) "Supervision", medical direction by an anesthesiologist 25 of an anesthesiologist assistant as defined in conditions of 42 26 CFR 415.110 which limits supervision to no more than four 27 anesthesiologist assistants concurrently.
- 28 334.430. 1. There is hereby established an "Advisory

- 1 Commission for Anesthesiologist Assistants" which shall guide,
- 2 advise and make recommendations to the board. The commission
- 3 shall be responsible for the ongoing examination of the scope of
- 4 practice and promoting the continuing role of anesthesiologist
- 5 assistants in the delivery of health care services. The
- 6 commission shall assist the board in carrying out the provisions
- 7 of sections 334.400 to 334.430.
- 8 2. The commission shall be appointed no later than July 1,
- 9 2005. The commission shall be composed of five members, to be
- appointed by the governor, with the advice and consent of the
- 11 senate, as follows:
- 12 (1) One member of the board;
- 13 (2) One licensed anesthesiologist assistant;
- 14 (3) Two licensed, board-certified anesthesiologists; and
- 15 (4) One lay member.
- 3. Each licensed anesthesiologist assistant member shall be
- 17 a citizen of the United States and a resident of this state, and
- shall be licensed as an anesthesiologist assistant by this state.
- 19 Each physician member shall be a United States citizen, a
- 20 resident of this state and have an active license to practice
- 21 medicine in this state. The lay member shall be a United States
- 22 citizen and a resident of this state.
- 23 4. The licensed anesthesiologist assistant member shall be
- 24 appointed to serve a three-year term. The anesthesiologist
- 25 members and lay member shall each be appointed to serve
- three-year terms, except at the time the commission is created,
- when one anesthesiologist member will be appointed for a first
- term of two years while the second anesthesiologist member will

- 1 be appointed to a three-year term. This will ensure that at
- 2 least one anesthesiologist member has at least one year's
- 3 experience as a member of the commission. Neither the
- 4 anesthesiologist assistant member nor the physician members shall
- 5 be appointed for more than two consecutive three- year terms.
- 6 5. The president of the Missouri Society of
- 7 Anesthesiologists or its successor in office at the time shall,
- 8 at least ninety days prior to the expiration of a term of an
- 9 anesthesiologist assistant member or an anesthesiologist member
- of the commission or as soon as feasible after such a vacancy on
- 11 the commission otherwise occurs, submit to the director of the
- 12 division of professional registration a list, not to exceed five
- individuals per vacancy, of qualified and willing
- 14 anesthesiologists or anesthesiologist assistants, respectively,
- to fill the vacancy in question, with the request and
- recommendation that the governor appoint one of the persons so
- 17 listed. With the list so submitted, the president of the
- 18 Missouri Society of Anesthesiologists shall include in a letter
- 19 of transmittal a description of the method by which the names
- 20 were chosen by that association.
- 21 6. Until such time as eligible anesthesiologist assistant
- candidates are identified, the anesthesiologist assistant seat
- 23 may remain vacant or may be filled by a qualified
- 24 anesthesiologist candidate, at the governor's discretion with the
- 25 advice and consent of the senate. This member may serve no more
- than two consecutive three-year terms or until an eligible
- 27 anesthesiologist assistant candidate selected by the governor
- 28 with the advice and consent of the senate from a list provided as

- 1 outlined above is appointed.
- 7. Notwithstanding any other provision of law to the
- 3 contrary, any appointed member of the commission shall receive as
- 4 compensation an amount [established by the director of the
- 5 division of professional registration not to exceed seventy
- 6 dollars per day for] set under section 324.015, RSMo, for each
- 7 day devoted to commission business plus actual and necessary
- 8 expenses. [The director of the division of professional
- 9 registration shall establish by rule the guidelines for payment.]
- 10 The board shall provide all staff for the commission.
- 11 8. The commission shall hold an open annual meeting at
- which time it shall elect from its membership a chairman and
- 13 secretary. The commission may hold such additional meetings as
- may be required in the performance of its duties[, provided that
- notice of every meeting shall be given to each member at least
- ten days prior to the date of the meeting]. A quorum of the
- 17 commission shall consist of a majority of its members.
- 18 [9. No licensing activity or other statutory requirements
- shall become effective until expenditures or personnel are
- 20 specifically appropriated for the purpose of conducting the
- 21 business as required to administer the provisions of sections
- 334.400 to 334.430 and the initial rules filed have become
- 23 effective.]
- 334.625. 1. There is hereby established an "Advisory
- Commission for Physical Therapists" which shall guide, advise and
- 26 make recommendations to the board. The commission shall approve
- 27 the examination required by section 334.530 and shall assist the
- board in carrying out the provisions of sections 334.500 to

1 334.620.

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- 2 The commission shall be appointed no later than October 1, 1989, and shall consist of five members appointed by the 3 governor with the advice and consent of the senate. Each member shall be a citizen of the United States and a resident of this 5 6 state, and shall be licensed as a physical therapist by this 7 state. Members shall be appointed to serve three-year terms, 8 except that the first commission appointed shall consist of one 9 member whose term shall be for one year; two members whose terms 10 shall be for three years; and two members whose terms shall be 11 for two years. The president of the Missouri Physical Therapy 12 Association in office at the time shall, at least ninety days prior to the expiration of the term of a commission member or as 13 14 soon as feasible after a vacancy on the commission otherwise 15 occurs, submit to the director of the division of professional registration a list of five physical therapists qualified and 16 17 willing to fill the vacancy in question, with the request and 18 recommendation that the governor appoint one of the five persons 19 so listed, and with the list so submitted, the president of the 20 Missouri Physical Therapy Association shall include in his or her letter of transmittal a description of the method by which the 21 22 names were chosen by that association.
 - 3. Notwithstanding any other provision of law to the contrary, any appointed member of the commission shall receive as compensation an amount established [by the director of the division of professional registration not to exceed seventy dollars] under section 324.015, RSMo, per day for commission business plus actual and necessary expenses. The director of the

division of professional registration shall establish by rule guidelines for payment. All staff for the commission shall be provided by the board of healing arts.

- 4. The commission shall hold an annual meeting at which it shall elect from its membership a chairman and secretary. The commission may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting must be given to each member at least ten days prior to the date of the meeting. A quorum of the board shall consist of a majority of its members.
- 334.702. As used in sections 334.700 to 334.725, unless the context clearly requires otherwise, the following terms mean:
 - (1) "Athlete", a person who participates in a sanctioned amateur or professional sport or recreational sport activity;
 - (2) "Athletic trainer", a person who meets the qualifications of section 334.708 and who, upon the direction of the team physician and/or consulting physician, practices prevention, emergency care, first aid, treatment, or physical rehabilitation of injuries incurred by athletes in the manner, means, and methods deemed necessary to effect care or rehabilitation, or both;
 - (3) "Board", the Missouri board for the healing arts;
 - (4) "Committee", the athletic trainers advisory committee;
- 24 (5) "Division", the division of professional registration 25 [of the department of economic development];
 - (6) "Student athletic trainer", a person who assists in the duties usually performed by a licensed athletic trainer and who works under the direct supervision of a licensed athletic

- 1 trainer.
- 2 334.720. Notwithstanding any other provision of law to the
- 3 contrary, any appointed member of the board shall receive as
- 4 compensation an amount established [by the director of the
- 5 division of professional registration not to exceed seventy
- 6 dollars] under section 324.015, RSMo, per day for board business
- 7 plus actual and necessary expenses. The director of the division
- 8 of professional registration shall establish by rule guidelines
- 9 for payment.
- 10 334.735. 1. As used in sections 334.735 to 334.749, the
- 11 following terms mean:
- 12 (1) "Applicant", any individual who seeks to become
- 13 licensed as a physician assistant;
- 14 (2) "Certification" or "registration", a process by a
- certifying entity that grants recognition to applicants meeting
- 16 predetermined qualifications specified by such certifying entity;
- 17 (3) "Certifying entity", the nongovernmental agency or
- 18 association which certifies or registers individuals who have
- 19 completed academic and training requirements;
- 20 (4) "Department", the department of [economic development]
- 21 insurance, financial and professional regulation or a designated
- 22 agency thereof;
- 23 (5) "License", a document issued to an applicant by the
- [department] department acknowledging that the applicant is
- 25 entitled to practice as a physician assistant;
- 26 (6) "Physician assistant", a person who has graduated from
- 27 a physician assistant program accredited by the American Medical
- 28 Association's Committee on Allied Health Education and

- 1 Accreditation or by its successor agency, who has passed the
- 2 certifying examination administered by the National Commission on
- 3 Certification of Physician Assistants and has active
- 4 certification by the National Commission on Certification of
- 5 Physician Assistants who provides health care services delegated
- 6 by a licensed physician. A person who has been employed as a
- 7 physician assistant for three years prior to August 28, 1989, who
- 8 has passed the National Commission on Certification of Physician
- 9 Assistants examination, and has active certification of the
- 10 National Commission on Certification of Physician Assistants;
- 11 (7) "Recognition", the formal process of becoming a
- certifying entity as required by the provisions of sections
- 13 334.735 to 334.749;
- 14 (8) "Supervision", control exercised over a physician
- 15 assistant working within the same office facility of the
- supervising physician except a physician assistant may make
- follow-up patient examinations in hospitals, nursing homes and
- 18 correctional facilities, each such examination being reviewed,
- 19 approved and signed by the supervising physician. The board
- shall promulgate rules pursuant to chapter 536, RSMo, for the
- 21 proximity of practice between the physician assistant and the
- 22 supervising physician and documentation of joint review of the
- 23 physician assistant activity by the supervising physician and the
- 24 physician assistant.

- 25 2. The scope of practice of a physician assistant shall
- 26 consist only of the following services and procedures:
- 27 (1) Taking patient histories;
 - (2) Performing physical examinations of a patient;

- 1 (3) Performing or assisting in the performance of routine 2 office laboratory and patient screening procedures;
 - (4) Performing routine therapeutic procedures;
- 4 (5) Recording diagnostic impressions and evaluating 5 situations calling for attention of a physician to institute 6 treatment procedures;
 - (6) Instructing and counseling patients regarding mental and physical health using procedures reviewed and approved by a licensed physician;
 - (7) Assisting the supervising physician in institutional settings, including reviewing of treatment plans, ordering of tests and diagnostic laboratory and radiological services, and ordering of therapies, using procedures reviewed and approved by a licensed physician;
 - (8) Assisting in surgery;

- (9) Performing such other tasks not prohibited by law under the supervision of a licensed physician as the physician's assistant has been trained and is proficient to perform;
 - (10) Physician assistants shall not perform abortions.
- 3. Physician assistants shall not prescribe nor dispense any drug, medicine, device or therapy independent of consultation with the supervising physician, nor prescribe lenses, prisms or contact lenses for the aid, relief or correction of vision or the measurement of visual power or visual efficiency of the human eye, nor administer or monitor general or regional block anesthesia during diagnostic tests, surgery or obstetric procedures. Prescribing and dispensing of drugs, medications, devices or therapies by a physician assistant shall be pursuant

- to a physician assistant supervision agreement which is specific to the clinical conditions treated by the supervising physician and the physician assistant shall be subject to the following:
 - (1) A physician assistant shall not prescribe controlled substances;

- (2) The types of drugs, medications, devices or therapies prescribed or dispensed by a physician assistant shall be consistent with the scopes of practice of the physician assistant and the supervising physician;
- (3) All prescriptions shall conform with state and federal laws and regulations and shall include the name, address and telephone number of the physician assistant and the supervising physician;
 - (4) A physician assistant or advanced practice nurse as defined in section 335.016, RSMo, may request, receive and sign for noncontrolled professional samples and may distribute professional samples to patients;
 - (5) A physician assistant shall not prescribe any drugs, medicines, devices or therapies the supervising physician is not qualified or authorized to prescribe; and
- (6) A physician assistant may only dispense starter doses of medication to cover a period of time for seventy-two hours or less.
- 4. A physician assistant shall clearly identify himself or herself as a physician assistant and shall not use or permit to be used in the physician assistant's behalf the terms "doctor", "Dr." or "doc" nor hold himself or herself out in any way to be a physician or surgeon. No physician assistant shall practice or

attempt to practice without physician supervision or in any location where the supervising physician is not immediately available for consultation, assistance and intervention, except in an emergency situation, nor shall any physician assistant bill a patient independently or directly for any services or procedure

by the physician assistant.

- 5. For purposes of this section, the licensing of physician assistants shall take place within processes established by the state board of registration for the healing arts through rule and regulation. The board of healing arts is authorized to establish rules pursuant to chapter 536, RSMo, establishing licensing and renewal procedures, supervision, supervision agreements, fees, and addressing such other matters as are necessary to protect the public and discipline the profession. An application for licensing may be denied or the license of a physician assistant may be suspended or revoked by the board in the same manner and for violation of the standards as set forth by section 334.100, or such other standards of conduct set by the board by rule or regulation. Persons licensed pursuant to the provisions of chapter 335, RSMo, shall not be required to be licensed as physician assistants.
 - 6. "Physician assistant supervision agreement" means a written agreement, jointly agreed-upon protocols or standing order between a supervising physician and a physician assistant, which provides for the delegation of health care services from a supervising physician to a physician assistant and the review of such services.
 - 7. When a physician assistant supervision agreement is

- utilized to provide health care services for conditions other than acute self-limited or well-defined problems, the supervising physician or other physician designated in the supervision agreement shall see the patient for evaluation and approve or formulate the plan of treatment for new or significantly changed
- 6 conditions as soon as practical, but in no case more than two
 7 weeks after the patient has been seen by the physician assistant.
- 8. At all times the physician is responsible for the
 9 oversight of the activities of, and accepts responsibility for,
 10 health care services rendered by the physician assistant.

- 334.746. All staff for the health care providers certification and registration program shall be provided by the director of the department of [economic development] <u>insurance</u>, <u>financial and professional regulation</u> through the director of the division of professional registration.
 - 334.749. 1. There is hereby established an "Advisory Commission for Physician Assistants" which shall guide, advise and make recommendations to the board. The commission shall also be responsible for the ongoing examination of the scope of practice and promoting the continuing role of physician assistants in the delivery of health care services. The commission shall assist the board in carrying out the provisions of sections 334.735 to 334.749.
 - 2. The commission shall be appointed no later than October 1, 1996, and shall consist of five members, one member of the board, two licensed physician assistants, one physician and one lay member. The two licensed physician assistant members, the physician member and the lay member shall be appointed by the

governor with the advice and consent of the senate. Each 1 2 licensed physician assistant member shall be a citizen of the United States and a resident of this state, and shall be licensed 3 as a physician assistant by this state. The physician member shall be a United States citizen, a resident of this state, have 6 an active Missouri license to practice medicine in this state and 7 shall be a supervising physician, at the time of appointment, to a licensed physician assistant. The lay member shall be a United 8 9 States citizen and a resident of this state. The licensed 10 physician assistant members shall be appointed to serve 11 three-year terms, except that the first commission appointed 12 shall consist of one member whose term shall be for one year and 13 one member whose term shall be for two years. The physician 14 member and lay member shall each be appointed to serve a 15 three-year term. No physician assistant member nor the physician member shall be appointed for more than two consecutive 16 17 three-year terms. The president of the Missouri Academy of 18 Physicians Assistants in office at the time shall, at least 19 ninety days prior to the expiration of a term of a physician 20 assistant member of a commission member or as soon as feasible after such a vacancy on the commission otherwise occurs, submit 21 22 to the director of the division of professional registration a 23 list of five physician assistants qualified and willing to fill 24 the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with 25 the list so submitted, the president of the Missouri Academy of 26 27 Physicians Assistants shall include in his or her letter of 28 transmittal a description of the method by which the names were

1 chosen by that association.

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- 3. Notwithstanding any other provision of law to the
 contrary, any appointed member of the commission shall receive as
 compensation an amount established [by the director of the
 division of professional registration not to exceed seventy
 dollars] under section 324.015, RSMo, per day for commission
 business plus actual and necessary expenses. The director of the
 division of professional registration shall establish by rule
 guidelines for payment. All staff for the commission shall be
 - 4. The commission shall hold an open annual meeting at which time it shall elect from its membership a chairman and secretary. The commission may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting shall be given to each member at least ten days prior to the date of the meeting. A quorum of the commission shall consist of a majority of its members.

provided by the state board of registration for the healing arts.

- 5. On August 28, 1998, all members of the advisory commission for registered physician assistants shall become members of the advisory commission for physician assistants and their successor shall be appointed in the same manner and at the time their terms would have expired as members of the advisory commission for registered physician assistants.
- 334.800. 1. Sections 334.800 to 334.930 shall be known and may be cited as the "Respiratory Care Practice Act".
 - 2. For the purposes of sections 334.800 to 334.930, the following terms mean:
 - (1) "Board", the Missouri board for respiratory care,

- 1 established in section 334.830;
- 2 (2) "Certified respiratory therapist" or "CRT", a person
- 3 meeting entry-level qualifying educational requirements, having
- 4 passed the certification examination and having been certified by
- 5 the certifying entity;
- 6 (3) "Certifying entity", the cognitive competency testing
- 7 organization as authorized by the board;
- 8 (4) "Continuing education", the offering of instruction or
- 9 information to license holders for the purpose of maintaining or
- 10 increasing skills necessary for the safe and competent practice
- of respiratory care;
- 12 (5) "CRT" and "RRT", abbreviations for certified
- 13 respiratory therapist and registered respiratory therapist and
- 14 are registered trademarks of a certifying entity of the National
- 15 Board for Respiratory Care but does not include certified
- 16 clinical perfusionists;
- 17 (6) "Direct clinical supervision", availability of a
- 18 licensed respiratory care practitioner for purposes of immediate
- 19 communication and consultation with, and the assistance of, the
- 20 permit holder;
- 21 (7) "Division", the division of professional registration
- 22 [of the department of economic development];
- 23 (8) "Practice of respiratory care", as provided in section
- 24 334.810;
- 25 (9) "Protocol", a written agreement of medical care plan
- delegating professional responsibilities to a person who is
- 27 qualified by training, competency, experience or licensure to
- 28 perform such responsibilities. A protocol is a defined response

- to a specific clinical situation and shall be written, signed and dated by a physician prior to its implementation;
- 3 (10) "Registered respiratory therapist" or "RRT", a person 4 meeting advanced-level qualifying professional educational 5 requirements, having passed the registry examination and having 6 been registered by the certifying entity;
 - (11) "Respiratory care", the allied health profession whose practitioners function under the supervision of a physician or in accordance with clinical protocols accepted by the physician in the administration of pharmacologic, diagnostic and therapeutic agents related to respiratory care necessary to implement or modify diagnostic regimes, treatment, disease prevention or pulmonary rehabilitation of patients with deficiencies and abnormalities associated with the cardiopulmonary system;
 - (12) "Respiratory care practitioner", a person:
 - (a) Duly licensed by the board;

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- (b) Employed in the practice of respiratory care who has the knowledge and skill necessary to administer respiratory care as defined in this section;
- (c) Who is able to function in situations of unsupervised patient contact requiring individual judgment; and
- (d) Who is capable of serving as a resource to the physician in relation to the technical aspects of respiratory care as to safe and effective methods for administering respiratory care modalities;
- 26 (13) "Special training":
- 27 (a) Is a deliberate systematic educational activity in the 28 affective, psychomotor and cognitive domains;

1 (b) Is intended to develop new proficiencies with an application in mind;

- 3 (c) Is presented with an attention to needs, objectives, activities and a defined means of evaluation.
 - 334.840. 1. The board shall elect annually a chairperson, vice chairperson and a secretary from among its members. In even-numbered years, the chairperson shall be elected from the respiratory care members and the vice chairperson from the nonrespiratory care members and in odd- numbered years the chairperson shall be from nonrespiratory care members and the vice chairperson from the respiratory care members.
 - 2. The board shall adopt, implement, rescind, amend and administer such rules and regulations as may be necessary to carry out the provisions of sections 334.800 to 334.930, including, but not limited to, rules relating to professional conduct, continuing education requirements for renewal of licenses, approval or sanction of continuing education programs, the amount of continuing education hours required and to the establishment of ethical standards of practice for persons holding a license or permit to practice respiratory care in this state. The board shall meet with the division at least twice a year and advise the division on matters within the scope of sections 334.800 to 334.930. The board may convene at the request of the chairperson or as the board may determine for such other meetings as may be necessary. A presence of a majority of the members of the board constitutes a quorum at any meeting.
 - 3. Each member of the board shall receive as compensation, an amount [set by the division not to exceed fifty dollars per

- day under section 324.015, RSMo, for each day devoted to the
- 2 affairs of the board and may be reimbursed for actual and
- 3 necessary expenses incurred in the performance of the member's
- 4 official duties.
- 5 335.026. 1. Before entering upon their duties, members of
- 6 the board shall make and file with the secretary of state the
- 7 oath of office required by article VII, section 11 of the
- 8 Constitution of Missouri, for all civil officers of this state.
- 9 2. Any member of the board may be removed by the governor
- 10 for misconduct, incompetency or neglect of duty. Before any
- 11 member may be so removed, he shall be given a hearing and may
- 12 appear in his own behalf, may be represented by counsel, and may
- 13 present witness or other evidence. Any person aggrieved by the
- 14 action of the governor after the hearing may appeal as provided
- in chapter 536, RSMo.
- 16 3. The board shall meet at least once each year as
- determined by the board. The board may hold such additional
- 18 meetings during the year as may be deemed necessary to perform
- 19 its duties. A majority of the board, including at least one
- officer, shall constitute a quorum for the conducting of
- 21 business.
- 22 4. Each member of the board shall receive as compensation
- an amount set [by the board not to exceed fifty dollars] under
- section 324.015, RSMo, for each day devoted to the affairs of the
- 25 board; and shall be entitled to reimbursement of their expenses
- 26 necessarily incurred in the discharge of their official duties.
- 27 335.036. 1. The board shall:
- 28 (1) Elect for a one-year term a president and a secretary,

- 1 who shall also be treasurer, and the board may appoint, employ
- 2 and fix the compensation of a legal counsel and such board
- 3 personnel as defined in subdivision (4) of subsection [16] $\underline{10}$ of
- 4 section [620.010] <u>324.001</u>, RSMo, as are necessary to administer
- 5 the provisions of sections 335.011 to 335.096;
- 6 (2) Adopt and revise such rules and regulations as may be
- 7 necessary to enable it to carry into effect the provisions of
- 8 sections 335.011 to 335.096;
- 9 (3) Prescribe minimum standards for educational programs
- 10 preparing persons for licensure pursuant to the provisions of
- 11 sections 335.011 to 335.096;
- 12 (4) Provide for surveys of such programs every five years
- and in addition at such times as it may deem necessary;
- 14 (5) Designate as "approved" such programs as meet the
- requirements of sections 335.011 to 335.096 and the rules and
- 16 regulations enacted pursuant to such sections; and the board
- 17 shall annually publish a list of such programs;
- 18 (6) Deny or withdraw approval from educational programs for
- 19 failure to meet prescribed minimum standards;
- 20 (7) Examine, license, and cause to be renewed the licenses
- 21 of duly qualified applicants;
- 22 (8) Cause the prosecution of all persons violating
- provisions of sections 335.011 to 335.096, and may incur such
- 24 necessary expenses therefor;
- 25 (9) Keep a record of all the proceedings; and make an
- 26 annual report to the governor and to the director of the
- 27 department of [economic development] insurance, financial and
- 28 professional regulation.

2. The board shall set the amount of the fees which this chapter authorizes and requires by rules and regulations. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter.

- 3. All fees received by the board pursuant to the provisions of sections 335.011 to 335.096 shall be deposited in the state treasury and be placed to the credit of the state board of nursing fund. All administrative costs and expenses of the board shall be paid from appropriations made for those purposes.
- 4. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule, permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.
- 5. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be

interpreted to repeal or affect the validity of any rule filed or 1 2 adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter 536, 3 RSMo, are nonseverable and if any of the powers vested with the 5 general assembly pursuant to chapter 536, RSMo, to review, to 6 delay the effective date or to disapprove and annul a rule are 7 subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 1999, 8 9 shall be invalid and void.

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- 336.140. 1. The board shall hold meetings for the examination of applicants for registration and the transaction of other business pertaining to its duties at least once in six The board shall give thirty days' public notice of the time and place of this meeting. Each member of the board shall receive as compensation an amount set [by the board not to exceed fifty dollars] under section 324.015, RSMo, for each day devoted to the affairs of the board, and shall be entitled to reimbursement of his expenses necessarily incurred in the discharge of his official duties. All fees payable under this chapter shall be collected by the division of professional registration, which shall transmit the same to the department of revenue for deposit in the state treasury to the credit of a fund to be known as the "Optometry Fund". All costs and expenses incurred in administering the provisions of this chapter shall be appropriated and paid from this fund.
 - 2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the

- 1 fund at the end of the biennium exceeds two times the amount of
- 2 the appropriation from the board's funds for the preceding fiscal
- 3 year or, if the board requires by rule permit renewal less
- 4 frequently than yearly, then three times the appropriation from
- 5 the board's funds for the preceding fiscal year. The amount, if
- 6 any, in the fund which shall lapse is that amount in the fund
- 7 which exceeds the appropriate multiple of the appropriations from
- 8 the board's funds for the preceding fiscal year.
- 9 336.160. 1. The state board of optometry may adopt
- 10 reasonable rules and regulations within the scope and terms of
- 11 this chapter for the proper administration and enforcement
- 12 thereof. It may employ such board personnel, as defined in
- subdivision (4) of subsection [16] $\underline{10}$ of section [620.010]
- 324.001, RSMo, as it deems necessary within appropriations
- 15 therefor.
- 16 2. The board shall set the amount of the fees which this
- 17 chapter authorizes and requires by rules and regulations
- 18 promulgated pursuant to section 536.021, RSMo. The fees shall be
- set at a level to produce revenue which shall not substantially
- 20 exceed the cost and expense of administering this chapter.
- 21 337.010. As used in sections 337.010 to 337.090 the
- 22 following terms mean:
- 23 (1) "Committee", the state committee of psychologists;
- 24 (2) "Department", the department of [economic development]
- 25 insurance, financial and professional regulation;
- 26 (3) "Division", the division of professional registration
- 27 [within the department of economic development];
- 28 (4) "Licensed psychologist", any person who offers to

- organizations, institutions, corporations, schools, government
 agencies or the general public for a fee, monetary or otherwise,
 implying that such person is trained, experienced and licensed to
- 5 practice psychology and who holds a current and valid, whether

render psychological services to individuals, groups,

- 6 temporary, provisional or permanent, license in this state to
- 7 practice psychology;

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- "Provisional licensed psychologist", any person who is 8 9 a graduate of a recognized educational institution with a 10 doctoral degree in psychology as defined in section 337.025, and 11 who otherwise meets all requirements to become a licensed 12 psychologist except for passage of the licensing exams, oral 13 examination and completion of the required period of postdegree 14 supervised experience as specified in subsection 2 of section 15 337.025;
- 16 (6) "Recognized educational institution":
- 17 (a) A school, college, university or other institution of
 18 higher learning in the United States, which, at the time the
 19 applicant was enrolled and graduated, had a graduate program in
 20 psychology and was accredited by one of the regional accrediting
 21 associations approved by the Council on Postsecondary
 22 Accreditation; or
 - (b) A school, college, university or other institution of higher learning outside the United States, which, at the time the applicant was enrolled and graduated, had a graduate program in psychology and maintained a standard of training substantially equivalent to the standards of training of those programs accredited by one of the regional accrediting associations

- 1 approved by the Council of Postsecondary Accreditation;
- 2 (7) "Temporary license", a license which is issued to a
- 3 person licensed as a psychologist in another jurisdiction, who
- 4 has applied for licensure in this state either by reciprocity or
- 5 endorsement of the score from the Examination for Professional
- 6 Practice in Psychology, and who is awaiting either a final
- 7 determination by the committee relative to such person's
- 8 eligibility for licensure or who is awaiting the results of the
- 9 jurisprudence examination or oral examination.
- 10 337.050. 1. There is hereby created and established a
- "State Committee of Psychologists", which shall consist of seven
- 12 licensed psychologists and one public member. The state
- committee of psychologists existing on August 28, 1989, is
- 14 abolished. Nothing in this section shall be construed to prevent
- the appointment of any current member of the state committee of
- psychologists to the new state committee of psychologists created
- 17 on August 28, 1989.
- 18 2. Appointments to the committee shall be made by the
- 19 governor upon the recommendations of the director of the
- 20 division, upon the advice and consent of the senate. The
- 21 division, prior to submitting nominations, shall solicit nominees
- 22 from professional psychological associations and licensed
- 23 psychologists in the state. The term of office for committee
- 24 members shall be five years, and committee members shall not
- 25 serve more than ten years. No person who has previously served
- on the committee for ten years shall be eligible for appointment.
- 27 In making initial appointments to the committee, the governor
- 28 shall stagger the terms of the appointees so that two members

- serve initial terms of two years, two members serve initial terms of three years, and two members serve initial terms of four years.
- Each committee member shall be a resident of the state 5 of Missouri for one year, shall be a United States citizen, and 6 shall, other than the public member, have been licensed as a 7 psychologist in this state for at least three years. Committee members shall reflect a diversity of practice specialties. 8 9 ensure adequate representation of the diverse fields of 10 psychology, the committee shall consist of at least two 11 psychologists who are engaged full time in the doctoral teaching 12 and training of psychologists, and at least two psychologists who 13 are engaged full time in the professional practice of psychology. 14 In addition, the first appointment to the committee shall include 15 at least one psychologist who shall be licensed on the basis of a master's degree who shall serve a full term of five years. 16 17 Nothing in sections 337.010 to 337.090 shall be construed to 18 prohibit full membership rights on the committee for 19 psychologists licensed on the basis of a master's degree. 20 member of the committee shall, during the member's term as a 21 committee member, remove the member's domicile from the state of 22 Missouri, then the committee shall immediately notify the director of the division, and the seat of that committee member 23 24 shall be declared vacant. All such vacancies shall be filled by 25 appointment of the governor with the advice and consent of the 26 senate, and the member so appointed shall serve for the unexpired 27 term of the member whose seat has been declared vacant.
 - 4. The public member shall be at the time of the public

2 of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession 3 licensed or regulated pursuant to sections 337.010 to 337.093 or 5 the spouse of such person; and a person who does not have and 6 never has had a material, financial interest in either the 7 providing of the professional services regulated by sections 337.010 to 337.093, or an activity or organization directly 8 related to any profession licensed or regulated pursuant to 9 10 sections 337.010 to 337.093. The duties of the public member

member's appointment a citizen of the United States; a resident

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5. The committee shall hold a regular annual meeting at which it shall select from among its members a chairperson and a secretary. A quorum of the committee shall consist of a majority of its members. In the absence of the chairperson, the secretary shall conduct the office of the chairperson.

technical judgment of a licensee or a candidate for licensure.

shall not include the determination of the technical requirements

to be met for licensure or whether any person meets such

technical requirements or of the technical competence or

- 6. Each member of the committee shall receive, as compensation, an amount set [by the division not to exceed fifty dollars] under section 324.015, RSMo, for each day devoted to the affairs of the committee and shall be entitled to reimbursement for necessary and actual expenses incurred in the performance of the member's official duties.
- 7. Staff for the committee shall be provided by the director of the division of professional registration.
 - 8. The governor may remove any member of the committee for

- misconduct, inefficiency, incompetency, or neglect of office.
- 2 9. In addition to the powers set forth elsewhere in

- 3 sections 337.010 to 337.090, the division may adopt rules and
- 4 regulations, not otherwise inconsistent with sections 337.010 to
- 5 337.090, to carry out the provisions of sections 337.010 to
- 6 337.090. The committee may promulgate, by rule, "Ethical Rules
- of Conduct" governing the practices of psychology which rules
- 8 shall be based upon the ethical principles promulgated and
- 9 published by the American Psychological Association.
- 10 Any rule or portion of a rule, as that term is defined 11 in section 536.010, RSMo, that is promulgated to administer and 12 enforce sections 337.010 to 337.090, shall become effective only 13 if the agency has fully complied with all of the requirements of chapter 536, RSMo, including but not limited to, section 536.028, 14 15 RSMo, if applicable, after August 28, 1998. All rulemaking authority delegated prior to August 28, 1998, is of no force and 16 17 effect and repealed as of August 28, 1998, however nothing in 18 this act shall be interpreted to repeal or affect the validity of 19 any rule adopted and promulgated prior to August 28, 1998. 20 the provisions of section 536.028, RSMo, apply, the provisions of this section are nonseverable and if any of the powers vested 21 22 with the general assembly pursuant to section 536.028, RSMo, to review, to delay the effective date, or to disapprove and annul a 23 24 rule or portion of a rule are held unconstitutional or invalid, the purported grant of rulemaking authority and any rule so 25 proposed and contained in the order of rulemaking shall be 26 27 invalid and void, except that nothing in this act shall affect 28 the validity of any rule adopted and promulgated prior to August

- 1 28, 1998.
- 2 11. The committee may sue and be sued in its official name,
- 3 and shall have a seal which shall be affixed to all certified
- 4 copies or records and papers on file, and to such other
- 5 instruments as the committee may direct. All courts shall take
- 6 judicial notice of such seal. Copies of records and proceedings
- 7 of the committee, and of all papers on file with the division on
- 8 behalf of the committee certified under the seal shall be
- 9 received as evidence in all courts of record.
- 10 12. When applying for a renewal of a license pursuant to
- section 337.030, each licensed psychologist shall submit proof of
- 12 the completion of at least forty hours of continuing education
- credit within the two-year period immediately preceding the date
- of the application for renewal of the license. The type of
- 15 continuing education to be considered shall include, but not be
- 16 limited to:
- 17 (1) Attending recognized educational seminars, the content
- of which are primarily psychological, as defined by rule;
- 19 (2) Attending a graduate level course at a recognized
- 20 educational institution where the contents of which are primarily
- 21 psychological, as defined by rule;
- 22 (3) Presenting a recognized educational seminar, the
- 23 contents of which are primarily psychological, as defined by
- 24 rule;
- 25 (4) Presenting a graduate level course at a recognized
- 26 educational institution where the contents of which are primarily
- 27 psychological, as defined by rule; and
- 28 (5) Independent course of studies, the contents of which

1 are primarily psychological, which have been approved by the

2 committee and defined by rule.

The committee shall determine by administrative rule the amount of training, instruction, self-instruction or teaching that shall

6 be counted as an hour of continuing education credit.

- 337.085. 1. There is hereby established in the state treasury a fund to be known as the "State Committee of Psychologists Fund". All fees of any kind and character authorized under sections 337.010 to 337.090 to be charged by the committee or division shall be collected by the director of the division of professional registration and shall be transmitted to the department of revenue for deposit in the state treasury for credit to this fund. Such funds, upon appropriation, shall be disbursed only in payment of expenses of maintaining the committee and for the enforcement of the provisions of law concerning professions regulated by the committee. No other money shall be paid out of the state treasury for carrying out these provisions. Warrants shall be issued on the state treasurer for payment out of the fund.
- 2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the committee's fund for the preceding fiscal year or, if the committee requires by rule renewal less frequently than yearly then three times the appropriation from the committee's fund for the preceding fiscal year. The amount,

- if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the committee's fund for the preceding fiscal year.
- [3. All funds pertaining to the Missouri state committee of psychologists deposited in the state treasury to the credit of the committee of registration for the healing arts fund shall be transferred from that fund to the state committee of psychologists fund by the division director.]

- 337.090. The committee and division in issuing licenses and in publishing the directory as provided in section [620.145]

 324.032, RSMo, shall not include or list the degree upon which the license or certificate was issued. Any person licensed on the basis of a master's degree who has then earned a doctoral degree may use the title "doctor" or hold himself out in his practice as a psychologist as having a doctoral degree so long as it is from an accredited institution of higher education and so long as the degree is relevant to the practice of psychology.
- 337.500. As used in sections 337.500 to 337.540, unless the context clearly requires otherwise, the following words and phrases mean:
- (1) "Committee or board", the committee for professional counselors;
 - (2) "Department", the Missouri department of [economic development] insurance, financial and professional regulation;
- 25 (3) "Director", the director of the division of
 26 professional registration [in the department of economic
 27 development];
 - (4) "Division", the division of professional registration;

"Licensed professional counselor", any person who 1 (5) offers to render professional counseling services to individuals, groups, organizations, institutions, corporations, government agencies or the general public for a fee, monetary or otherwise, implying that the person is trained, experienced, and licensed in counseling, and who holds a current, valid license to practice counseling;

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- "Practice of professional counseling", rendering, 8 9 offering to render, or supervising those who render to 10 individuals, couples, groups, organizations, institutions, 11 corporations, schools, government agencies, or the general public 12 any counseling service involving the application of counseling 13 procedures, and the principles and methods thereof, to assist in 14 achieving more effective intrapersonal or interpersonal, marital, 15 decisional, social, educational, vocational, developmental, or rehabilitative adjustments; 16
 - "Professional counseling", includes, but is not limited (7) to:
 - The use of verbal or nonverbal counseling or both (a) techniques, methods, or procedures based on principles for assessing, understanding, or influencing behavior (such as principles of learning, conditioning, perception, motivation, thinking, emotions, or social systems);
 - Appraisal or assessment, which means selecting, administering, scoring, or interpreting instruments designed to assess a person's or group's aptitudes, intelligence, attitudes, abilities, achievement, interests, and personal characteristics;
 - The use of referral or placement techniques or both

- 1 which serve to further the goals of counseling;
- 2 (d) Therapeutic vocational or personal or both
- 3 rehabilitation in relation to coping with or adapting to physical
- 4 disability, emotional disability, or intellectual disability or
- 5 any combination of the three;
- 6 (e) Designing, conducting, and interpreting research;
- 7 (f) The use of group methods or techniques to promote the goals of counseling;
- 9 (g) The use of informational and community resources for 10 career, personal, or social development;
- 11 (h) Consultation on any item in paragraphs (a) through (g) above; and
- (i) No provision of sections 337.500 to 337.540, or of
 chapter 354 or 375, RSMo, shall be construed to mandate benefits
 or third-party reimbursement for services of professional
 counselors in the policies or contracts of any insurance company,
- 17 health services corporation or other third-party payer;
- 18 (8) "Provisional licensed professional counselor", any
- 19 person who is a graduate of an acceptable educational
- 20 institution, as defined by division rules, with at least a
- 21 master's degree with a major in counseling, or its equivalent,
- 22 and meets all requirements of a licensed professional counselor,
- other than the supervised counseling experience prescribed by
- subdivision (1) of section 337.510, and who is supervised by a
- 25 person who is qualified for the practice of professional
- 26 counseling.
- 27 337.535. 1. There is hereby established the "Committee for
- 28 Professional Counselors" which shall guide, advise, and make

- recommendations to the division and fulfill other
 responsibilities designated by this chapter. The committee shall
 approve the examination required by section 337.510 and shall
- 4 assist the division in carrying out the provisions of sections
- 5 337.500 to 337.540.
- The committee shall consist of six members, including 6 2. 7 one public member, appointed by the governor with the advice and consent of the senate. Each member of the committee shall be a 8 citizen of the United States and a resident of this state and, 9 10 except as provided hereinafter, shall be licensed as a 11 professional counselor by this state. Beginning with the 12 appointments made after August 28, 1992, two members shall be 13 appointed for four years, two members shall be appointed for 14 three years and two members shall be appointed for two years. 15 Thereafter, all members shall be appointed to serve four-year terms. No person shall be eligible for reappointment who has 16 17 served as a member of the committee for a total of eight years. 18 The membership of the committee shall reflect the differences in 19 levels of education and work experience with consideration being 20 given to race, gender and ethnic origins. Not more than two counselor educators shall be members of the committee at the same 21 22 The president of the American Counseling Association of Missouri in office at the time shall, at least ninety days prior 23 24 to the expiration of the term of the committee member, other than the public member, or as soon as feasible after the vacancy on 25 26 the committee otherwise occurs, submit to the director of the 27 division of professional registration a list of five professional 28 counselors qualified and willing to fill the vacancy in question,

- with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the American Counseling Association of Missouri shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.
 - 3. A vacancy in the office of a member shall be filled by appointment by the governor for the remainder of the unexpired term.

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- 4. Each member of the committee shall receive as compensation, an amount set [by the committee not to exceed fifty dollars] under section 324.015, RSMo, for each day devoted to the affairs of the committee, and shall be reimbursed for necessary and actual expenses incurred in the performance of his or her official duties. All staff for the committee shall be provided by the division.
- 5. The committee shall hold an annual meeting at which it shall elect from its membership a chairperson and secretary. The committee may hold such additional meetings as may be required in the performance of its duties, provided that notice of every meeting must be given to each member at least three days prior to the date of the meeting. A quorum of the committee shall consist of a majority of its members.
- 6. The governor may remove a committee member for misconduct, incompetency or neglect of his or her official duties after giving the committee member written notice of the charges against the committee member and an opportunity to be heard thereon.
 - 7. The public member shall be at the time of his or her

- 1 appointment a citizen of the United States; a resident of this
- 2 state for a period of one year and a registered voter; a person
- 3 who is not and never was a member of any profession licensed or
- 4 regulated pursuant to sections 337.500 to 337.540 or the spouse
- of such person; and a person who does not have and never has had
- 6 a material, financial interest in either the providing of the
- 7 professional services regulated by sections 337.500 to 337.540,
- 8 or an activity or organization directly related to any profession
- 9 licensed or regulated pursuant to sections 337.500 to 337.540.
- 10 The duties of the public member shall not include the
- determination of the technical requirements to be met for
- 12 licensure or whether any person meets such technical requirements
- or of the technical competence or technical judgment of a
- 14 licensee or a candidate for licensure.
- 15 337.600. As used in sections 337.600 to 337.689, the
- 16 following terms mean:
- 17 (1) "Clinical social work", the application of methods,
- principles, and techniques of case work, group work,
- 19 client-centered advocacy, community organization, administration,
- 20 planning, evaluation, consultation, research, psychotherapy and
- 21 counseling methods and techniques to persons, families and groups
- in assessment, diagnosis, treatment, prevention and amelioration
- of mental and emotional conditions;
- 24 (2) "Department", the Missouri department of [economic
- development] <u>insurance</u>, <u>financial</u> and <u>professional</u> regulation;
- 26 (3) "Director", the director of the division of
- 27 professional registration [in the department of economic
- 28 development];

- 1 (4) "Division", the division of professional registration;
- 2 (5) "Independent practice", any practice of social workers
- 3 outside of an organized setting such as a social, medical, or
- 4 governmental agency in which a social worker assumes
- 5 responsibility and accountability for services required;
- 6 (6) "Licensed clinical social worker", any person who
- 7 offers to render services to individuals, groups, organizations,
- 8 institutions, corporations, government agencies or the general
- 9 public for a fee, monetary or otherwise, implying that the person
- 10 is trained, experienced, and licensed as a clinical social
- 11 worker, and who holds a current, valid license to practice as a
- 12 clinical social worker;
- 13 (7) "Practice of clinical social work", rendering, offering
- 14 to render, or supervising those who render to individuals,
- 15 couples, groups, organizations, institutions, corporations, or
- the general public any service involving the application of
- 17 methods, principles, and techniques of clinical social work;
- 18 (8) "Provisional licensed clinical social worker", any
- 19 person who is a graduate of an accredited school of social work
- and meets all requirements of a licensed clinical social worker,
- 21 other than the supervised clinical social work experience
- prescribed by subdivision (2) of subsection 1 of section 337.615,
- and who is supervised by a person who is qualified to practice
- 24 clinical social work, as defined by rule;
- 25 (9) "Social worker", any individual that has:
- 26 (a) Received a baccalaureate or master's degree in social
- work from an accredited social work program approved by the
- 28 council on social work education;

- 1 (b) Received a doctorate or Ph.D. in social work; or
- 2 (c) A current baccalaureate or clinical social worker
- 3 license as set forth in sections 337.600 to 337.689.
- 4 337.622. 1. There is hereby established the "State
- 5 Committee for Social Workers", which shall guide, advise, and
- 6 make recommendations to the division and fulfill other
- 7 responsibilities designated by sections 337.600 to 337.649 and
- 8 sections 337.650 to 337.689. The committee shall approve any
- 9 examination required by sections 337.600 to 337.649 and sections
- 10 337.650 to 337.689 and shall assist the division in carrying out
- 11 the provisions of sections 337.600 to 337.649 and sections
- 12 337.650 to 337.689.

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2. The committee shall consist of nine members, including a public member appointed by the governor with the advice and consent of the senate. Each member of the committee shall be a citizen of the United States and a resident of this state. The committee shall consist of six licensed clinical social workers, two licensed baccalaureate social workers and one voting public member. At least two committee members shall be involved in the private practice of clinical social work. Any person who is a member of any clinical social worker advisory committee appointed by the director of the division of professional registration shall be eligible for appointment to the state committee for social work on August 28, 1997. The governor shall endeavor to appoint members from different geographic regions of the state

and with regard to the pattern of distribution of social workers

in the state. The term of office for committee members shall be

four years and no committee member shall serve more than ten

- 1 years. Of the members first appointed, the governor shall
- 2 appoint three members, one of whom shall be the public member,
- 3 whose terms shall be four years; three members whose terms shall
- 4 be three years; two members whose terms shall be two years; and
- one member whose term shall be one year. The president of the
- 6 National Association of Social Workers Missouri Chapter in office
- 7 at the time shall, at least ninety days prior to the expiration
- 8 of a term of a member of a clinical social worker or
- 9 baccalaureate social worker committee member or as soon as
- 10 feasible after a vacancy on the committee otherwise occurs,
- 11 submit to the director of the division of professional
- 12 registration a list of five clinical social workers qualified or
- five baccalaureate social workers and willing to fill the vacancy
- in question, with the request and recommendation that the
- 15 governor appoint one of the five persons in each category so
- listed, and with the list so submitted, the president of the
- 17 National Association of Social Workers Missouri Chapter shall
- include in his or her letter of transmittal a description of the
- method by which the names were chosen by that association.
- 3. A vacancy in the office of a member shall be filled by
- 21 appointment by the governor for the remainder of the unexpired
- 22 term.
- 4. Notwithstanding any other provision of law to the
- 24 contrary, any appointed member of the committee shall receive as
- compensation an amount established [by the director of the
- division of professional registration not to exceed seventy
- dollars] under section 324.015, RSMo, per day for committee
- business plus each member of the committee shall be reimbursed

- for necessary and actual expenses incurred in the performance of the member's official duties. The director of the division of professional registration shall establish by rule guidelines for
- 4 payment. All staff for the committee shall be provided by the
- 5 division.

5. The committee shall hold an annual meeting at which it
shall elect from its membership a chairperson and a secretary.

The committee may hold such additional meetings as may be
required in the performance of its duties, provided that notice
of every meeting must be given to each member at least three days
prior to the date of the meeting. A quorum of the board shall

consist of a majority of its members.

- 6. The governor may remove a committee member for misconduct, incompetency or neglect of the member's official duties after giving the committee member written notice of the charges against such member and an opportunity to be heard thereon.
- 7. The public member shall be at the time of such member's appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to sections 337.600 to 337.649 or sections 337.650 to 337.689, or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by sections 337.600 to 337.649 or sections 337.650 to 337.689, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 337.600 to

- 1 337.649. The duties of the public member shall not include the
- 2 determination of the technical requirements to be met for
- 3 licensure or whether any person meets such technical requirements
- 4 or of the technical competence or technical judgment of a
- 5 licensee or a candidate for licensure.
- 6 337.650. As used in sections 337.650 to 337.689, the
- 7 following terms mean:
- 8 (1) "Committee", the state committee for social work 9 established in section 337.622;
- 10 (2) "Department", the Missouri department of [economic development] insurance, financial and professional regulation;
- 12 (3) "Director", the director of the division of
 13 professional registration [in the department of economic
 14 development];
- 15 (4) "Division", the division of professional registration;
- 16 (5) "Licensed baccalaureate social worker", any person who
 17 offers to render services to individuals, groups, organizations,
 18 institutions, corporations, government agencies or the general
 19 public for a fee, monetary or otherwise, implying that the person
 20 is trained, experienced and licensed as a baccalaureate social
- 21 worker, and who holds a current valid license to practice as a
- 22 baccalaureate social worker;
- 23 (6) "Practice of baccalaureate social work", rendering,
- offering to render or supervising those who render to
- 25 individuals, families, groups, organizations, institutions,
- 26 corporations or the general public any service involving the
- application of methods, principles, and techniques of
- 28 baccalaureate social work;

- "Provisional licensed baccalaureate social worker", any 1 (7) 2 person who is a graduate of an accredited school of social work and meets all requirements of a licensed baccalaureate social 3 4 worker, other than the supervised baccalaureate social work 5 experience prescribed by subdivision (3) of subsection 1 of 6 section 337.665, and who is supervised by a licensed clinical 7 social worker or a licensed baccalaureate social worker, as 8 defined by rule.
- 9 337.700. As used in sections 337.700 to 337.739, the following terms mean:
- 11 (1) "Committee", the state committee for family and marital 12 therapists;
 - (2) "Department", the Missouri department of [economic development] insurance, financial and professional regulation;
- 15 (3) "Director", the director of the division of 16 professional registration [in the department of economic 17 development];

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- 18 (4) "Division", the division of professional registration;
- 19 (5) "Fund", the marital and family therapists' fund created 20 in section 337.712;
 - (6) "Licensed marital and family therapist", a person to whom a license has been issued pursuant to the provisions of sections 337.700 to 337.739, whose license is in force and not suspended or revoked;
 - (7) "Marital and family therapy", the use of scientific and applied marriage and family theories, methods and procedures for the purpose of describing, evaluating and modifying marital, family and individual behavior within the context of marital and

- 1 family systems, including the context of marital formation and
- 2 dissolution. Marriage and family therapy is based on systems
- 3 theories, marriage and family development, normal and
- 4 dysfunctional behavior, human sexuality and psychotherapeutic,
- 5 marital and family therapy theories and techniques and includes
- 6 the use of marriage and family therapy theories and techniques in
- 7 the evaluation, assessment and treatment of intrapersonal or
- 8 interpersonal dysfunctions within the context of marriage and
- 9 family systems. Marriage and family therapy may also include
- 10 clinical research into more effective methods for the treatment
- and prevention of the above-named conditions;
- 12 (8) "Practice of marital and family therapy", the rendering
- of professional marital and family therapy services to
- individuals, family groups and marital pairs, singly or in
- 15 groups, whether such services are offered directly to the general
- 16 public or through organizations, either public or private, for a
- fee, monetary or otherwise.
- 18 337.739. 1. There is created and established the "State
- 19 Committee of Marital and Family Therapists" which shall consist
- of four family and marital therapists and two voting public
- 21 members. The committee shall be appointed by the governor with
- 22 the advice and consent of the senate. Committee members shall
- 23 serve for a term of five years, except for the members first
- 24 appointed, one public member and one other member shall be
- appointed for five years, two members shall be appointed for four
- years, the other public member and one other member appointed for
- three years. No person shall be eligible for appointment to the
- committee who has served as a member of the committee for a total

- of ten years. Members shall be appointed to represent a diversity in gender, race and ethnicity. No more than three members shall be from the same political party.
- Each nonpublic committee member shall be a resident of 5 the state of Missouri for one year, shall be a United States 6 citizen, and shall meet all the requirements for licensing 7 enumerated in sections 337.700 to 337.739, shall be licensed pursuant to sections 337.700 to 337.739, except the members of 8 9 the first committee, who shall be licensed within six months of 10 their appointment, and are actively engaged in the practice of 11 marital and family therapy. If a member of the committee shall, 12 during the member's term as a committee member, remove the 13 member's domicile from the state of Missouri, then the committee 14 shall immediately notify the governor, and the seat of that 15 committee member shall be declared vacant. All such vacancies shall be filled by appointment as in the same manner as the first 16 17 appointment, and the member so appointed shall serve for the 18 unexpired term of the member whose seat has been declared vacant. 19 The public members shall be at the time of each member's 20 appointment a citizen of the United States; a resident of this 21 state for a period of one year and a registered voter; a person 22 who is not and never was a member of any profession licensed or 23 regulated pursuant to this chapter or the spouse of such person; 24 a person who does not have and never has had a material, 25 financial interest in either the provision of the professional 26 services regulated by this chapter, or an activity or 27 organization directly related to any profession licensed or 28 regulated pursuant to this chapter.

- 3. The committee shall hold a regular annual meeting at
 which it shall select from among its members a chairman and a
 secretary. A quorum of the committee shall consist of a majority
 of its members. In the absence of the chairman, the secretary
 shall conduct the office of the chairman.
- [No member of the committee shall receive any compensation for the performance of the member's official duties but] Each member of the committee shall receive compensation as set under section 324.015 for each day devoted to the affairs of the committee and shall be entitled to reimbursement for necessary and actual expenses incurred in the performance of the member's duties. The committee shall share resources and facilities with the office for the committee for professional counselors provided for in sections 337.500 to 337.540. All staff for the committee shall be provided by the director of the division of professional registration.
 - 5. The governor may remove any member of the committee for misconduct, inefficiency, incompetency or neglect of office.

- 338.130. 1. Each member of the board shall receive as compensation an amount set [by the board not to exceed fifty dollars] under section 324.015, RSMo, for each day devoted to the affairs of the board, and shall be entitled to reimbursement of the member's expenses necessarily incurred in the discharge of the member's official duties.
- 2. The board may employ such board personnel, as defined in subdivision (4) of subsection [15] 10 of section [620.010] 324.001, RSMo, as it deems necessary to carry out the provisions of this chapter. The compensation and expenses of such personnel

and all expenses incurred by the board in carrying into execution the provisions of this chapter, shall be paid out of the board of pharmacy fund upon a warrant on the state treasurer.

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339.120. 1. There is hereby created the "Missouri Real Estate Commission", to consist of seven persons, citizens of the United States and residents of this state for at least one year prior to their appointment, for the purpose of carrying out and enforcing the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860. The commission shall be appointed by the governor with the advice and consent of the senate. members, except one voting public member, of the commission must have had at least ten years' experience as a real estate broker prior to their appointment. The terms of the members of the commission shall be for five years, and until their successors are appointed and qualified. Members to fill vacancies shall be appointed by the governor for the unexpired term. The president of the Missouri Association of Realtors in office at the time shall, at least ninety days prior to the expiration of the term of the board member, other than the public member, or as soon as feasible after the vacancy on the board otherwise occurs, submit to the director of the division of professional registration a list of five realtors qualified and willing to fill the vacancy in question, with the request and recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the Missouri Association of Realtors shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association. The commission shall organize annually by selecting from its members a chairman. The commission may do all things necessary and convenient for carrying into effect the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860, and may promulgate necessary rules compatible with the provisions of sections 339.010 to 339.180 and sections 339.710 to 339.860. Each member of the commission shall receive as compensation an amount set [by the commission not to exceed seventy-five dollars] under section 324.015, RSMo, for each day devoted to the affairs of the commission, and shall be entitled to reimbursement of his or her expenses necessarily incurred in the discharge of his or her official duties. The governor may remove any commissioner for cause.

2. The public member shall be at the time of his or her appointment a citizen of the United States; a resident of this state for a period of one year and a registered voter; a person who is not and never was a member of any profession licensed or regulated pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860 or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by sections 339.010 to 339.180 and sections 339.710 to 339.860, or an activity or organization directly related to any profession licensed or regulated pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any

person meets such technical requirements or of the technical
competence or technical judgment of a licensee or a candidate for

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licensure.

- 3. The commission shall employ such board personnel, as
 defined in subdivision (4) of subsection [15] 10 of section
 [620.010] 324.001, RSMo, as it shall deem necessary to discharge
 the duties imposed by the provisions of sections 339.010 to
 339.180 and sections 339.710 to 339.860.
- 9 Any rule or portion of a rule, as that term is defined 10 in section 536.010, RSMo, that is created under the authority 11 delegated in sections 339.010 to 339.180 and sections 339.710 to 12 339.860 shall become effective only if it complies with and is 13 subject to all of the provisions of chapter 536, RSMo, and, if 14 applicable, section 536.028, RSMo. All rulemaking authority 15 delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal 16 17 or affect the validity of any rule filed or adopted prior to 18 August 28, 1999, if it fully complied with all applicable 19 provisions of law. This section and chapter 536, RSMo, are 20 nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the 21 22 effective date or to disapprove and annul a rule are subsequently 23 held unconstitutional, then the grant of rulemaking authority and 24 any rule proposed or adopted after August 28, 1999, shall be 25 invalid and void.
- 339.507. 1. There is hereby created within the division of professional registration [of the department of economic development] the "Missouri Real Estate Appraisers Commission",

which shall consist of seven members appointed by the governor 1 2 with the advice and consent of the senate, six of whom shall be appraiser members, and one shall be a public member. Each member 3 shall be a resident of this state and a registered voter for a 5 period of one year prior to the person's appointment. 6 president of the Missouri Appraiser Advisory Council in office at 7 the time shall, at least ninety days prior to the expiration of the term of the commission member, other than the public member, 8 9 or as soon as feasible after the vacancy on the commission 10 otherwise occurs, submit to the director of the division of 11 professional registration a list of five appraisers qualified and 12 willing to fill the vacancy in question, with the request and 13 recommendation that the governor appoint one of the five persons so listed, and with the list so submitted, the president of the 15 Missouri Appraiser Advisory Council shall include in his or her letter of transmittal a description of the method by which the 16 17 names were chosen by that association. The public member shall 18 have never been engaged in the businesses of real estate 19 appraisal, real estate sales or making loans secured by real 20 The governor shall designate one of the appraiser 21 appointees to be chairperson.

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The real estate appraiser members appointed by the governor shall be Missouri residents who have real estate appraisal experience in the state of Missouri for not less than five years immediately preceding their appointment. The real estate appraiser members appointed to the commission shall be designated members in good standing of nationally recognized real estate appraisal organizations that required, as of June 1, 1988,

in order to become a designated member, appraisal experience, 1 2 education and testing, and recertification that is at least equal to that required for certification or licensure pursuant to 3 sections 339.500 to 339.549, provided that not more than one member of the commission shall be a designated member of the same 6 nationally recognized real estate appraisal organization. 7 Successor appraiser members of the commission shall be appointed from the registry of state-certified real estate appraisers and 8 9 state-licensed real estate appraisers and not more than one 10 successor appraiser member of the commission shall be a 11 designated member in good standing of the same nationally 12 recognized real estate appraisal organization as provided in this 13 subsection. The governor shall not exclude a state-certified 14 real estate appraiser or a state-licensed real estate appraiser 15 from appointment as a successor appraiser member of the commission by virtue of membership or lack of membership of the 16 17 state-certified real estate appraiser or state-licensed real 18 estate appraiser in any particular real estate appraisal 19 organization.

3. Of the initial members appointed, two members shall be appointed for one-year terms, two members for two-year terms, and three members for three-year terms, provided that the initial public member shall be appointed for a three-year term. All successor members shall be appointed for three-year terms. All members shall serve until their successors have been appointed and qualified. Vacancies occurring in the membership of the commission for any reason shall be filled by appointment by the governor for the unexpired term. Upon expiration of their terms,

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members of the commission shall continue to hold office until the appointment and qualification of their successors. No more than four members of the commission shall be members of the same political party. No person shall be appointed for more than two consecutive terms. The governor may remove a member for cause. The executive director of the commission shall be employed by the division of professional registration, subject to approval and

confirmation by the commission.

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- 4. The commission shall meet at least once each calendar quarter to conduct its business. The location in Missouri of future meetings shall be decided by a vote of the members present at the current meeting. The executive director shall give written notice by certified mail to each member of the time and place of each meeting of the commission at least ten days before the scheduled date of the meeting, and notice of any special meeting shall state the specific matters to be considered in the special meeting which is not a regular quarterly meeting. A quorum of the commission shall consist of four members.
- 5. Each member of the commission shall be entitled to [a per diem allowance of fifty dollars] compensation under section 324.015, RSMo, for each meeting of the commission at which the member is present and shall be entitled to reimbursement of the member's expenses necessarily incurred in the discharge of the member's official duties. Each member of the commission shall be entitled to reimbursement of travel expenses necessarily incurred in attending meetings of the commission.
- 340.208. Each member of the board shall receive as compensation an amount set [by the board not to exceed fifty

- dollars] <u>under section 324.015, RSMo,</u> for each day devoted to the
- 2 affairs of the board and shall be entitled to reimbursement of
- 3 expenses necessarily incurred in the discharge of official
- 4 duties.
- 5 340.212. 1. The board shall cause the executive director
- 6 to prepare and maintain a written record of all board proceedings
- 7 whether or not such proceedings are formal, informal, open or
- 8 closed to the public. All records so prepared and maintained and
- 9 other documents or reports incorporated therein shall be open to
- 10 the public except where specifically required or allowed to be
- 11 closed to the public pursuant to chapter 610, RSMo.
- 12 2. Other provisions of section [620.010] <u>324.001</u>, RSMo, to
- the contrary notwithstanding, the board shall publish a list of
- 14 the names and addresses of all persons who hold licenses under
- the provisions of sections 340.200 to 340.330, and shall publish
- 16 a list of all persons whose licenses have been suspended,
- 17 revoked, surrendered, restricted, denied, withheld, or otherwise
- disciplined, whether voluntarily or not. The board shall mail a
- 19 copy of such list to any person, agency or professional
- 20 association upon request and payment of a fee necessary for
- 21 photocopying and postage as established by board rule. The board
- 22 may forward such lists at no charge and upon its own motion for
- 23 the purpose of voluntary interstate exchange of information or to
- other administrative or law enforcement agencies acting within
- 25 the scope of their statutory authority, whether the same be
- 26 interstate or intrastate.
- 3. Other provisions of section [620.010] <u>324.001</u>, RSMo, to
- 28 the contrary notwithstanding, the board shall prepare and make

actions taken by the board or denial of licensure. Such report shall set forth findings of fact, grounds for such denial or discipline, names of board members who were present, and any resulting order or directive of the board; the same to apply whether or not discipline or denial is voluntarily agreed to by

available to the public a report upon the final disciplinary

- 7 the licensee or applicant. Whenever a person possessing a
- 8 license voluntarily enters chemical or alcohol treatment and
- 9 monitoring programs for purposes of rehabilitation by informal
- agreement with the board, the action shall not be reported with
- any other actions taken or agreed to between the board and the
- 12 licensee or applicant.

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- 4. Where the board does not recommend disciplinary action,
 a report stating that no action is recommended shall be prepared
 and forwarded to the complaining party and the licensee or
 applicant.
- 5. Members of the board or employees of the board shall be immune from any suit predicated on the publication of information, reports or lists required by this section.
 - 345.035. 1. The board may, within the limits of appropriations, employ such board personnel as defined in subdivision (4) of subsection [15] 10 of section [620.010] 324.001, RSMo, as may be necessary to carry out its duties.
 - 2. All expenses of the board shall be paid only from appropriations made for that purpose from the board of registration for the healing arts fund.
- 27 345.080. 1. There is hereby established an "Advisory
 28 Commission for Speech-Language Pathologists and Audiologists"

- 1 which shall guide, advise and make recommendations to the board.
- 2 The commission shall approve the examination required by section
- 3 345.050, and shall assist the board in carrying out the
- 4 provisions of sections 345.010 to 345.075.
- 5 2. After August 28, 1997, the commission shall consist of
- 6 seven members, one of whom shall be a voting public member,
- 7 appointed by the board of registration for the healing arts.
- 8 Each member shall be a citizen of the United States and a
- 9 resident of this state. Three members of the commission shall be
- 10 licensed speech-language pathologists and three members of the
- 11 commission shall be licensed audiologists. The public member
- shall be at the time of appointment a citizen of the United
- 13 States; a resident of this state for a period of one year and a
- registered voter; a person who is not and never was a member of
- any profession licensed or regulated pursuant to sections 345.010
- to 345.080 or the spouse of such person; and a person who does
- 17 not have and never has had a material, financial interest in
- 18 either the providing of the professional services regulated by
- 19 sections 345.010 to 345.080, or an activity or organization
- 20 directly related to any profession licensed or regulated pursuant
- 21 to sections 345.010 to 345.080. Members shall be appointed to
- 22 serve three-year terms, except as provided in this subsection.
- 23 Each member of the advisory commission for speech pathologists
- 24 and clinical audiologists on August 28, 1995, shall become a
- 25 member of the advisory commission for speech-language
- 26 pathologists and clinical audiologists and shall continue to
- serve until the term for which the member was appointed expires.
- 28 Each member of the advisory commission for speech-language

pathologists and clinical audiologists on August 28, 1997, shall 1 2 become a member of the advisory commission for speech-language pathologists and audiologists and shall continue to serve until 3 the term for which the member was appointed expires. 5 public member appointed pursuant to this subsection shall be 6 appointed for a two-year term and the one additional member 7 appointed pursuant to this subsection shall be appointed for a 8 full three-year term. No person shall be eligible for 9 reappointment who has served as a member of the advisory 10 commission for speech pathologists and audiologists or as a 11 member of the commission as established on August 28, 1995, for a 12 total of six years. The membership of the commission shall 13 reflect the differences in levels of education, work experience 14 and geographic residence. For a licensed speech-language 15 pathologist member, the president of the Missouri Speech-Language-Hearing Association in office at the time, and 16 17 for a licensed audiologist member, the president of the Missouri 18 Academy of Audiologists in office at the time, in consultation 19 with the president of the Missouri Speech-Language- Hearing 20 Association, shall, at least ninety days prior to the expiration of a term of a commission member, other than the public member, 21 22 or as soon as feasible after a vacancy on the commission 23 otherwise occurs, submit to the director of the division of 24 professional registration a list of five persons qualified and 25 willing to fill the vacancy in question, with the request and recommendation that the board of registration for the healing 26 27 arts appoint one of the five persons so listed, and with the list

so submitted, the president of the Missouri

- Speech-Language-Hearing Association or the president of the Missouri Academy of Audiologists in office at the time shall include in his or her letter of transmittal a description of the method by which the names were chosen by that association.
- 3. Notwithstanding any other provision of law to the 6 contrary, any appointed member of the commission shall receive as 7 compensation an amount [established by the director of the 8 division of professional registration not to exceed seventy 9 dollars per day for] set under section 324.015, RSMo, for each 10 day devoted to the affairs of the commission [business] plus actual and necessary expenses incurred in the discharge of 11 12 official duties. [The director of the division of professional 13 registration shall establish by rule guidelines for payment.] 14 All staff for the commission shall be provided by the board of registration for the healing arts. 15
 - 4. The commission shall hold an annual meeting at which it shall elect from its membership a chairman and secretary. The commission may hold such additional meetings as may be required in the performance of its duties[, provided that notice of every meeting shall be given to each member at least ten days prior to the date of the meeting]. A quorum of the commission shall consist of a majority of its members.

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- 5. The board of registration for the healing arts may remove a commission member for misconduct, incompetency or neglect of the member's official duties after giving the member written notice of the charges against such member and an opportunity to be heard thereon.
- 28 346.010. As used in sections 346.010 to 346.250, except as

- 1 the context may require otherwise, the following terms mean:
- 2 (1) "Audiologist", a clinical audiologist licensed
- 3 pursuant to chapter 345, RSMo;

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- 4 (2) "Board", the Missouri board of examiners for hearing 5 instrument specialists, which is established in section 346.120;
- 6 (3) "Department", the department of [economic development]
 7 insurance, financial and professional regulation;
 - (4) "Division", the division of professional registration [in the department of economic development];
 - (5) "Hearing instrument" or "hearing aid", any wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories, including earmold, but excluding batteries, cords, receivers and repairs;
 - (6) "Hearing instrument specialist" or "specialist", a person licensed by the state pursuant to sections 346.010 to 346.250 who is authorized to engage in the practice of fitting hearing instruments;
 - (7) "Hearing instrument specialist in-training", a person who holds a temporary permit issued by the division to fit hearing instruments under the supervision of a hearing instrument specialist;
- 23 (8) "License", a license issued by the state under sections 24 346.010 to 346.250 to hearing instrument specialists;
- 25 (9) "Otolaryngologist", a person licensed to practice
 26 medicine and surgery in the state of Missouri pursuant to chapter
 27 334, RSMo, and who spends the majority of the person's practice
 28 seeing patients with ear, nose, and throat diseases;

"Person", an individual, corporation, partnership, 1 (10)2 joint venture, association, trust or any other legal entity;

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- "Practice of fitting hearing instruments", the 3 4 selection, adaptation, and sale of hearing instruments, including 5 the testing and evaluation of hearing by means of an audiometer 6 and the making of impressions for earmolds;
 - (12)"Sell or sale", any transfer of title or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with distributors or dealers;
 - "Registration of supervision", the process of obtaining a certificate of authority issued by the division to a hearing instrument specialist that enables the specialist to supervise one or more hearing instrument specialists in-training, as defined by division rules;
 - "Supervised training", the program of education and (14)experience, as defined by division rule, required to be followed by each hearing instrument specialist in-training;
 - "Supervisor", a hearing instrument specialist who has filed a registration of supervision with the board and has received from the division a certificate of authority;
- "Temporary permit", a permit issued by the division 21 22 while the applicant is in training to become a licensed hearing 23 instrument specialist.
 - 346.120. 1. There is hereby established the "Missouri Board of Examiners for Hearing Instrument Specialists", which shall guide, advise and make recommendations to the division. The council for hearing aid dealers and fitters is abolished.

- any current member of the council for hearing aid dealers and fitters to the Missouri board of examiners for hearing instrument specialists upon August 28, 1995.
- Members of the board shall be United States citizens and residents of the state for a period of not less than one year. The board shall consist of five hearing instrument specialists, one otolaryngologist, one voting public member and one audiologist holding a certificate of clinical competence and licensed pursuant to chapter 345, RSMo. Each hearing instrument specialist on the board shall have no less than five years of experience in the practice of fitting hearing instruments and shall hold a valid license as a hearing instrument specialist as provided in sections 346.010 to 346.250.

- 3. Each member of the board shall be appointed by the governor with the advice and consent of the senate. The term of office of each member shall be for four years, except that the first board appointed shall consist of two members, one of which shall be the public member, whose terms shall be for four years, two members whose terms shall be for three years, two members whose terms shall be for two years and two members whose terms shall be for one year. Upon the expiration of a member's term, the governor shall appoint a successor. The members of the board shall annually designate one member to serve as chairperson and another to serve as vice chairperson. Upon the absence of the chairperson, the vice chairperson shall assume the duties of the chairperson.
 - 4. No member of the board who has served a full term may be reappointed to the board until at least one year after the

expiration of the member's term of office.

- 5. Each member of the board shall receive as compensation an amount set [by the division] <u>under section 324.015</u> for each day devoted to the affairs of the board and shall be reimbursed for the member's actual and necessary expenses incurred in the performance of the member's duties.
- 6. The public member shall be at the time of appointment a citizen of the United States, a resident of this state for a period of one year and a registered voter; a person who is not, and never was, a member of any profession licensed or regulated under this chapter or the spouse of such person; and a person who does not have, and never has had, a material financial interest in either the providing of the professional services regulated by this chapter, or any activity or organization directly related to any profession licensed or regulated under this chapter. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.
- 7. No member of the board shall use his or her position on the board to advance any financial or material interest the member may have in the provision of professional services regulated by sections 346.010 to 346.250. Members of the board may be removed from office for cause. Upon death, resignation or removal from office of any member of the board, any such vacancy shall be filled by the governor.
 - 8. The board may sue and be sued as the Missouri board of

- 1 examiners for hearing instrument specialists, and its members
- 2 need not be named as parties. Members of the board shall not be
- 3 personally liable, either jointly or severally, for any act
- 4 committed in the performance of their official duties as board
- 5 members, nor shall any board member be personally liable for any
- 6 costs which accrue in any action by or against the board.
- 7 352.505. 1. A qualified organization that issues qualified
- 8 charitable gift annuities shall notify the department of
- 9 insurance, financial and professional regulation in writing by
- 10 the later of ninety days after August 28, 2001, or the date on
- 11 which it enters into the organization's first qualified
- 12 charitable gift annuity agreement. The notice must:
- 13 (1) Be signed by an officer or director of the
- 14 organization;
- 15 (2) Identify the organization; and
- 16 (3) Certify that:
- 17 (a) The organization is a qualified organization; and
- 18 (b) The annuities issued by the organization are qualified
- 19 charitable gift annuities.
- 20 2. The organization shall be required to submit additional
- 21 information if necessary to determine appropriate penalties that
- 22 may be applicable pursuant to section 352.520.
- 352.520. The department of insurance, financial and
- 24 professional regulation may enforce performance of the
- requirements of sections 352.505 and 352.510 by sending a letter
- by certified mail, return receipt requested, demanding that the
- 27 qualified organization comply with the requirements of sections
- 352.505 and 352.510. The department of insurance, financial and

professional regulation may fine the qualified organization in an 1 2 amount not to exceed one thousand dollars per qualified charitable gift annuity agreement issued until such time as the 3 qualified organization complies with sections 352.505 and 352.510. However, the failure of a qualified organization to 5 6 comply with the notice requirements imposed pursuant to section 7 352.505 or section 352.510 does not prevent a charitable gift annuity that otherwise meets the requirements of sections 352.500 8 to 352.520 from constituting a qualified charitable gift annuity. 9 10 353.120. Notwithstanding any requirement of law to the 11 contrary, or the absence of direct provision therefor in the 12 instrument under which a fiduciary is acting, every executor, 13 administrator, trustee, guardian or any other person, holding trust funds or acting in a fiduciary capacity, unless the 14 15 instrument under which such fiduciary is acting expressly forbids, also the state, its subdivisions, cities, all other 16 17 public bodies, all public officers, corporations, organized under 18 or subject to the provisions of the banking law (including 19 savings banks, savings and loan associations, trust companies, 20 private bankers and private banking corporations), the state director of finance as conservator, liquidator or rehabilitator 21 22 of any such person, partnership or corporation, person, 23 partnership and corporations organized under or subject to the 24 provisions of the insurance law, the director of the department of insurance, financial and professional regulation as 25 26 conservator, liquidator, or rehabilitator of any such person, 27 partnership or corporation, any of which owns or holds any real 28 property within any blighted area proposed to be cleared or

sell, lease or otherwise transfer any such real property to an urban redevelopment corporation, and receive and hold any cash, mortgages, or other securities or obligations exchanged therefor by such urban redevelopment corporations, and may execute such instruments and do such acts as may be deemed necessary or

redeveloped by an urban redevelopment corporation, may grant,

- desirable by them or it and by the urban redevelopment corporations in connection with the development and any
- 9 development plan.

- 354.010. As used in sections 354.010 to 354.380, unless the context clearly indicates otherwise, the following terms mean:
 - (1) "Corporation", a domestic health services corporation subject to the provisions of sections 354.010 to 354.380;
 - (2) "Director", the director of the department of insurance, financial and professional regulation of the state of Missouri;
 - (3) "Health services", the health care and services provided by hospitals, or other health care institutions, organizations, associations or groups, and by doctors of medicine, osteopathy, dentistry, chiropractic, optometry and podiatry, nursing services, medical appliances, equipment and supplies, drugs, medicines, ambulance services, and other therapeutic services and supplies;
 - (4) "Health services corporation", any not-for-profit corporation heretofore or hereafter organized or operating for the purposes of establishing and operating a nonprofit plan or plans under which prepaid hospital care, medical-surgical care and other health care and services, or reimbursement therefor,

- 1 may be furnished to a member or beneficiary;
- 2 (5) "Member" or "beneficiary", a natural person who is
- 3 entitled to receive health services, or reimbursement therefor,
- 4 pursuant to a contract made by a health services corporation with
- 5 or for the benefit of such person;
- 6 (6) "Membership contract", any agreement, contract or
- 7 certificate by which a health services corporation describes the
- 8 health services or benefits to be provided thereunder to its
- 9 members or beneficiaries;
- 10 (7) "Not-for-profit corporation", a nonprofit domestic
- 11 corporation organized under or accepting the provisions of
- 12 chapter 355, RSMo, or incorporated under chapter 352, RSMo.
- 13 354.050. The corporation shall have all the powers, rights
- and privileges of a corporation organized under chapter 355,
- 15 RSMo, except insofar as such provisions are inconsistent with the
- provisions of sections 354.010 to 354.380, but it shall not
- 17 commence its business or operations until it receives authority
- 18 to do so from the director [of insurance], as provided in section
- 19 354.055.
- 20 354.055. No corporation subject to the provisions of this
- 21 chapter shall commence operations or transact any business in
- this state unless it shall first procure from the director [of
- 23 insurance] a certificate of authority stating that the
- 24 requirements of the laws of this state have been complied with
- and authorizing it to do business. The certificate of authority
- 26 shall expire on the last day of June in each year, but shall be
- 27 extended automatically pending formal renewal by the director, if
- the corporation has continued to comply with the provisions of

- 1 sections 354.010 to 354.380 and of the laws of this state.
- 2 354.060. 1. The director [of the department of insurance]
- 3 shall determine that all the requirements of sections 354.010 to
- 4 354.380 for commencement of business have been complied with, and
- 5 upon such determination shall issue to the corporation a
- 6 certificate of authority to do business as a health services
- 7 corporation under sections 354.010 to 354.380.
- 8 2. The director shall not issue or renew his certificate of
- 9 authority to any corporation operating or proposing to operate
- under the provisions of sections 354.010 to 354.380, unless such
- 11 corporation shall be in compliance with all the requirements of
- 12 sections 354.010 to 354.380.
- 13 354.065. 1. A corporation may amend its articles of
- incorporation from time to time in the manner provided in chapter
- 15 355, RSMo, and shall file a duly certified copy of its
- 16 certificate of amendment with the director [of insurance] within
- twenty days after the issuance of the certificate of amendment by
- 18 the secretary of state. Upon the issuance of the certificate of
- amendment by the secretary of state, the amendment shall become
- 20 effective and the articles of incorporation shall be deemed to be
- amended accordingly.
- 22 2. A health services corporation organized as a
- 23 not-for-profit corporation pursuant to this chapter may amend its
- 24 articles in the manner provided in chapter 355, RSMo, to change
- 25 its status to that of a for-profit business corporation and
- accept the provisions of chapter 351, RSMo, by:
- 27 (1) Adopting a resolution amending its articles of
- incorporation or articles of agreement so as:

1 (a) To eliminate any purpose, power or other provision
2 thereof not authorized to be set forth in the articles of
3 incorporation of corporations organized pursuant to chapter 351,
4 RSMo;

- (b) To set forth any provision authorized pursuant to chapter 351, RSMo, to be inserted in the articles of incorporation of corporations organized pursuant to chapter 351, RSMo, which the corporation chooses to insert therein and the material and information required to be set forth pursuant to chapter 351, RSMo, in the original articles of incorporation of corporations organized pursuant to chapter 351, RSMo;
- (2) Adopting a resolution accepting all of the provisions of chapter 351, RSMo, and providing that such corporation shall for all purposes be thenceforth deemed to be a corporation organized pursuant to chapter 351, RSMo;
- (3) By filing with the secretary of state a certificate of acceptance of chapter 351, RSMo;
- (4) By complying with the provisions of sections 355.616 and 355.621, RSMo, to the extent those sections would apply if such health services corporation were merging with a domestic business corporation with the proposed amended articles of incorporation serving as the proposed plan of merger.
- 3. The provisions of subsection 2 of this section shall expire and have no force and effect on and after August 31, 2001.
- 354.085. No corporation subject to the provisions of sections 354.010 to 354.380 shall deliver or issue for delivery in this state a form of membership contract, or any endorsement or rider thereto, until a copy of the form shall have been

approved by the director. The director shall not approve any 1 2 policy forms which are not in compliance with the provisions of sections 354.010 to 354.380 of this state, or which contain any 3 provision which is deceptive, ambiguous or misleading, or which do not contain such words, phraseology, conditions and provisions 5 6 which are specific, certain and reasonably adequate to meet 7 needed requirements for the protection of those insured. If a policy form is disapproved, the reasons therefor shall be stated 8 in writing; a hearing shall be granted upon such disapproval, if 9 10 so requested; provided, however, that such hearing shall be held 11 no sooner than fifteen days following the request. The failure 12 of the director [of insurance] to take action approving or 13 disapproving a submitted policy form within forty-five days from 14 the date of filing shall be deemed an approval thereof. 15 director shall not disapprove any deemed policy form for a period 16 of twelve months thereafter. If at any time during that twelvemonth period the director determines that any provision of the 17 18 deemed policy form is contrary to state law, the director shall notify the health services corporation of the specific provision 19 that is contrary to state law, and any specific statute to which 20 21 the provision is contrary to, and request that the health 22 services corporation file, within thirty days of receipt of the request, an amendment form that modifies the provision to conform 23 24 to state law. Upon approval of the amendment form by the director, the health services corporation shall issue a copy of 25 26 the amendment to each individual and entity to which the deemed 27 policy form was previously issued and shall attach a copy of the 28 amendment to the deemed policy form when it is subsequently

- issued. Such amendment shall have the force and effect as if the amendment was in the original filing or policy. The director [of insurance] shall have authority to make such reasonable rules and regulations concerning the filing and submission of such policy
- 354.152. Premiums, dues or fees made by each corporation shall be subject to the following provisions:

forms as are necessary, proper or advisable.

- (1) Premiums, dues or fees shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory;
- (2) No premiums, dues or fees shall be held to be excessive unless such premiums, dues or fees are unreasonably high relative to the corporation's loss experience under policies, plans or contracts with respect to the territory or classification to which such premiums, dues or fees are applicable;
- (3) No premiums, dues or fees shall be held to be inadequate unless such premiums, dues or fees are unreasonably low for the coverage provided and the continued use of such premiums, dues or fees endangers the solvency of the corporation using the same;
- (4) If the director [of the department of insurance] has reason to believe that any premiums, dues or fees do not meet the standards of this section, he shall hold a public hearing in connection therewith, provided that within a reasonable period of time, which shall be not less than ten days before the date of such hearing, he shall mail written notice specifying the matters to be considered at such hearing to any corporation believed by him not to be in compliance with the provisions of this section;

(5) If the director, after such hearings, for good cause finds that such premiums, dues or fees do not meet the provisions of this section, he shall issue an order specifying in what respects any such premiums, dues or fees fails to meet the provisions of this section and stating when, within a reasonable period of time thereafter, the further use of such premiums, dues or fees by the corporation which is the subject of the examination shall be prohibited and a copy of such order shall be sent to such corporation.

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354.165. The provisions of sections 354.010 to 354.380 or of any law relating to insurance shall not apply to any labor organization's health plan providing services established and maintained solely for its members and their immediate families, or to any health plan or services established and maintained by a trust in which a labor organization is interested as that term is defined in, and which trust is subject to the provisions and regulations of, the Federal Labor-Management Reporting and Disclosure Act, 29 U.S.C. 401-531. The administrator of any other plan or program to provide health service or benefits, or to pay or indemnify for the payment of their cost, which is maintained by any employer or jointly by any employer and employees and/or labor organizations exclusively for employees and their families, hereinafter referred to as "plan or program", shall make and file annually with the director on or before the first day of March of each year a report under oath, upon a form to be prescribed by the director, setting out the income and expenses of the plan or program for the preceding year and its financial condition as of the end of that year. In lieu of

- 1 filing such prescribed form the administrator of any such plan or
- 2 program may file with the director a duplicate set of documents,
- 3 records, reports, booklets and other instruments as may have been
- 4 filed by it within the preceding twelve months pursuant to the
- 5 Federal Welfare and Pension Plans Disclosure Act, 29 U.S.C.
- 6 301-309, the Federal Labor-Management Reporting and Disclosure
- 7 Act, 29 U.S.C. 151-168, 401-531 or the Labor Management Relations
- 8 Act, 29 U.S.C. 186. Any labor organization member or any
- 9 employee claiming to be aggrieved under the terms of any such
- 10 plan or program may file a complaint with respect thereto with
- 11 the director. The authority of the director under the insurance
- laws of this state and sections 354.010 to 354.380 to prohibit or
- regulate such a plan or program shall be limited to the
- 14 following:
- 15 (1) Compelling the filing of the annual reports referred to
- 16 above;
- 17 (2) Investigating the complaints of members or employees;
- 18 (3) Examining the financial conditions, affairs and
- management of the plan or program;
- 20 (4) Instituting judicial proceedings to enjoin the
- 21 continuation of any act or practices which he believes to be
- 22 unfair and deceptive with respect to such members.
- 23 This section shall not be construed as exempting from regulation
- by the department [of insurance] any insurance contract or health
- 25 services contract which provides for the payment of benefits or
- the supplying of health services under the labor organization,
- 27 union-employer-employee or employer-employee plans referred to in
- this section which are purchased from insurance companies or

health-services corporations subject to regulation by the
department [of insurance].

or persons rendering the service.

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- 3 354.205. 1. The expenses of any proceedings concerning, or 4 examinations of, a corporation subject to the provisions of 5 sections 354.010 to 354.380, conducted by the department [of 6 insurance], shall be assessed by the director upon the 7 corporation proceeded against or examined, or whose policies have 8 been valued, and shall be in the first instance paid by such 9 corporation, on the order of the director, directly to the person
 - 2. If the corporation subject to the provisions of sections 354.010 to 354.380 has been or shall be adjudged insolvent, or shall neglect, fail or refuse to pay the director may approve the payment of the expenses, in whole or in part, which shall be paid in like manner as other expenses of the [insurance] department; and the amount so paid, together with cost, charges and fees for collecting the same, shall be a first lien upon all the assets and property of such corporation, and may be recovered by the director of revenue in any court of competent jurisdiction; or if such corporation be in liquidation, or process of being wound up, the cost and expenses of settling its affairs shall be allowed and taxed as costs against said corporation, and shall be a first lien upon and payable out of its assets. The director of revenue shall deposit such sums in the state treasury to reimburse the insurance fund.
- 3. Before any costs of any examination or valuation shall be paid, vouchers for the same shall be submitted to and approved by the commissioner of administration.

4. When any examination or valuation is made by the
director in person or by any salaried employee of the department
[of insurance], the cost of making the same shall be certified to
the director of revenue for collection.

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- 354.240. 1. A person not a legal resident of this state may be licensed to act in this state as an enrollment representative upon compliance with the provisions of this chapter provided that the state in which the person resides will accord the same privilege to a resident of this state. The director is authorized to enter into reciprocal agreements with the appropriate official of any other state waiving the written examination of any applicant residing in the other state; provided, the director deems the applicant fully qualified and competent; and
- 15 (1) That a written examination is required of applicants 16 for similar licenses in the other state; and
 - (2) That the appropriate official in that state certifies that the applicant holds a currently valid license of similar type in that state and either passed a written examination or was the holder of such license prior to the time a written examination was required.
 - 2. In the event that the applicant is a resident of a state which does not require a written examination, then the director shall subject him to a written examination under terms and conditions to be prescribed by the director [of insurance].
 - 3. In the event that the applicant is a resident of another state in which the appropriate insurance official, as a general policy, has refused to permit legal residents of Missouri to

- become licensed as enrollment representatives and to transact the
 business of a health services corporation in such state, then the
 director shall not license any applicant from that state.
 - 354.275. Any person willfully violating any of the provisions of sections 354.225 to 354.270 is guilty of a class A misdemeanor and on conviction thereof, if the offender holds a license under these sections, the court imposing sentence shall order the director [of the department of insurance] to revoke the license.

- 354.285. 1. All agreements or contracts under which any person, organization or corporation enjoys in fact the exclusive or dominant right to manage or control any corporation subject to the provisions of sections 354.010 to 354.380 to the substantial exclusion of the board of directors, officers, attorney in fact or other lawful management shall be filed with the director on his request.
- 2. The director, for the purpose of ascertaining the assets, conditions and affairs of any corporation subject to the provisions of sections 354.010 to 354.380, may examine the books, records, documents and assets of any person having a contract or agreement as provided in subsection 1 to the extent necessary to determine the financial condition of such corporation. The failure or refusal of any such person to submit his books, papers, accounts, records or affairs to the reasonable inspection or examination of the director shall be grounds for the suspension or revocation of the certificate of authority of the corporation to do business in this state.
 - 3. No agreement or contract as provided in subsection 1

shall operate to the financial detriment of the corporation in such manner as to endanger its financial stability or otherwise be hazardous to the members and creditors of the corporation.

- 4. On examination of any agreement or contract, if the director finds it violates the provisions of this section, he shall proceed in accordance with the provisions of section 354.180.
 - 5. Any person, organization or corporation having a management contract as provided in subsection 1 hereof shall within five days of execution of such contract provide notice of such contract to the director [of insurance].
 - 354.305. 1. Whenever any corporation subject to the provisions of sections 354.010 to 354.380 doing business in this state advertises its assets, either in any newspaper or periodical, or by any sign, circular, card, policy of insurance or certificate of renewal thereof, it shall, in the same connection, equally conspicuously advertise its liabilities, the same to be determined in the manner required in making statement to the [insurance division] department, and all advertisements purporting to show the amount of capital of the company shall show only the amount of capital actually paid up in cash.
 - 2. Any corporation subject to the provisions of sections 354.010 to 354.380 or enrollment representative violating the provisions of this section shall, upon conviction thereof, be guilty of a class B misdemeanor, punishable as provided by law.
 - 354.325. 1. The director [of insurance] shall, as often as he may deem proper, make careful inquiry and investigation as to the manner in which the money, funds or securities of

1 corporations subject to the provisions of sections 354.010 to
2 354.380, doing business in this state, are invested or employed,
3 and record the result of such inquiry or investigation in records
4 kept in his office for the inspection of members and public

officials.

- 2. In the event of a violation of this section or of section 354.320, the prosecuting attorney of the proper county, or in the city of St. Louis, the circuit attorney, shall proceed at once by information or indictment against the offenders.
- 354.340. Whenever any judgment shall be obtained in any of the courts of this state against any corporation subject to the provisions of sections 354.010 to 354.380 doing business in this state, and said judgment shall remain unsatisfied for fifteen days after execution shall have been lawfully issued thereon, the certificate of authority or license to do business issued or granted to such corporation shall immediately be suspended or revoked by the director [of the insurance department], upon said director being notified thereof, and such insurance company shall, after such suspension or revocation, be prohibited from transacting any business in this state until such judgment shall be satisfied.
- 354.345. Any person, who has heretofore obtained or may hereafter obtain, in any of the courts of this state, a decree against any corporation subject to the provisions of sections 354.010 to 354.380 doing business in this state, commanding or directing said corporation to specifically perform a membership contract, may, if the corporation against which said decree is obtained, fails, for a period of fifteen days after the rendition

- of said decree, to comply with the same, obtain a copy of said 1 2 decree, certified to under the hand and seal of the clerk of the court in which said decree was rendered, and transmit the same, 3 together with the certificate of said clerk, reciting therein the 5 failure of such corporation to comply with said decree, and transmit the same to the director [of the insurance department of 6 the state of Missouri], and immediately upon receipt thereof, the 7 said director [of insurance] shall cause such corporation to be 8 notified of the fact of the filing of such certified copy of said 9 decree and certificate, and if such corporation fails for a 10 period of thirty days thereafter to comply with said decree, the 11 12 certificate of authority or license to do business issued or granted to such corporation shall immediately be suspended or 13 14 revoked by the director [of the insurance department], until such decree shall be satisfied; provided, however, the foregoing shall 15 16 not be applicable while an appeal is pending if a supersedeas 17 bond shall have been given.
 - 354.355. Whenever it shall appear to the director [of the insurance department], from any examination made by himself, or from the report of a person or persons appointed by him, or from the statements of the corporation subject to the provisions of sections 354.010 to 354.380, or from any knowledge or information in his possession

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- (1) That the corporation has refused to submit its books, papers, accounts or affairs to the reasonable inspection of the director or his deputy or his examiner; or
- (2) That the corporation has, by contract of reinsurance or otherwise, transferred or attempted to transfer substantially its

- 1 entire property or business, or entered into any transaction, the
- 2 effect of which is to merge substantially its entire property or
- 3 business in the property or business of any other corporation,
- 4 association, society, order, partnership or individual without
- 5 first having obtained the written approval of the director [of
- 6 insurance] as provided by law; or
- 7 (3) That the corporation is found, after an examination, to
- 8 be in such condition that its further transaction of business
- 9 will be hazardous to its policyholders or to its creditors or to
- 10 the public; or
- 11 (4) That the corporation has an officer who has refused to
- be examined under oath touching its affairs; or
- 13 (5) That the corporation has ceased to transact the
- business of insurance for a period of one year;

- 16 the director may institute a suit or proceedings in the circuit
- 17 court in the county or city in which the corporation was
- organized or in which it has or last had its principal or chief
- 19 office or place of business or in the county of Cole, to enjoin
- 20 the corporation from further prosecution of its business, either
- 21 temporarily or perpetually, or for a judgment dissolving the
- corporation or for both; and after the entry of the decree or
- judgment, the court upon the motion of the director [of the
- insurance department] may order the liquidation, settlement and
- 25 winding up of the affairs of such corporation or the
- rehabilitation of the corporation as provided in section 354.140
- 27 together with such other decrees and orders in connection
- therewith as the court shall deem advisable.

- 1 354.400. As used in sections 354.400 to 354.535, the following terms shall mean:
- 3 (1) "Basic health care services", health care services
 4 which an enrolled population might reasonably require in order to
 5 be maintained in good health, including, as a minimum, emergency
 6 care, inpatient hospital and physician care, and outpatient
 7 medical services;
 - (2) "Community-based health maintenance organization", a health maintenance organization which:

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- (a) Is wholly owned and operated by hospitals, hospital systems, physicians, or other health care providers or a combination thereof who provide health care treatment services in the service area described in the application for a certificate of authority from the department of insurance, financial and professional regulation;
- (b) Is operated to provide a means for such health care providers to market their services directly to consumers in the service area of the health maintenance organization;
- (c) Is governed by a board of directors that exercises fiduciary responsibility over the operations of the health maintenance organization and of which a majority of the directors consist of equal numbers of the following:
 - a. Physicians licensed pursuant to chapter 334, RSMo;
- 24 b. Purchasers of health care services who live in the 25 health maintenance organization's service area;
- 26 c. Enrollees of the health maintenance organization elected 27 by the enrollees of such organization; and
 - d. Hospital executives, if a hospital is involved in the

- 1 corporate ownership of the health maintenance organization;
- 2 (d) Provides for utilization review, as defined in section
- 3 374.500, RSMo, under the auspices of a physician medical director
- 4 who practices medicine in the service area of the health
- 5 maintenance organization, using review standards developed in
- 6 consultation with physicians who treat the health maintenance
- 7 organization's enrollees;
- 8 (e) Is actively involved in attempting to improve
- 9 performance on indicators of health status in the community or
- 10 communities in which the health maintenance organization is
- operating, including the health status of those not enrolled in
- 12 the health maintenance organization;
- 13 (f) Is accountable to the public for the cost, quality and
- 14 access of health care treatment services and for the effect such
- 15 services have on the health of the community or communities in
- 16 which the health maintenance organization is operating on a
- 17 whole;
- 18 (g) Establishes an advisory group or groups comprised of
- 19 enrollees and representatives of community interests in the
- 20 service area to make recommendations to the health maintenance
- 21 organization regarding the policies and procedures of the health
- 22 maintenance organization;
- 23 (h) Enrolls fewer than fifty thousand covered lives;
- 24 (3) "Covered benefit" or "benefit", a health care service
- 25 to which an enrollee is entitled under the terms of a health
- 26 benefit plan;
- 27 (4) "Department", the department of insurance, financial
- 28 and professional regulation;

- 1 (5) "Director", the director of the department of
- insurance, financial and professional regulation;
- 3 [(5)] (6) "Emergency medical condition", the sudden and, at
- 4 the time, unexpected onset of a health condition that manifests
- 5 itself by symptoms of sufficient severity that would lead a
- 6 prudent lay person, possessing an average knowledge of health and
- 7 medicine, to believe that immediate medical care is required,
- 8 which may include, but shall not be limited to:
- 9 (a) Placing the person's health in significant jeopardy;
- 10 (b) Serious impairment to a bodily function;
- 11 (c) Serious dysfunction of any bodily organ or part;
- 12 (d) Inadequately controlled pain; or
- (e) With respect to a pregnant woman who is having
- 14 contractions:
- a. That there is inadequate time to effect a safe transfer
- 16 to another hospital before delivery; or
- b. That transfer to another hospital may pose a threat to
- 18 the health or safety of the woman or unborn child;
- [(6)] (7) "Emergency services", health care items and
- 20 services furnished or required to screen and stabilize an
- 21 emergency medical condition, which may include, but shall not be
- limited to, health care services that are provided in a licensed
- 23 hospital's emergency facility by an appropriate provider;
- [(7)] (8) "Enrollee", a policyholder, subscriber, covered
- 25 person or other individual participating in a health benefit
- 26 plan;
- [(8)] (9) "Evidence of coverage", any certificate,
- agreement, or contract issued to an enrollee setting out the

- 1 coverage to which the enrollee is entitled;
- 2 [(9)] (10) "Health care services", any services included in
- 3 the furnishing to any individual of medical or dental care or
- 4 hospitalization, or incident to the furnishing of such care or
- 5 hospitalization, as well as the furnishing to any person of any
- and all other services for the purpose of preventing,
- 7 alleviating, curing, or healing human illness, injury, or
- 8 physical disability;
- 9 [(10)] (11) "Health maintenance organization", any person
- which undertakes to provide or arrange for basic and supplemental
- 11 health care services to enrollees on a prepaid basis, or which
- meets the requirements of section 1301 of the United States
- 13 Public Health Service Act;
- [(11)] (12) "Health maintenance organization plan", any
- 15 arrangement whereby any person undertakes to provide, arrange
- 16 for, pay for, or reimburse any part of the cost of any health
- 17 care services and at least part of such arrangement consists of
- 18 providing and assuring the availability of basic health care
- services to enrollees, as distinguished from mere indemnification
- against the cost of such services, on a prepaid basis through
- insurance or otherwise, and as distinguished from the mere
- 22 provision of service benefits under health service corporation
- 23 programs;
- [(12)] (13) "Individual practice association", a
- 25 partnership, corporation, association, or other legal entity
- 26 which delivers or arranges for the delivery of health care
- 27 services and which has entered into a services arrangement with
- 28 persons who are licensed to practice medicine, osteopathy,

- dentistry, chiropractic, pharmacy, podiatry, optometry, or any
- 2 other health profession and a majority of whom are licensed to
- 3 practice medicine or osteopathy. Such an arrangement shall
- 4 provide:
- 5 (a) That such persons shall provide their professional 6 services in accordance with a compensation arrangement
- 7 established by the entity; and
- 8 (b) To the extent feasible for the sharing by such persons
- 9 of medical and other records, equipment, and professional,
- 10 technical, and administrative staff;
- [(13)] (14) "Medical group/staff model", a partnership,
- 12 association, or other group:
- 13 (a) Which is composed of health professionals licensed to
- 14 practice medicine or osteopathy and of such other licensed health
- 15 professionals (including dentists, chiropractors, pharmacists,
- 16 optometrists, and podiatrists) as are necessary for the
- 17 provisions of health services for which the group is responsible;
- 18 (b) A majority of the members of which are licensed to
- 19 practice medicine or osteopathy; and
- 20 (c) The members of which (i) as their principal
- 21 professional activity over fifty percent individually and as a
- group responsibility engaged in the coordinated practice of their
- profession for a health maintenance organization; (ii) pool their
- income from practice as members of the group and distribute it
- among themselves according to a prearranged salary or drawing
- account or other plan, or are salaried employees of the health
- 27 maintenance organization; (iii) share medical and other records
- and substantial portions of major equipment and of professional,

- 1 technical, and administrative staff; (iv) establish an
- 2 arrangement whereby an enrollee's enrollment status is not known
- 3 to the member of the group who provides health services to the
- 4 enrollee;
- 5 [(14)] (15) "Person", any partnership, association, or
- 6 corporation;
- 7 [(15)] (16) "Provider", any physician, hospital, or other
- 8 person which is licensed or otherwise authorized in this state to
- 9 furnish health care services;
- [(16)] (17) "Uncovered expenditures", the costs of health
- 11 care services that are covered by a health maintenance
- organization, but that are not guaranteed, insured, or assumed by
- 13 a person or organization other than the health maintenance
- organization, or those costs which a provider has not agreed to
- forgive enrollees if the provider is not paid by the health
- 16 maintenance organization.
- 17 354.405. 1. Notwithstanding any law of this state to the
- 18 contrary, any person may apply to the director for a certificate
- of authority to establish and operate a health maintenance
- organization in compliance with this act. No person shall
- 21 establish or operate a health maintenance organization in this
- 22 state without obtaining a certificate of authority pursuant to
- 23 sections 354.400 to 354.636. A foreign corporation may qualify
- pursuant to sections 354.400 to 354.636, subject to its
- 25 registration to do business in this state as a foreign
- 26 corporation pursuant to chapter 351, RSMo, and compliance with
- the provisions of sections 354.400 to 354.636.
- 28 2. Every health maintenance organization doing business in

a certificate of authority pursuant to subsection 3 of this section within one hundred twenty days of September 28, 1983. Each such applicant may continue to operate until the director acts upon the application. In the event that an application is not submitted or is denied pursuant to section 354.410, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked. Any health maintenance organization licensed by the department of insurance, financial and professional regulation prior to

this state on September 28, 1983, shall submit an application for

- September 28, 1983, and complying with the paid-in capital or guarantee fund requirements of section 354.410 shall be issued a certificate of authority upon filing an amended certificate of authority and an amended articles of incorporation that conform with sections 354.400 to 354.636. When the annual statement of a health maintenance organization subject to the provisions of sections 354.400 to 354.636 is filed and all fees due from the health maintenance organization are tendered, the health maintenance organization's certificate of authority to do business in this state shall automatically be extended pending formal renewal by the director, or until such time as the director should refuse to renew the certificate.
 - 3. Each application for a certificate of authority shall be verified by an officer or authorized representative of the applicant, shall be in a form prescribed by the director, and shall set forth or be accompanied by the following:
 - (1) A copy of the organizational documents of the applicant such as the articles of incorporation, articles of association,

partnership agreement, trust agreement, or other applicable
documents, and all amendments thereto;

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- 3 (2) A copy of the bylaws, rules and regulations, or similar 4 document, if any, regulating the conduct of the internal affairs 5 of the applicant;
 - (3) A list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the principal officers if the applicant is a corporation, and the partners or members if the applicant is a partnership or association;
- 13 (4) A copy of any contract made or to be made between any 14 providers and persons listed in subdivision (3) of this 15 subsection and the applicant;
- 16 (5) A copy of the form of evidence of coverage to be issued 17 to the enrollees:
- 18 (6) A copy of the form of the group contract, if any, which 19 is to be issued to employers, unions, trustees, or other 20 organizations;
 - (7) Financial statements showing the applicant's assets, liabilities, and sources of financial support. If the applicant's financial affairs are audited by independent certified public accountants, a copy of the applicant's most recent certified financial statement shall be deemed to satisfy this requirement unless the director directs that additional or more recent financial information is required for the proper administration of sections 354.400 to 354.636;

1 (8) A description of the proposed method of marketing the 2 plan, a financial plan which includes a three-year projection of 3 operating results anticipated, and a statement as to the sources 4 of working capital as well as any other sources of funding;

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- (9) If the applicant is not domiciled in this state, a power of attorney duly executed by such applicant appointing the director, the director's successors in office, and duly authorized deputies, as the true and lawful attorney of such applicant in and for this state upon whom all lawful process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state may be served;
- 13 (10) A statement reasonably describing the geographic area 14 or areas to be served;
- 15 (11) A description of the complaints procedures to be 16 utilized as required by section 354.445;
 - (12) A description of the mechanism by which enrollees will be afforded an opportunity to participate in matters of policy and operation;
- 20 (13) Evidence demonstrating that the health maintenance 21 organization has provided its enrollees with adequate access to 22 health care providers; and
 - (14) Such other information as the director may require to make the determinations required in section 354.410.
 - 4. Every health maintenance organization shall file with the director notice of its intention to modify any of the procedures or information described in and required to be filed by this section. Such changes shall be filed with the director

- prior to the actual modification. If the director does not 1 2 disapprove the modification within forty-five days of filing, 3 citing specific reasons for noncompliance, such modification shall be deemed approved. If a filing that is deemed approved is a document described in subdivision (4), (5) or (6) of subsection 6 3 of this section, the director shall not disapprove the deemed 7 filing for a period of twelve months thereafter. If at any time during that twelve-month period the director determines that any 8 9 provision of the deemed filing is contrary to state law, the 10 director shall notify the health maintenance organization of the 11 specific provision that is contrary to state law, and any 12 specific statute to which the provision is contrary to, and 13 request that the health maintenance organization file, within 14 thirty days of receipt of the request, an amendment form that 15 modifies the provision to conform to the state law. Upon approval of the amendment form by the director, the health 16 17 maintenance organization shall issue a copy of the amendment to 18 each individual and entity to which the deemed filing was previously issued and shall attach a copy of the amendment to the 19 20 deemed filing when it is subsequently issued. Such amendment shall have the force and effect as if the amendment was in the 21 22 original filing or policy.
 - 5. A health maintenance organization shall file all contracts of reinsurance. Any agreement between the organization and an insurer shall be subject to the laws of this state regarding reinsurance. All reinsurance agreements and any modifications thereto shall be filed and approved.

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6. When the director deems it appropriate, the director may

- 1 exempt any item from the filing requirements of this section.
- 2 354.430. 1. Every enrollee residing in this state is
- 3 entitled to evidence of coverage. If the enrollee obtains
- 4 coverage through an insurance policy or a contract issued by a
- 5 health services corporation, whether by option or otherwise, the
- 6 insurer or the health services corporation shall issue the
- 7 evidence of coverage. Otherwise the health maintenance
- 8 organization shall issue the evidence of coverage.
- 9 2. No evidence of coverage, or amendment thereto, shall be
- issued or delivered to any person in this state until a copy of
- 11 the form of the evidence of coverage, or amendment thereto, has
- 12 been filed with the director.
- 3. An evidence of coverage shall contain:
- 14 (1) No provisions or statements which are unjust, unfair,
- inequitable, misleading, or deceptive, or which encourage
- misrepresentation, or which are untrue, misleading, or deceptive
- 17 as defined in subsection 1 of section 354.460; and
- 18 (2) A clear and complete statement, if a contract, or a
- reasonably complete summary, if a certificate, of:
- 20 (a) The health care services and the insurance or other
- benefits, if any, to which the enrollee is entitled;
- 22 (b) Any limitations on the services, kind of services,
- benefits or kinds of benefits to be provided, including any
- 24 deductible or co-payment feature;
- 25 (c) Where and in what manner information is available as to
- how services may be obtained;
- 27 (d) The total amount of payment for health care services
- and the indemnity or service benefits, if any, which the enrollee

- is obligated to pay with respect to individual contracts; and
- 2 (e) A clear and understandable description of the health
- 3 maintenance organization's method for resolving enrollee
- 4 complaints, including the health maintenance organization's
- 5 toll-free customer service number and the [department of
- 6 insurance's] department's consumer complaint hot line number.
- 7 4. Any subsequent change in an evidence of coverage may be
- 8 made in a separate document issued to the enrollee.
- 9 5. A copy of the form of the evidence of coverage to be
- 10 used in this state, and any amendment thereto, shall be subject
- 11 to the filing of subsection 2 of this section unless it is
- subject to the jurisdiction of the director under the laws
- governing health insurance or health services corporations, in
- 14 which event the filing provisions of those laws shall apply.
- 15 354.442. 1. Each enrollee, and upon request each
- 16 prospective enrollee prior to enrollment, shall be supplied with
- 17 written disclosure information. In the event of any
- inconsistency between any separate written disclosure statement
- 19 and the enrollee contract or evidence of coverage, the terms of
- the enrollee contract or evidence of coverage shall be
- 21 controlling. The information to be disclosed in writing shall
- 22 include at a minimum the following:
- 23 (1) A description of coverage provisions, health care
- 24 benefits, benefit maximums, including benefit limitations;
- 25 (2) A description of any exclusions of coverage, including
- the definition of medical necessity used in determining whether
- 27 benefits will be covered;
- 28 (3) A description of all prior authorization or other

- 1 requirements for treatments and services;
- 2 (4) A description of utilization review policies and
- 3 procedures used by the health maintenance organization,
- 4 including:
- 5 (a) The circumstances under which utilization review shall
- 6 be undertaken;
- 7 (b) The toll-free telephone number of the utilization
- 8 review agent;
- 9 (c) The time frames under which utilization review
- 10 decisions shall be made for prospective, retrospective and
- 11 concurrent decisions;
- 12 (d) The right to reconsideration;
- 13 (e) The right to an appeal, including the expedited and
- 14 standard appeals processes and the time frames for such appeals;
- 15 (f) The right to designate a representative;
- 16 (g) A notice that all denials of claims shall be made by
- 17 qualified clinical personnel and that all notices of denial shall
- include information about the basis of the decision; and
- 19 (h) Further appeal rights, if any;
- 20 (5) An explanation of an enrollee's financial
- 21 responsibility for payment of premiums, coinsurance, co-payments,
- deductibles and any other charge, annual limits on an enrollee's
- financial responsibility, caps on payments for covered services
- 24 and financial responsibility for noncovered health care
- 25 procedures, treatments or services provided within the health
- 26 maintenance organization;
- 27 (6) An explanation of an enrollee's financial
- responsibility for payment when services are provided by a health

- 1 care provider who is not part of the health maintenance
- 2 organization's network or by any provider without required
- 3 authorization, or when a procedure, treatment or service is not a
- 4 covered health care benefit;
- 5 (7) A description of the grievance procedures to be used to
- 6 resolve disputes between a health maintenance organization and an
- 7 enrollee, including:
- 8 (a) The right to file a grievance regarding any dispute
- 9 between an enrollee and a health maintenance organization;
- 10 (b) The right to file a grievance when the dispute is about
- 11 referrals or covered benefits;
- 12 (c) The toll-free telephone number which enrollees may use
- 13 to file a grievance;
- 14 (d) The [department of insurance's] <u>department's</u> toll-free
- consumer complaint hot line number;
- 16 (e) The time frames and circumstances for expedited and
- 17 standard grievances;
- 18 (f) The right to appeal a grievance determination and the
- 19 procedures for filing such an appeal;
- 20 (g) The time frames and circumstances for expedited and
- 21 standard appeals;
- 22 (h) The right to designate a representative;
- 23 (i) A notice that all disputes involving clinical decisions
- shall be made by qualified clinical personnel; and
- 25 (j) All notices of determination shall include information
- about the basis of the decision and further appeal rights, if
- 27 any;
- 28 (8) A description of a procedure for providing care and

coverage twenty-four hours a day, seven days a week, for
emergency services. Such description shall include the
definition of emergency services and emergency medical condition,
notice that emergency services are not subject to prior approval,
and shall describe the enrollee's financial and other
responsibilities regarding obtaining such services, including
when such services are received outside the health maintenance

organization's service area;

- (9) A description of procedures for enrollees to select and access the health maintenance organization's primary and specialty care providers, including notice of how to determine whether a participating provider is accepting new patients;
- (10) A description of the procedures for changing primary and specialty care providers within the health maintenance organization;
- (11) Notice that an enrollee may obtain a referral for covered services to a health care provider outside of the health maintenance organization's network or panel when the health maintenance organization does not have a health care provider with appropriate training and experience in the network or panel to meet the particular health care needs of the enrollee and the procedure by which the enrollee may obtain such referral;
- (12) A description of the mechanisms by which enrollees may participate in the development of the policies of the health maintenance organization;
- (13) Notice of all appropriate mailing addresses and telephone numbers to be utilized by enrollees seeking information or authorization;

1 (14) A listing by specialty, which may be in a separate 2 document that is updated annually, of the names, addresses and 3 telephone numbers of all participating providers, including 4 facilities, and in addition in the case of physicians, board

certification; and

- (15) The director [of the department of insurance] shall develop a standard credentialing form which shall be used by all health carriers when credentialing health care professionals in a managed care plan. If the health carrier demonstrates a need for additional information, the director [of the department of insurance] may approve a supplement to the standard credentialing form. All forms and supplements shall meet all requirements as defined by the National Committee of Quality Assurance.
- 2. Each health maintenance organization shall, upon request of an enrollee or prospective enrollee, provide the following:
- (1) A list of the names, business addresses and official positions of the membership of the board of directors, officers, controlling persons, owners or partners of the health maintenance organization;
- (2) A copy of the most recent annual certified financial statement of the health maintenance organization, including a balance sheet and summary of receipts and disbursements prepared by a certified public accountant;
- (3) A copy of the most recent individual, direct pay enrollee contracts;
- 26 (4) Information relating to consumer complaints compiled 27 annually by the department [of insurance];
 - (5) The procedures for protecting the confidentiality of

- 1 medical records and other enrollee information;
- 2 (6) An opportunity to inspect drug formularies used by such
- 3 health maintenance organization and any financial interest in a
- 4 pharmacy provider utilized by such organization. The health
- 5 maintenance organization shall also disclose the process by which
- 6 an enrollee or his representative may seek to have an excluded
- 7 drug covered as a benefit;
- 8 (7) A written description of the organizational
- 9 arrangements and ongoing procedures of the health maintenance
- 10 organization's quality assurance program;
- 11 (8) A description of the procedures followed by the health
- 12 maintenance organization in making decisions about the
- 13 experimental or investigational nature of individual drugs,
- 14 medical devices or treatments in clinical trials;
- 15 (9) Individual health practitioner affiliations with
- 16 participating hospitals, if any;
- 17 (10) Upon written request, written clinical review criteria
- relating to conditions or diseases and, where appropriate, other
- 19 clinical information which the organization may consider in its
- 20 utilization review. The health maintenance organization may
- 21 include with the information a description of how such
- 22 information will be used in the utilization review process;
- 23 (11) The written application procedures and minimum
- 24 qualification requirements for health care providers to be
- considered by the health maintenance organization;
- 26 (12) A description of the procedures followed by the health
- 27 maintenance organization in making decisions about which drugs to
- include in the health maintenance organization's drug formulary.

- 3. Nothing in this section shall prevent a health
 maintenance organization from changing or updating the materials
 that are made available to enrollees.
- 354.443. 1. A health maintenance organization shall disclose to the department [of insurance] all financial 5 arrangements, financial interest in, or contractual provisions 6 7 with utilization review companies or any other health care 8 provider that would encourage or limit the type, amount, duration 9 and scope of services offered, restrict or limit referral or 10 treatment to patients, including but not limited to financial 11 incentives to limit, restrict or deny access to or delivery of 12 medical or other services prior to the delivery of such services. 13 Capitation arrangements between health maintenance organizations and health care providers shall not be considered an inducement 14 15 to limit, restrict or deny access to medical services. 16 director shall review all financial arrangements filed with the 17 department [of insurance] to determine if such arrangements offer 18 an inducement to a provider to provide less than medically necessary services to an enrollee. 19
 - 2. The capitation rate to be paid from the health maintenance organization to the health care provider is not required to be included with the financial arrangements to be filed with the department [of insurance] pursuant to subsection 1 of this section.
- 25 354.444. 1. Notwithstanding any other provisions of 26 chapter 354, the director may, after a hearing, order a 27 forfeiture to the state of Missouri a sum not to exceed one 28 hundred dollars for each violation by any person knowingly

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- 1 violating any provision of sections 354.400 to 354.636 for which
- 2 no specific punishment is provided, or order a specific
- 3 punishment in accordance with such sections. Such forfeiture may
- 4 be recovered by a civil action brought by and in the name of the
- 5 department [of insurance]. The civil action may be brought in
- 6 the county which has venue for an action against the person or
- 7 corporation.
- 8 2. Nothing contained in this section shall be construed to
- 9 prohibit the director and the corporation or its enrollment
- 10 representative from agreeing to a voluntary forfeiture of the sum
- 11 mentioned herein without civil proceedings being instituted. Any
- 12 payment under this section shall be paid into the school fund as
- provided by article IX, section 7 of the Missouri Constitution
- 14 for fines and penalties.
- 15 354.551. 1. Missouri licensed health maintenance
- organizations shall be permitted to offer point of service riders
- 17 (POS) to their approved health plan products, without being
- 18 required to obtain a separate license as a health insurer
- 19 pursuant to chapter 376, RSMo, so long as medical and hospital
- 20 expenses incurred under the POS rider do not exceed ten percent
- of total medical and hospital expenses incurred for all health
- 22 plan products sold.
- 23 2. Health maintenance organizations which have been
- licensed for at least one calendar year, who choose to insure the
- 25 POS rider, shall maintain a net worth of the greater of:
- 26 (1) One million two hundred thousand dollars; or
- 27 (2) Two percent of total premium revenue for the
- immediately preceding twelve months plus fifty percent of

- uncovered liabilities as reported in the immediately preceding calendar quarter.
- 3. Health maintenance organizations which have been
 4 licensed for less than one calendar year, who choose to insure
 5 the POS rider, shall maintain a net worth of the greater of:
 - (1) One million two hundred thousand dollars; or

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- (2) Ten percent of the yearly average of the three-year annual premium plus fifty percent of its average annual uncovered liabilities as projected in its application for a certificate of authority.
- The department [of insurance] may modify the net worth requirements for a health maintenance organization which has been licensed for less than one calendar year if its actual results deviate materially from its projections. In addition to any other deposit required of a licensed health maintenance organization pursuant to section 354.410, any health maintenance organization which chooses to issue a POS rider shall deposit an additional six hundred thousand dollars with the director of the department [of insurance]. Any health maintenance organization which issues a POS rider whose medical and hospital expenses incurred under the POS rider exceed ten percent of total medical and hospital expenses incurred for all health plan products sold shall either cease insuring new POS riders until it comes into compliance with the ten percent limitation of this section or meet the minimum net worth requirements and all other statutory and regulatory requirements of a Missouri domestic life insurance company.
 - 354.558. A community-based health maintenance organization

shall provide each prospective purchaser of its services with the following marketing materials prior to enrollment:

- (1) A list of the health care providers who have a contractual agreement to provide services under the plan of coverage. It shall be a violation of the unfair trade practices act for a community-based health maintenance organization to falsely list that a provider has a contractual agreement to provide services under its plan of coverage;
- (2) Information to describe how the community-based health maintenance organization will use utilization management to promote efficiency in the delivery of services in accordance with the terms of the contract for coverage. This information shall explain how the community- based health maintenance organization will encourage the use of treatment options that produce the most cost-effective results. The format and content of the descriptive information disclosed under this subdivision shall be approved by the department [of insurance] and shall include information regarding covered benefits available under the plan;
- (3) Disclosure of grievance procedures established in accordance with regulations promulgated by the department [of insurance] for community-based health maintenance organizations. Included in this information shall be notification of how and when to contact the health plan and the department [of insurance] regarding a grievance; and
- (4) Notice of the availability of coverage as described in section 354.554.
- 354.560. 1. The director [of the department of insurance] shall adopt rules governing the use of payment arrangements by

payment withholding arrangements that place a physician at substantial financial risk. The standards for determining substantial financial risk and determining which payment

community-based health maintenance organizations which use

- arrangements are subject to rules shall be the same as provided for health maintenance organizations and competitive medical
- 7 plans contracting with the Medicare program, as provided in 42
- 8 CFR 417.479, or its successor regulation.

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- 2. The [department of insurance] <u>director</u> may require that community-based health maintenance organizations disclose to the department financial arrangements or contractual provisions that place a physician at substantial financial risk. Such financial arrangements and contractual provisions which constitute substantial financial risk for the physician shall be reviewed by the department and shall be deemed approved if not disapproved by the director of the department within thirty days from the date that they are filed with the department.
- 3. The [department of insurance] director shall promulgate rules governing the confidentiality of proprietary information disclosed to the department pursuant to this section.

 Proprietary information disclosed pursuant to this section shall not be construed to be a public record as defined in chapter 610,
 - 354.562. The director [of the department of insurance] shall promulgate rules governing grievance procedures for enrollees of a community-based health maintenance organization. Such regulations shall be consistent with and not less or more stringent than federal regulations governing grievance procedures

- 1 promulgated by the Health Care Financing Administration of the
- 2 United States Department of Health and Human Services for
- 3 Medicare enrollees in managed care plans.
- 4 354.563. If the Health Care Financing Administration of the
- 5 United States Department of Health and Human Services promulgates
- 6 regulations governing the practice of utilization review in
- 7 health maintenance organizations serving enrollees in the
- 8 Medicare program, the director [of the department of insurance]
- 9 may issue rules to apply those standards to community-based
- 10 health maintenance organizations as defined in subdivision (3) of
- 11 section 354.400.
- 12 354.565. The director [of the department of insurance]
- shall designate those health maintenance organizations which meet
- the criteria established in subdivision (3) of section 354.400 as
- 15 community-based health maintenance organizations. After a
- 16 community-based health maintenance organization has been so
- designated for two years, the director may revoke such
- designation at any time thereafter upon finding that the health
- 19 maintenance organization has ceased to meet the established
- 20 criteria for community- based health maintenance organizations.
- 21 354.600. For purposes of sections 354.600 to 354.636 the
- following terms shall mean:
- 23 (1) "Covered benefit" or "benefit", a health care service
- 24 to which an enrollee is entitled under the terms of a health
- 25 benefit plan;
- 26 (2) "Director", the director of the department of
- insurance, financial and professional regulation;
- 28 (3) "Emergency medical condition", the sudden and, at the

- 1 time, unexpected onset of a health condition that manifests
- 2 itself by symptoms of sufficient severity that would lead a
- 3 prudent lay person, possessing an average knowledge of medicine
- 4 and health, to believe that immediate medical care is required,
- 5 which may include, but shall not be limited to:
- 6 (a) Placing the person's health in significant jeopardy;
- 7 (b) Serious impairment to a bodily function;
- 8 (c) Serious dysfunction of any bodily organ or part;
- 9 (d) Inadequately controlled pain; or

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- 10 (e) With respect to a pregnant woman who is having contractions:
- 12 a. That there is inadequate time to effect a safe transfer 13 to another hospital before delivery; or
 - b. That transfer to another hospital may pose a threat to the health or safety of the woman or unborn child;
 - (4) "Emergency service", a health care item or service furnished or required to screen and stabilize an emergency medical condition, which may include, but shall not be limited to, health care services that are provided in a licensed hospital's emergency facility by an appropriate provider;
 - (5) "Enrollee", a policyholder, subscriber, covered person or other individual participating in a health benefit plan;
 - (6) "Facility", an institution providing health care services or a health care setting, including but not limited to, hospitals and other licensed inpatient centers, ambulatory surgical or treatment centers, skilled nursing facilities, residential treatment centers, diagnostic, laboratory and imaging centers, and rehabilitation and other therapeutic health

- 1 settings;
- 2 (7) "Health benefit plan", a policy, contract, certificate
- 3 or agreement entered into, offered or issued by a health carrier
- 4 to provide, deliver, arrange for, pay for or reimburse any of the
- 5 costs of health care services;
- 6 (8) "Health care professional", a physician or other health
- 7 care practitioner licensed, accredited or certified by the state
- 8 of Missouri to perform specified health services;
- 9 (9) "Health care provider" or "provider", a health care
- 10 professional or a facility;
- 11 (10) "Health care service", a service for the diagnosis,
- 12 prevention, treatment, cure or relief of a health condition,
- illness, injury or disease;
- 14 (11) "Health carrier", a health maintenance organization
- 15 established pursuant to sections 354.400 to 354.636;
- 16 (12) "Health indemnity plan", a health benefit plan that is
- 17 not a managed care plan;
- 18 (13) "Intermediary", a person authorized to negotiate and
- 19 execute provider contracts with health carriers on behalf of
- 20 health care providers or on behalf of a network;
- 21 (14) "Managed care plan", a health benefit plan that either
- 22 requires an enrollee to use, or creates incentives, including
- 23 financial incentives, for an enrollee to use health care
- 24 providers managed, owned, under contract with or employed by the
- 25 health carrier;
- 26 (15) "Network", the group of participating providers
- 27 providing services to a managed care plan;
- 28 (16) "Participating provider", a provider who, under a

- 1 contract with the health carrier or with its contractor or
- 2 subcontractor, has agreed to provide health care services to
- 3 enrollees with an expectation of receiving payment, other than
- 4 coinsurance, co-payments or deductibles, directly or indirectly
- 5 from the health carrier;
- 6 (17) "Person", an individual, a corporation, a partnership,
- 7 an association, a joint venture, a joint stock company, a trust,
- 8 an unincorporated organization, any similar entity or any
- 9 combination of the foregoing; and
- 10 (18) "Primary care professional" or "primary care
- 11 provider", a participating health care professional designated by
- 12 the health carrier to supervise, coordinate or provide initial
- care or continuing care to an enrollee, and who may be required
- by the health carrier to initiate a referral for specialty care
- 15 and maintain supervision of health care services rendered to the
- 16 enrollee.
- 17 354.603. 1. A health carrier shall maintain a network that
- is sufficient in number and types of providers to assure that all
- 19 services to enrollees shall be accessible without unreasonable
- 20 delay. In the case of emergency services, enrollees shall have
- 21 access twenty-four hours per day, seven days per week. The
- 22 health carrier's medical director shall be responsible for the
- 23 sufficiency and supervision of the health carrier's network.
- 24 Sufficiency shall be determined by the director in accordance
- 25 with the requirements of this section and by reference to any
- reasonable criteria, including but not limited to
- 27 provider-enrollee ratios by specialty, primary care
- 28 provider-enrollee ratios, geographic accessibility, reasonable

waiting times for appointments with participating providers,
hours of operation, and the volume of technological and specialty

distance accessibility criteria for pharmacy and other services,

- services available to serve the needs of enrollees requiring
- 5 technologically advanced or specialty care.

- (1) In any case where the health carrier has an insufficient number or type of participating providers to provide a covered benefit, the health carrier shall ensure that the enrollee obtains the covered benefit at no greater cost than if the benefit was obtained from a participating provider, or shall make other arrangements acceptable to the director.
- (2) The health carrier shall establish and maintain adequate arrangements to ensure reasonable proximity of participating providers, including local pharmacists, to the business or personal residence of enrollees. In determining whether a health carrier has complied with this provision, the director shall give due consideration to the relative availability of health care providers in the service area under, especially rural areas, consideration.
- (3) A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity, and legal authority of its providers to furnish all contracted benefits to enrollees. The provisions of this subdivision shall not be construed to require any health care provider to submit copies of such health care provider's income tax returns to a health carrier. A health carrier may require a health care provider to obtain audited financial statements if such health care provider received ten percent or more of the total medical expenditures made by the

1 health carrier.

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- 2 (4) A health carrier shall make its entire network
 3 available to all enrollees unless a contract holder has agreed in
 4 writing to a different or reduced network.
- 2. A health carrier shall file with the director, in a manner and form defined by rule of the [department of insurance] 6 7 director, an access plan meeting the requirements of sections 8 354.600 to 354.636 for each of the managed care plans that the 9 health carrier offers in this state. The health carrier may request the director to deem sections of the access plan as 10 11 proprietary or competitive information that shall not be made 12 public. For the purposes of this section, information is 13 proprietary or competitive if revealing the information will 14 cause the health carrier's competitors to obtain valuable business information. The health carrier shall provide such 15 16 plans, absent any information deemed by the director to be 17 proprietary, to any interested party upon request. The health 18 carrier shall prepare an access plan prior to offering a new managed care plan, and shall update an existing access plan 19 20 whenever it makes any change as defined by the director to an existing managed care plan. The director shall approve or 21 22 disapprove the access plan, or any subsequent alterations to the access plan, within sixty days of filing. The access plan shall 23 24 describe or contain at a minimum the following:
 - (1) The health carrier's network;
- 26 (2) The health carrier's procedures for making referrals 27 within and outside its network;
 - (3) The health carrier's process for monitoring and

assuring on an ongoing basis the sufficiency of the network to meet the health care needs of enrollees of the managed care plan;

- (4) The health carrier's methods for assessing the health care needs of enrollees and their satisfaction with services;
 - (5) The health carrier's method of informing enrollees of the plan's services and features, including but not limited to the plan's grievance procedures, its process for choosing and changing providers, and its procedures for providing and approving emergency and specialty care;
 - (6) The health carrier's system for ensuring the coordination and continuity of care for enrollees referred to specialty physicians, for enrollees using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;
 - (7) The health carrier's process for enabling enrollees to change primary care professionals;
- (8) The health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, in the event of a reduction in service area or in the event of the health carrier's insolvency or other inability to continue operations. The description shall explain how enrollees shall be notified of the contract termination, reduction in service area or the health carrier's insolvency or other modification or cessation of operations, and transferred to other health care professionals in a timely manner; and
- (9) Any other information required by the director to determine compliance with the provisions of sections 354.600 to

- 1 354.636.
- 2 3. In reviewing an access plan filed pursuant to subsection
- 3 2 of this section, the director shall deem a managed care plan's
- 4 network to be adequate if it meets one or more of the following
- 5 criteria:
- 6 (1) The managed care plan is a Medicare + Choice
- 7 coordinated care plan offered by the health carrier pursuant to a
- 8 contract with the federal Centers for Medicare and Medicaid
- 9 Services;
- 10 (2) The managed care plan is being offered by a health
- 11 carrier that has been accredited by the National Committee for
- 12 Quality Assurance at a level of "accredited" or better, and such
- accreditation is in effect at the time the access plan is filed;
- 14 (3) The managed care plan's network has been accredited by
- 15 the Joint Commission on the Accreditation of Health Organizations
- 16 for Network Adequacy, and such accreditation is in effect at the
- 17 time the access plan is filed. If the accreditation applies to
- only a portion of the managed care plan's network, only the
- 19 accredited portion will be deemed adequate; or
- 20 (4) The managed care plan is being offered by a health
- 21 carrier that has been accredited by the Utilization Review
- 22 Accreditation Commission at a level of "accredited" or better,
- and such accreditation is in effect at the time the access plan
- 24 is filed.
- 25 354.627. 1. The executing of a contract by a health
- 26 carrier shall not relieve the health carrier of its liability to
- 27 any person with whom it has contracted for the provision of
- 28 services, or of its responsibility for compliance with the law or

- 1 applicable regulations.
- 2 2. All contracts shall be in writing and may be subject to
- 3 review by the [department of insurance] <u>director</u>.
- 3. All contracts shall comply with applicable requirements of the law and applicable regulations.
- 6 354.637. The director of the department of insurance,
- 7 financial and professional regulation shall report to the
- 8 appropriate committees of the general assembly by March first of
- 9 each year on the status of all actions initiated, maintained by
- 10 the director, or which have been concluded, during the preceding
- 11 year to enforce the provisions of sections 354.552 to 354.636.
- 12 The director shall answer all questions regarding such actions,
- or regarding other matters that are related to the provisions of
- 14 sections 354.552 to 354.636.
- 15 354.700. As used in sections 354.700 to 354.723, the
- 16 following terms mean:
- 17 (1) "Dental care services", services included in the
- 18 practice of dentistry as defined in section 332.071, RSMo;
- 19 (2) "Director", the director of the department of
- insurance, financial and professional regulation;
- 21 (3) "Enrollee", an individual who is enrolled in a prepaid
- dental plan as a principal subscriber together with such
- 23 individual's dependents who are entitled to dental care benefits
- 24 under the plan solely because of their status as dependents of
- 25 the principal subscriber;
- 26 (4) "Prepaid dental plan", any contractual arrangement to
- 27 provide, either directly or through arrangement with others,
- 28 specified dental benefits to enrollees on a fixed prepayment

- 1 basis or as a benefit of such enrollees' participation or
- 2 membership in any other contract, agreement, or group or any
- 3 corporation, partnership or other entity which undertakes to
- 4 provide or arrange specified dental benefits on a prepayment or
- 5 other basis or to indemnify for specified dental benefits;
- 6 (5) "Prepaid dental plan corporation", a corporation
 7 operating a prepaid dental plan;
 - (6) "Provider", any person licensed as a dentist pursuant to chapter 332, RSMo.
- 10 354.703. 1. The director [of the department of insurance]
 11 may issue an order directing any person or entity to cease and
- desist from engaging in any act or practice in violation of
- sections 354.700 to 354.723. Within twenty days after service of
- 14 the order to cease and desist, the respondent may request a
- 15 hearing on the question of whether acts or practices in violation
- of sections 354.700 to 354.723, have occurred. Such hearing
- shall be conducted, and judicial review shall be available, as
- 18 provided in chapter 536, RSMo.

- 19 2. In the case of noncompliance with a cease and desist
- order issued pursuant to subsection 1 of this section, the
- 21 director may institute a proceeding to obtain injunctive or other
- 22 appropriate relief in the circuit court.
- 361.010. 1. There is hereby created a "State Division of
- 24 Finance", which shall be under the management and control of a
- 25 chief officer who shall be called the "Director of Finance".
- 26 2. The director of finance shall maintain his office at the
- 27 City of Jefferson, reside in the state of Missouri, and shall
- devote all of his time to the duties of his office. The division

- of design and construction is hereby required to provide the
- 2 director of finance and the state division of finance with
- 3 suitable rooms.
- 4 3. The division of finance with all of its powers, duties
- 5 and functions is assigned by type III transfer under the
- 6 authority of the Omnibus State Reorganization Act of 1974 and
- 7 Executive Order 6-04, to the department of insurance, financial
- 8 and professional regulation. All of the general provisions,
- 9 definitions and powers enumerated in section 1 of the Omnibus
- 10 <u>State Reorganization Act of 1974 and Executive Order 6-04 shall</u>
- 11 apply to this department and its divisions, agencies and
- 12 <u>personnel.</u>
- 4. Wherever the laws, rules or regulations of this state
- 14 <u>make reference to the "division of finance of the department of</u>
- economic development" or to the "division of finance", such
- 16 references shall be deemed to refer to the division of finance of
- 17 the department of insurance, financial and professional
- 18 regulation.
- 19 361.092. There is hereby created [in the department of
- 20 economic development], a "State Banking Board" which shall have
- 21 such powers and duties as are conferred upon it by law. The
- 22 State Banking Board with all of its powers, duties and functions
- is assigned by type III transfer under the authority of the
- Omnibus State Reorganization Act of 1974 and Executive Order 6-
- 25 <u>04, to the department of insurance, financial and professional</u>
- 26 regulation.
- 27 361.140. 1. The director of finance shall prepare the
- following information to be included in the report of the

director of the department of [economic development] insurance,
financial and professional regulation:

- corporation required to report to him or her and from which reports have been received or obtained pursuant to subsection 3 of section 361.130 during the preceding two years, at the several dates to which such reports refer, with an abstract of the whole amount of capital reported by them, the whole amount of their debts and liabilities and the total amount of their resources, specifying in the case of banks and trust companies the amount of lawful money held by them at the time of their several reports, and such other information in relation to such corporations as, in his or her judgment, may be useful;
- (2) A statement of all corporations authorized by him or her to do business during the previous biennium with their names and locations and the dates on which their respective certificates of incorporation were issued, particularly designating such as have commenced business during the biennium;
- (3) A statement of the corporations whose business has been closed either voluntarily or involuntarily, during the biennium, with the amount of their resources and of their deposits and other liabilities as last reported by them and the amount of unclaimed and unpaid deposits, dividends and interest held by him or her on account of each;
- (4) A statement of the amount of interest earned upon all unclaimed deposits, dividends and interest held by him or her pursuant to the requirements of this chapter;
 - (5) Any amendments to this chapter, which, in his or her

judgment, may be desirable;

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- 2 (6) The names and compensation of the deputies, clerks,
 3 examiners, special agents and other employees employed by him or
 4 her, and the whole amount of the receipts and expenditures of the
 5 division during each of the last two preceding fiscal years.
- 2. All such reports shall be printed at the expense of the state and paid for as other public printing.

361.160. 1. The director of finance at least once each year, either personally or by a deputy or examiner appointed by the director, shall visit and examine every bank and trust company organized and doing business under the laws of this state, and every other corporation which is by law required to report to the director; except, for banks or trust companies receiving a Camel 1 or Camel 2 rating from the division of finance, the director of finance at least once each eighteen calendar months either personally or by a deputy or examiner appointed by the director, shall visit and examine such bank or trust company, and the director of finance, at the director's discretion, may conduct the director's examination, or any part thereof, on the basis of information contained in examination reports of other states, the Federal Deposit Insurance Corporation or the Federal Reserve Board or in audits performed by certified public accountants. The director shall be afforded prompt and free access to any workpapers upon which a certified public accountant bases an audit. A certified public accountant shall retain workpapers for a minimum of three years after the date of issuance of the certified public accountant's report to the bank or trust company. The director or the director's agent

1 may concentrate the examinations on institutions which the 2 director believes have safety or soundness concerns.

- 2. The director, or the deputy or examiners designated by the director for that purpose, shall have power to examine any such corporation whenever, in the director's judgment, it may be deemed necessary or expedient, and shall have power to examine every agency located in this state of any foreign banking corporation and every branch in this state of any out-of-state bank, for the purpose of ascertaining whether it has violated any law of this state, and for such other purposes and as to such other matters as the director may prescribe.
 - 3. The director and the director's deputy and examiners shall have power to administer oaths to any person whose testimony may be required in such examination or investigation of any such corporation or agency, and to compel the appearance and attendance of any person for the purpose of any such examination or investigation.
 - 4. On every such examination inquiry shall be made as to the condition and resources of such corporation, the mode of conducting and managing its affairs, the actions of its directors or trustees, the investment of its funds, the safety and prudence of its management, the security afforded to its creditors, and whether the requirements of its charter and of law have been complied with in the administration of its affairs, and as to such other matters as the director may prescribe.
 - 5. The director may also make such special investigations as the director deems necessary to determine whether any individual or corporation has violated any of the provisions of

- 1 this law.
- 2 6. Such examination may be made and such inquiry instituted
- 3 or continued in the discretion of the director after the director
- 4 has taken possession of the property and business of any such
- 5 corporation, until it shall resume business or its affairs shall
- 6 be finally liquidated in accordance with the provisions of this
- 7 chapter.
- 7. The result of each examination shall be certified by the
- 9 director or the examiner upon the records of the corporation
- 10 examined and the result of all examinations during the biennial
- period shall be embodied in the report to be made by the director
- of the department of [economic development] <u>insurance</u>, <u>financial</u>
- and professional regulation to the legislature.
- 14 8. The director may contract with regulators in other
- 15 states to provide for the examination of Missouri branches of
- 16 out-of-state banks and branches of banks whose home state is
- 17 Missouri. The agreements may provide for the payment by the home
- 18 state of the cost of examinations conducted by the host state at
- 19 the request of the home state regulators.
- 362.109. Notwithstanding any law to the contrary, any order
- or ordinance by any political subdivision shall be consistent
- 22 with and not more restrictive than state law and regulations
- 23 governing lending or deposit taking entities regulated by the
- 24 division of finance or the division of credit unions [within the
- department of economic development].
- 362.332. 1. As used in this section, the following words
- 27 and phrases shall mean:

(1) "Bank", any bank subject to the provisions of chapter

- 362, which is duly authorized to exercise trust powers, and any
- 2 national bank which is authorized to exercise trust powers under
- 3 the laws of the United States and which has its principal place
- 4 of business in Missouri, including a national bank whose
- 5 operations include providing trust and other fiduciary services
- 6 and related activities;
- 7 (2) "Beneficiary", any person or entity which benefits
- 8 from, or has a present or future interest in, any money or
- 9 property administered by a person with a fiduciary obligation;
- 10 (3) "Director", the director of the division of finance [of the department of economic development];
- 12 (4) "Fiduciary obligation", any obligation of any bank or
- trust company to a person or entity resulting from an
- 14 appointment, designation or undertaking to act alone or jointly
- with others primarily for the benefit of others in matters
- 16 connected with such appointment, designation or undertaking, and
- including, but is not limited to, acting as a trustee of a trust,
- including a testamentary or nontestamentary trust, or a trustee
- 19 of a common trust fund; executor; administrator; personal
- 20 representative; quardian; conservator; custodian; assignee;
- 21 depositary; receiver; attorney- in-fact; registrar or transfer
- agent with respect to stocks, bonds or other evidences of
- indebtedness of any corporation, association, state,
- 24 municipality, or public authority; agent, including escrow agent
- or agent for the investment of money; or in any other similar
- 26 capacity. The term "fiduciary obligation" includes any
- 27 obligation occurring as a result of an appointment or designation
- 28 to any foregoing capacity upon the death of a person serving in

such capacity or upon the happening of any other future event;

- 2 (5) "Transferee", a bank or trust company assuming
 3 fiduciary obligations pursuant to this section from a transferor;
 - (6) "Transferor", a bank or trust company transferring fiduciary obligations pursuant to this section to a transferee;
 - (7) "Trust company", any trust company or bank organized under the laws of this state which is duly authorized to exercise trust powers.
 - 2. Notwithstanding any other provision of law to the contrary, a bank or trust company may transfer by assignment to another bank or trust company any or all of the fiduciary obligations of such bank or trust company, without any order of or other action by any court or any consent or other approval of any interested person, except as provided in subsection 5 of this section, upon the prior approval of the director and provided that the transferor and transferee comply with the provisions of this section. The assignment may encompass all fiduciary obligations, or specified individual accounts or other particularly identified fiduciary obligations.
 - 3. The transferor, transferee or any beneficiary on behalf of all beneficiaries jointly, shall file an application for approval of the transfer of a fiduciary obligation with the director, and shall provide all relevant information as the director may deem necessary. The transferee shall also file proof with the director that the transferee has given written notice by certified mail of the proposed transfer, including a summary of the provisions of subsection 5 of this section

relating to objections to the transfer of the fiduciary 1 2 obligation, at least thirty days and not more than sixty days prior to the filing of the application, to the transferor, all 3 persons, firms, organizations or corporations who are known to 5 the applicant to be living or existing grantors under each 6 affected trust or other fiduciary obligation, or if there is no 7 such known living or existing grantor, to each living or existing beneficiary thereof known to the transferee. If any living or 8 9 existing grantor or any such beneficiary delivers to the 10 applicant any communication regarding the proposed transfer, the 11 applicant shall furnish the director with a copy of such 12 communication together with any accompanying documents. If the 13 director determines that the transferee has the authority and is 14 qualified to complete the fiduciary obligation, and that the 15 transfer of the fiduciary obligation will not materially adversely affect the fiduciary obligation, he shall issue an 16 17 order approving the transfer of the fiduciary obligation. If the 18 director fails to approve or deny the transfer of the fiduciary 19 obligation within thirty days of the date of the filing of the 20 application with the director, the application shall be deemed 21 approved by the director.

4. If the director approves the transfer of a fiduciary obligation, within twenty days of the approval, the transferee shall publish a notice of the transfer of the fiduciary obligation pursuant to this section in a newspaper of general circulation in the county or city where the transferor's main banking house or principal place of business, respectively, is located. The transfer of the fiduciary obligation shall be

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- effective upon the thirtieth day after the date of such

 publication except with respect to any fiduciary obligation which

 upon that date is the subject of notice of objection made

 pursuant to subsection 5 of this section.
- Within thirty days after the publication of notice of 6 approval by the director of the transfer of a fiduciary 7 obligation pursuant to subsection 4 of this section, any grantor or beneficiary who was entitled to receive a written notice 8 9 pursuant to subsection 3 of this section may give written notice 10 to the transferee objecting to the transfer of the fiduciary 11 obligation in which such person has an interest. In order to 12 complete the transfer, the transferee may petition the probate 13 division of the circuit court of the county or city not within a county in which the notice was published to determine whether the 14 15 transfer of the fiduciary capacity will materially adversely affect the administration of the fiduciary account. After notice 16 17 to all interested parties and a hearing on the issues, the 18 circuit court may deny the relief sought by the petitioning 19 transferee and not transfer the fiduciary obligation to the 20 petitioning transferee, may appoint a new fiduciary to succeed the transferor if the court finds that the appointment of a new 21 22 fiduciary is in the best interests of the beneficiaries of the 23 fiduciary obligation but that the transfer of the fiduciary 24 obligation to the petitioning transferee will materially adversely affect the administration of the fiduciary account, or 25 shall order the transferor to transfer by assignment the 26 27 fiduciary obligation to the petitioning transferee.
 - 6. On the effective date of the transfer of a fiduciary

obligation pursuant to this section, the transferor shall be 1 2 released from all transferred fiduciary obligations and all liability relating to such transferred fiduciary obligations, and 3 shall cease to act regarding all such transferred fiduciary obligations, except that such transferor shall not be relieved of any liabilities arising out of a breach of a fiduciary obligation 6 7 occurring prior to such effective date. The transferor shall file an itemized accounting of all assets and liabilities in each 8 9 transferred fiduciary account with the transferee upon the 10 effective date of the transfer. Notwithstanding the provision of 11 any law or the provision of any agreement to the contrary, the 12 transferor shall not impose fees relating to the transfer of the 13 fiduciary obligation in excess of the actual cost to the transferor of the transfer of the fiduciary obligation. 14 15 failure by a bank or trust company to give any notice required by subsection 3 of this section with respect to any fiduciary 16 17 account shall not affect the validity of the transfer of a 18 fiduciary obligation pursuant to this section with respect to any 19 other fiduciary obligation or account.

7. Any appointment or other designation of a bank or trust company to a fiduciary obligation in a trust, will or other instrument shall be deemed to be made based only on facts and circumstances in existence on the date and at the time that the appointment or designation is made, and the director or a court, when considering the transfer of a fiduciary obligation, shall consider whether the transferee has the authority to complete the fiduciary obligation and is qualified to do so, the effect of the transfer of the fiduciary obligation including whether the

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- 1 transfer of the fiduciary obligation will materially adversely
- 2 affect the fiduciary obligation, and whether the transfer of the
- 3 fiduciary obligation is in the best interests of the
- 4 beneficiaries of the fiduciary obligation.

- 5 362.910. As used in sections 362.910 to 362.940, unless the 6 context clearly indicates otherwise, the following terms mean:
 - (1) "Bank", any bank, trust company or national banking association which accepts demand deposits and makes loans, and which has its principal banking house in Missouri and a branch of any bank, trust company or national banking association which accepts demand deposits and which has a physical presence in Missouri, other than a branch located outside of Missouri;
 - (2) "Bank holding company", any company which has control over any bank or over any company that is a bank holding company;
 - (3) "Company", any corporation, partnership, business trust, association, or similar organization, or any other trust unless by its terms it must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust, but shall not include any corporation the majority of the shares of which are owned by the United States or by any state;
 - (4) "Control", a company has control over a bank, trust company, or company if:
 - (a) The company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote twenty-five percent or more of any class of voting securities of the bank or company;
 - (b) The company controls in any manner the election of a

majority of the directors or trustees of the bank or company; or

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- (c) The company directly or indirectly exercises a controlling influence over the management or policies of the bank or company;
- (d) Provided, however, no company shall be deemed to have 5 6 control over a bank or a company by virtue of its ownership or 7 control of shares acquired by it in connection with its underwriting of securities and which are held only for such 8 period of time as will permit the sale thereof upon a reasonable 9 10 basis, or which is formed for the sole purpose of participating 11 in a proxy solicitation, or which acquires ownership or control 12 of shares in securing or collecting a debt previously contracted 13 in good faith, until two years after the date of acquisition, or 14 which acquires ownership or control of shares in a fiduciary 15 capacity. For the purpose of sections 362.910 to 362.940, bank shares shall not be deemed to have been acquired in a fiduciary 16 17 capacity if the acquiring bank or company in its capacity as 18 trustee of a trust has sole discretionary authority to exercise 19 voting rights with reference thereto; except that this limitation 20 is applicable in the case of a bank or company which acquired such shares prior to December 31, 1970, only if the bank or 21 22 company had the right consistent with its obligations under the 23 instrument, agreement, or other arrangement establishing the 24 trust relationship to divest itself of such voting rights and 25 failed to exercise that right to divest prior to December 31, 1971; 26
 - (5) "Director" or "director of finance", the director of the division of finance [of the department of economic

development];

- 2 (6) "Trust holding company", any company which has control 3 over any trust company or over any company that is a trust 4 holding company.
- 5 365.080. 1. The amount, if any, included in any retail 6 installment transaction for insurance, if a separate identified charge is made for the insurance, which insurance may be 7 8 purchased by the holder of the contract, shall not exceed the 9 applicable premiums chargeable in accordance with the rates 10 approved by the department of insurance, financial and 11 professional regulation of this state where the rates are 12 required by law to be approved by the department. All insurance 13 shall be written by an insurance company authorized to do 14 business in this state and all policies written in this state 15 shall be countersigned by a duly licensed resident agent 16 authorized to engage in the insurance business in this state, 17 unless otherwise provided by law. A buyer may be required to 18 provide insurance on the motor vehicle at his own cost for the 19 protection of the seller or holder, as well as the buyer, but the 20 insurance shall be limited to insurance against substantial risk 21 of loss, damage or destruction of the motor vehicle. Any other 22 insurance, including insurance providing involuntary unemployment coverage, may be included in a retail installment transaction at 23 24 the buyer's expense only if contracted for voluntarily by the buyer. If the insurance for which the identified charge is made 25 26 insures the safety or health of the buyer or his interest in the 27 motor vehicle and is purchased by the holder, it shall be subject 28 to the limitations provided for in the regulations promulgated

- and issued by the director pursuant to the provision of 1 2 subsection 1 of section 365.060. The holder shall within thirty days after the execution of the retail installment contract send 3 or cause to be sent to the buyer a policy or certificate of 5 insurance, clearly setting forth the amount of the cost of the 6 policy or certificate of insurance, the kinds of insurance, and, 7 if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract of insurance, or, if a 8 9 certificate, a summary of the certificate. The seller shall not 10 decline existing insurance written by an insurance company 11 authorized to do business in this state and the buyer shall have 12 the privilege of purchasing insurance from an agent or broker of 13 his own selection and of selecting his insurance company; except, that the insurance company shall be acceptable to the holder, and 14 15 further, that the inclusion of the cost of the insurance in the retail installment contract when the buyer selects his agent, 16 17 broker or company, shall be optional with the seller.
 - 2. If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing installments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.

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3. The amount of any life insurance shall not exceed the amount of the total unpaid balance from time to time; except, that where the buyer's obligation is repayable in payments which are not substantially equal in amount, the insurance may be level term insurance in an amount which shall not exceed by more than

- five dollars the time balance as determined under subsection 6 of section 365.070.
- 3 4. Nothing in this chapter shall be construed to prohibit
- 4 the sale of a deficiency waiver addendum, guaranteed asset
- 5 protection, extended service contract, or other similar products
- 6 purchased at the time of sale, as part of a retail sale
- 7 transaction involving any motor vehicle, or including the cost
- 8 therefor within a retail installment transaction, provided the
- 9 requirements of section 365.070 are met.
- 367.500. As used in sections 367.500 to 367.533, unless the
- 11 context otherwise requires, the following terms mean:
- 12 (1) "Borrower", a person who borrows money pursuant to a
- 13 title loan agreement;
- 14 (2) "Capital", the assets of a person less the liabilities
- 15 of that person. Assets and liabilities shall be measured
- according to generally accepted accounting principles;
- 17 (3) "Certificate of title", a state-issued certificate of
- title or certificate of ownership for personal property;
- 19 (4) "Director", the director of the division of finance [of
- the department of economic development] or its successor agency;
- 21 (5) "Person", any resident of the state of Missouri or any
- business entity formed under Missouri law or duly qualified to do
- 23 business in Missouri;
- 24 (6) "Pledged property", personal property, ownership of
- which is evidenced and delineated by a title;
- 26 (7) "Title lending office" or "title loan office", a
- location at which, or premises in which, a title lender regularly
- 28 conducts business;

- 1 (8) "Title lender", a person qualified to make title loans
 2 pursuant to sections 367.500 to 367.533 who maintains at least
 3 one title lending office within the state of Missouri, which
 4 office is open for the conduct of business not less than thirty
 5 hours per week, excluding legal holidays;
 - (9) "Title loan agreement", a written agreement between a borrower and a title lender in a form which complies with the requirements of sections 367.500 to 367.533. The title lender shall perfect its lien pursuant to sections 301.600 to 301.660, RSMo, but need not retain physical possession of the titled personal property at any time; and
 - (10) "Titled personal property", any personal property excluding property qualified to be a personal dwelling the ownership of which is evidenced by a certificate of title.
- 370.005. As used in this chapter, the [term "director" means] following terms mean:
 - (1) "Director, the director of the division of credit unions [of the department of economic development];
- 19 (2) "Division", the division of credit unions.
- 21 370.006. 1. There is hereby created a "Division of Credit
 22 Unions", to be headed by a director appointed by the governor
- 23 <u>with the advice and consent of the senate.</u>

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2. The division of credit unions with all of its powers,

duties and functions is assigned by type III transfer under the

authority of the Omnibus State Reorganization Act of 1974 and

Executive Order 6-04, to the department of insurance, financial

- definitions and powers enumerated in section 1 of the Omnibus
- 2 State Reorganization Act of 1974 and Executive Order 6-04 shall
- 3 apply to this department and its divisions, agencies and
- 4 personnel.
- 5 3. The salary of the director of the division of credit
- 6 unions shall be set by the director of the department within the
- 7 limits of the appropriations therefor.
- 8 4. Wherever the laws, rules or regulations of this state
- 9 <u>make reference to the "division of credit unions of the</u>
- department of economic development" or to the "division of credit
- 11 <u>unions", such references shall be deemed to refer to the division</u>
- of credit unions of the department of insurance, financial and
- 13 professional regulation.
- 14 370.366. 1. Upon compliance with any applicable laws of
- 15 the United States and upon obtaining the approval of the
- directors of the division of finance and the division of credit
- unions [within the department of economic development], any
- central credit union organized pursuant to section 370.365 may be
- 19 converted under the laws of this state into a bank or trust
- 20 company located in this state, or may be consolidated or merged
- 21 with one or more banks or trust companies or central credit
- 22 unions incorporated under the laws of the United States or any
- 23 state under the charter of a bank or trust company incorporated
- 24 under the laws of this state; provided, however, that the central
- credit union and its members must comply with the procedure,
- notice and voting requirements of sections 370.351 to 370.357,
- and that the approval of the director of finance shall not be
- required for transactions not involving a bank or trust company.

The name of the resulting or surviving bank or trust company in the case of conversion, consolidation or merger may be the name of a party to the conversion, consolidation or merger, provided that in no case shall the name contain the word "national" or "federal" or be the same as or deceptively similar to the name of any bank or trust company incorporated under the laws of this state which is engaged in business at the time of the particular conversion, consolidation or merger and is not a party thereto.

- 2. (1) In the case of conversion the majority of the board of directors of the central credit union shall proceed as is provided by law for other individuals incorporating a bank or trust company under the laws of this state except that the articles of agreement:
- (a) May provide that instead of the capital stock having actually been paid up in money it is to be paid up in assets of the converting central credit union, the net value of which is equal to at least the full amount of the capital stock of the proposed resulting bank or trust company which capital stock shall be no less than that required by law for a bank or trust company, as the case may be, to be located in the state of Missouri;
- (b) Shall provide that the proposed resulting bank or trust company is and shall be considered the same business and corporate entity as, and a continuation of the corporate entity and identity of, the converting central credit union although as to rights, powers and duties the proposed resulting institution is a bank or trust company incorporated under the laws of the state of Missouri;

(c) Shall set out the names and addresses of all persons who are to be officers of the proposed bank or trust company; and

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- (d) Shall set out the manner as provided in subdivision (1) of section 370.356 in which the ownership interest of the members shall be converted into stock of the resulting bank or trust company which stock ownership by the member or shareholder shall be lawful for this sole purpose; provided, however, that the director of finance may reject any such application upon a determination that the statutory treatment accorded the members of the converting central credit union is not fair and reasonable.
- (2) If the director of finance, as the result of an examination and investigation made by the division of finance, is satisfied that such assets are of such value and that the character, responsibility and general fitness of the persons named in the articles of agreement are such as to command confidence and warrant belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the purpose and intent of the laws of this state relative to banks or trust companies, the director of finance shall grant the charter. If the director of finance is not satisfied, the director of finance shall forthwith give notice thereof to the majority of the board of directors of the converting central credit union who shall have the same right of appeal as is provided by the laws of this state in the case of the proposed incorporators of a new bank or trust company.
- (3) Upon the approval of the particular conversion being granted, the director of finance shall execute and deliver to the

- majority of the board of directors of the converting central 1 2 credit union a certificate declaring that the bank or trust company therein named has been duly organized and is the 3 institution resulting from the conversion of the central credit 5 union into the resulting bank or trust company, and that the 6 resulting bank or trust company is and shall be considered the 7 same business and corporate entity as, and a continuation of the corporate entity and identity of, the converting central credit 8 9 The certificate shall be recorded in the office of the 10 recorder of deeds of the county or city in which the resulting 11 bank or trust company is located and the certificate so recorded, 12 or certified copies thereof, shall be taken in all the courts of 13 this state as evidence of the conversion of the central credit union into the resulting bank or trust company and that the 14 resulting bank or trust company is the same business and 15 corporate entity as, and a continuation of the corporate entity 16 17 and identity of, the converting central credit union.
 - (4) When the director of finance has given a certificate as aforesaid:

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- (a) The resulting bank or trust company and all its stockholders, directors, officers, and employees shall have the same powers and privileges and be subject to the same duties and liabilities in all respects as if such an institution had originally been organized as a bank or trust company under the laws of this state;
- (b) All the rights, franchises, and interests of the converting central credit union in and to every type of property, real, personal and mixed, and choses in action thereto belonging

shall be deemed to be transferred to and vest in the resulting bank or trust company without any deed or other transfer; and

- (c) The resulting bank or trust company by virtue of the conversion and without any order of any court or otherwise shall hold and enjoy the same and all rights of property and interests including, but not limited to, appointments, designations and nominations and all other rights and interests, as trustee, personal representative, conservator, receiver, registrar, assignee and every other fiduciary capacity in the same manner and to the same extent as these rights and interests were held or enjoyed by the converting central credit union at the time of its conversion into the resulting bank or trust company; provided, however, that its corporate powers shall be limited to those granted to a bank or trust company under the laws of this state.
- 3. In the case of consolidation or merger, the same shall be consummated by each federally chartered central credit union complying with the laws of the United States relating to the consent of its members, by each state chartered central credit union complying with sections 370.351 to 370.357 relating to the consent of its members, and also by each bank or trust company complying with the provisions of the laws of this state relating to consolidation or merger of banks or trust companies, except that where the resulting institution is a bank rather than a trust company the number and qualifications of directors and any requirement that directors shall or may be divided into classes shall be determined as provided by law for banks. The rights of dissenting shareholders of the bank or trust company shall be determined as provided by the laws of this state in the case of

- 1 consolidation or merger of banks or trust companies. The rights
- of dissenting shareholders of the central credit union shall be
- 3 determined as provided by section 370.356. In the case of
- 4 consolidation or merger the resulting bank or trust company shall
- 5 be considered the same business and corporate entity as, and a
- 6 continuation of the corporate entity and identity of, each
- 7 central credit union and each bank or trust company which is a
- 8 party to the consolidation or merger.
- 9 374.005. 1. The department of insurance created by Section
- 10 <u>36(b) of Article IV of the Missouri Constitution shall operate</u>
- 11 <u>under the name "Department of Insurance, Financial and</u>
- 12 Professional Regulation". Under the authority of the Omnibus
- 13 State Reorganization Act of 1974 and Executive Order 6-04, the
- 14 <u>department shall administer and enforce the laws assigned to the</u>
- department.
- 16 2. Unless otherwise clearly indicated by the context, the
- following words, as used in this chapter, mean:
- 18 _____(1) "Department", the department of insurance, financial
- 19 and professional regulation; and
- 20 (2) "Director", the director of the department of
- insurance, financial and professional regulation.
- 22 3. Wherever the laws, rules or regulations of this state
- 23 <u>make reference to the "department of insurance" or the</u>
- "department of insurance, financial and professional regulation",
- 25 <u>such references shall be deemed to refer to the department</u>
- created by Section 36(b) of Article IV of the Missouri
- 27 Constitution and this chapter.
- 28 374.010. The [insurance] department of insurance, financial

- 1 <u>and professional regulation</u> shall be charged with the execution
- of all laws now in force, or which may be hereafter enacted, in
- 3 relation to insurance and insurance companies doing business in
- 4 this state, and such other duties as are provided for by law.
- 5 374.020. 1. The chief officer of said department shall be
- 6 designated as the director of the department of insurance,
- 7 <u>financial and professional regulation</u>. He shall be a citizen of
- 8 this state, and experienced in matters of insurance, and be
- 9 appointed by the governor, by and with the advice and consent of
- 10 the senate, and shall hold his office concurrently with that of
- the governor and until his successor is appointed and qualified,
- and shall be subject to removal from office by the governor at
- 13 his pleasure.
- 14 2. If a vacancy shall at any time occur, the same shall be
- filled by the governor, by appointment, subject to the
- 16 confirmation of the senate, if in session; if not, then at its
- 17 next session.
- 18 3. It shall not be lawful for the director or his deputy to
- 19 hold any position as officer, agent or employee of any insurance
- or assurance company, nor shall he otherwise be directly or
- 21 indirectly interested in any insurance company, except as a
- 22 policyholder.
- 23 374.040. 1. It shall be the duty of the director [of the
- insurance department] to file in his office and safely keep all
- 25 books and papers required by law to be filed therein, to issue
- 26 certificates of authority to transact insurance business in this
- 27 state to any companies who have fully complied with the laws of
- this state, and to issue such other certificates as are required

companies and the transaction of the business of insurance, and
generally to do and perform with justice and impartiality all
such duties as are or may be imposed upon him by the laws
regulating the business of insurance in this state and to perform

by the laws of this state in the organization of insurance

- 5 regulating the business of insurance in this state and to perform
- 6 those duties imposed upon him in such a manner as to be in the
- 7 best interests of and protect the general public, policyholders,
- 8 insurance companies, and the officers, directors and stockholders
- 9 thereof; and every director shall, upon retiring from office,
- deliver to his qualified successor the possession of his office,
- and all furniture, papers and property belonging to the same.
- 12 2. Notwithstanding the provisions of sections 621.015 to
- 13 621.198, RSMo, whenever the director [of insurance] undertakes to
- issue, refuse, revoke or suspend the license or certificate of
- authority of an insurance company, fraternal benefit society, or
- 16 reciprocal or interinsurance exchange, he shall proceed in
- 17 accordance with the insurance laws of this state.
- 18 374.045. 1. The director shall have the full power and
- 19 authority to make all reasonable rules and regulations to
- 20 accomplish the following purposes:

- 21 (1) To regulate the internal affairs of the department of
- insurance, financial and professional regulation;
- 23 (2) To prescribe forms and procedures to be followed in
- 24 proceedings before the department of insurance, financial and
- 25 <u>professional regulation;</u> and
- 26 (3) To effectuate or aid in the interpretation of any law
- of this state [pertaining to the business of insurance] in this
- 28 chapter, chapter 287, RSMo, chapter 354, RSMo, chapters 375 to

1 385, RSMo, or as otherwise authorized by law.

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- 2 2. The director may from time to time withdraw or amend any rule or regulation.
- 3. [No rule or regulation shall conflict with any law of 5 this state. No rule or portion of a rule promulgated under the 6 authority of this chapter shall become effective unless it has 7 been promulgated pursuant to the provisions of section 536.024, 8 RSMo] Any rule or portion of a rule, as that term is defined in 9 section 536.010, RSMo, that is created under the authority 10 delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 11 12 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the 13 14 powers vested with the general assembly pursuant to chapter 536, 15 RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the 16 grant of rulemaking authority and any rule proposed or adopted 17 after August 28, 2007, shall be invalid and void. 18
 - 4. At least fifteen days prior to the adoption of any rule or regulation, or any amendment thereof, to be issued under the provisions of subdivision (3) of subsection 1, the director shall give notice of a hearing on the proposed action. The notice shall be mailed to all persons who have made timely requests of the [department of insurance] director for advance notice of its rulemaking proceedings. The notice shall contain a statement of the terms or the substance of the proposed rule or regulation. In addition, the notice shall give the time and place where a hearing on the proposed rule or regulation will be held and the

- 1 manner in which interested parties may present their views
- 2 thereon. On the date of the hearing, all interested parties
- 3 shall be given reasonable opportunity to present their views or
- 4 arguments in writing or orally. The failure of any person to
- 5 receive any notice of a hearing on any proposed rule or
- 6 regulation shall not invalidate any rule or regulation
- 7 subsequently adopted.
- 8 5. The willful violation of any rule or regulation shall
- 9 subject the person violating it to such penalty as may be
- applicable and which the director has within his power to impose
- 11 under the laws of this state relating to the business of
- insurance for violation of the law to which the rule or
- 13 regulation relates.
- 14 6. Upon request and payment of the reasonable cost thereof,
- if required and fixed by the director, the director shall furnish
- 16 a copy of any rule, regulation, or order to any person so
- 17 requesting.
- 18 374.070. 1. The office shall be a public office and the
- 19 records shall be public records and shall at all times be open to
- 20 the inspection of the public subject to such rules as the
- 21 director shall make for their safekeeping; provided, however,
- that the work product of the director, the director's employees
- 23 and agents, including but not limited to work papers of
- 24 examinations of companies, work papers of investigations of
- companies, agents, brokers and insurance agencies and
- confidential communications to the [department of insurance]
- director, shall not be considered public records except as the
- 28 director may decide otherwise.

2. When requested, the director shall furnish certified copies of any paper, report, or documents on file in the director's office to any person requesting them, upon payment of the fees allowed by law.

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- 3. Five years after the conclusion of the transactions to which they relate, the director is authorized to destroy or otherwise dispose of all correspondence, complaints, claim files, working papers of examinations of companies, examination reports of companies made by the insurance supervisory officials of states other than Missouri, rating files, void or obsolete or superseded rate filings and schedules, individual company rating experience data, applications, requisitions, and requests for licenses, all license cards and records, all expired bonds, all records of hearings, and all similar records, papers, documents, and memoranda now or hereafter in the possession of the director.
- 4. Ten years after the conclusion of the transactions to which they relate, the director is authorized to destroy or otherwise dispose of all foreign companies' and alien companies' annual statements, valuation reports, tax reports, and all similar records, papers, documents and memoranda now or hereafter in the possession of the director.
- 5. Disposal and destruction of records shall be in accordance with sections 109.200 to 109.310, RSMo.
 - 374.075. [1.] The director [of the department of insurance] may establish two or more divisions within the department to administer and enforce the laws of this state relating to insurance. The director shall establish at least one division, to be known as the "Division of Consumer Affairs",

which shall perform the functions of the consumer services section in addition to such other functions as may be assigned to it by the director.

- [2. Any division established by the director shall be considered as though it were transferred to the insurance department under a type I transfer under section 1 of the Reorganization Act of 1974, except that the advisory commission on insurance regulation, established in section 374.281, shall review the need for the division of consumer affairs to be transferred under a type III transfer and report its findings to the general assembly within one year after June 26, 1991.
- 3. All property, functions, duties and funds of the division of insurance as it existed under the department of economic development shall be transferred to the department of insurance. In addition, the property, functions, duties and funds formerly possessed, performed, assigned or appropriated to the department of economic development on behalf or for the benefit of the division of insurance shall be transferred to the department of insurance.
 - 4. Wherever the laws, rules or regulations of this state make reference to the "division of insurance" or to the "insurance division", such references shall be deemed to refer to the department of insurance.]
- 374.085. 1. The division of consumer affairs of the department of insurance, financial and professional regulation shall perform the following functions:
- 27 (1) The division shall receive complaints and inquiries 28 from the general public concerning insurance companies, health

- 1 services corporations and health maintenance organizations, their
- 2 agents and employees, insurance producers, and any other persons
- 3 licensed by or registered with the department, except those
- 4 <u>licensed by the division of finance</u>, credit unions or
- 5 professional registration, or any boards assigned to those
- 6 <u>divisions</u>;

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- 7 (2) The division shall maintain records of each complaint 8 received and the disposition of that complaint, indexed by type 9 of complaint, company, and such other factors as the section
- deems appropriate;
 - (3) The division shall operate a statewide toll-free telephone service to receive complaints and inquiries, and shall publicize the existence of this service to the general public;
 - (4) The division shall investigate complaints received of unfair or unlawful acts under the insurance laws of this state and shall close the file on each investigation only when the director of the consumer services division is satisfied that the person or persons complained against have taken a fair and reasonable position or one which is legally correct;
 - (5) The division shall prepare such brochures and other documents as it deems appropriate to help inform the general public on such topics as the state's insurance laws, insurance practices, policy coverages and policy costs; and
 - (6) The division shall recommend changes to state statutes when it considers such statutes to adversely or unfairly affect the interests of the general public.
 - 2. In performing the functions of this section, the consumer services division may be assisted by a legal adviser.

- 1 The legal adviser shall be an attorney licensed to practice law
- 2 in the state of Missouri and shall possess a knowledge of the
- 3 state's insurance laws and regulations.
- 4 374.110. 1. The director [of insurance], through the chief
- 5 examiner, may examine into the affairs and good faith of any
- 6 person who is engaged in, or is claiming or advertising that he
- 7 is engaged in, organizing or receiving subscriptions for or
- 8 disposing of stock of, or in any manner aiding or taking part in
- 9 the formation of or business of an insurance corporation,
- 10 association or organization and the chief examiner shall conduct
- or assist in conducting the examination of insurance companies,
- 12 associations and organizations and reciprocal or interinsurance
- exchanges as required by law, and do such other things pertaining
- 14 to the department as the director may direct.
- 15 2. The director may also employ one or more expert
- 16 actuaries or examiners to assist the chief examiner in making
- 17 such examinations.
- 18 3. The fees and expenses in all cases to be reasonable and
- 19 to be paid by the company, association, organization or
- 20 reciprocal or interinsurance exchange being examined upon
- 21 accounts approved by the director.
- 22 374.115. Insurance examiners appointed or employed by the
- 23 director of the department of insurance, financial and
- 24 professional regulation shall be compensated according to the
- 25 applicable levels established and published by the National
- 26 Association of Insurance Commissioners.
- 27 374.120. 1. The director shall appoint and employ such
- 28 clerks and clerical and other help which are necessary for a

- proper dispatch of the business of the department [of insurance]
 at salaries as now or hereafter provided by law, and may employ
 such actuarial work to be done as may be necessary, all of which
 expense shall be paid as provided for by section 374.160, out of
 the amount appropriated by law from the fees collected by the
 [department of insurance] director.
- 7 The director shall appoint and employ legal counsel regarding the enforcing of the insurance laws of the state; 8 9 provided, however, that with respect to criminal prosecutions, 10 the attorney general shall be the legal adviser to the director. 11 All counsel employed by the [legal section] department shall be attorneys licensed to practice law in the state of Missouri and 12 the general counsel shall be subject to removal at the pleasure 13 of the director. In addition, the general counsel shall have had 14 at least two years of experience in the areas of insurance law, 15 16 insurance regulation or insurance litigation, or any combination 17 The general counsel may receive an annual salary of up thereof. 18 to one thousand dollars less than the annual salary paid the 19 director. The director may assign legal counsel to specific 20 divisions established pursuant to section 374.075. Legal counsel may act as hearing officers at any hearing before the [insurance 21 22 department] director, but may not act as a hearing officer in any contested case brought to the director from a division to which 23 24 legal counsel was assigned.
 - 3. The director may also employ suitable persons to make examinations as to the solvency or market conduct of companies when he deems it necessary.

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4. The director shall also employ a reinsurance analyst to

- 1 assist the department in carrying out its responsibilities
- 2 regarding reinsurers as are provided for by law. The reinsurance
- 3 analyst shall have knowledge of the state's insurance laws and
- 4 regulations, shall have a degree in accounting, and shall be able
- 5 to meet the requirements of an Associate in Reinsurance of the
- 6 American Institute of Property and Liability Underwriters within
- 7 two years of appointment, or comparable standards as provided for
- 8 by regulation, and have at least three years' experience in
- 9 insurance or reinsurance matters.
- 10 5. The director shall not employ any person in any capacity
- 11 who is an officer, agent or employee of any insurance company or
- 12 association.
- 13 374.130. The director may designate one of the clerks of
- 14 the [insurance] department of insurance, financial and
- professional regulation as chief clerk, who shall possess the
- qualifications of the director, and shall, subject to the
- director and his deputy, have charge of the clerical and detail
- 18 work of the department, and the employees thereof. In the
- absence or inability of both the director and deputy or in case
- of a vacancy in both of said offices, the chief clerk shall have
- 21 and exercise the powers of the director. Chief clerk shall serve
- during the pleasure of the director, and shall perform such other
- 23 duties as the director may direct.
- 24 374.150. 1. All fees due the state under the provisions of
- 25 the insurance laws of this state shall be paid to the director of
- revenue and deposited in the state treasury to the credit of the
- 27 insurance [department] dedicated fund unless otherwise provided
- 28 for in subsection 2 of this section.

There is hereby established in the state treasury a 1 2 special fund to be known as the "[Department of] Insurance 3 Dedicated Fund". The fund shall be subject to appropriation of 4 the general assembly and shall be devoted solely to the payment 5 of expenditures incurred by the department of insurance, financial and professional regulation attributable to duties 6 7 performed by the department for the administration and 8 enforcement of laws relating to insurance and for the operation 9 of the divisions of consumer affairs as required by law which are not paid for by another source of funds. Other provisions of law 10 11 to the contrary notwithstanding, [beginning on January 1, 1991,] all fees charged under any provision of chapter 325, 354, 374, 12 375, 376, 377, 378, 379, 380, 381, 382, 383, 384 or 385, RSMo, 13 14 due the state shall be paid into this fund. The state treasurer 15 shall invest moneys in this fund in the same manner as other state funds and any interest or earnings on such moneys shall be 16 17 credited to the [department of] insurance dedicated fund. 18 provisions of section 33.080, RSMo, notwithstanding, moneys in 19 the fund shall not lapse, be transferred to or placed to the 20 credit of the general revenue fund unless and then only to the 21 extent to which the unencumbered balance at the close of the biennium year exceeds two times the total amount appropriated, 22 23 paid, or transferred to the fund during such fiscal year.

[3. Notwithstanding the provisions of this section to the contrary, fifty-five percent of the balance in the department of insurance dedicated fund as of the effective date of this act or six million fifteen thousand eight hundred and fifty-five dollars, whichever is greater, shall be subject to an immediate

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- one-time transfer to the state general revenue fund.]

 2 374.155. There is hereby created in the state treasury the
- 3 "Department of Insurance, Financial and Professional Regulation
- 4 Administrative Fund". The state treasurer shall be the custodian
- of the fund and the fund shall be administered by the director of
- 6 the department of insurance, financial and professional
- 7 regulation. The fund shall be funded annually by appropriations,
- 8 deposits, and transfers thereto. The fund shall contain moneys
- 9 transferred or paid to the department in return for goods and
- services provided internally by the department, or to any
- 11 governmental entity or the public. Moneys in the fund shall only
- be expended by the department of insurance, financial and
- professional regulation to administer the laws under the
- jurisdiction of the department and to provide goods and services
- that relate to the administration of these laws. The
- 16 commissioner of administration shall approve disbursements from
- 17 the fund at the request of the director of the department or the
- director's designee in accordance with appropriations made
- 19 thereto. Notwithstanding the provisions of section 33.080, RSMo,
- 20 moneys in the fund shall not lapse to the credit of general
- 21 revenue at the end of the biennium. All interest earned on the
- fund shall be deposited in and credited to the fund.
- 23 374.160. 1. The expenses of examinations, valuations or
- 24 proceedings against any company, and for dissolving or settling
- 25 the affairs of companies are to be paid by the company, or as
- 26 provided by law. The state shall not be responsible in any
- 27 manner for the payment of any such expenses, or any charges
- 28 connected therewith.

2. All other expenses of the department of insurance, financial and professional regulation now or hereafter incurred and unpaid, or that may be hereafter incurred, including the salaries of the director and deputy director, shall be paid out of the state treasury in the manner provided by law.

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- The director shall assess the expenses of any examination against the company examined and shall order that the examination expenses be paid into the insurance examiners fund created by section 374.162. The director shall also assess an additional amount equal to fifteen percent of the total expenses of examination, to be paid for the supervision and support of the examiners. The insurance examiner's sick leave fund created by sections 374.261 to 374.267 shall be combined with the insurance examiners fund. The director shall pay from the insurance examiners fund the compensation of insurance examiners pursuant to section 374.115, any expenses to be paid from such sick leave fund under sections 374.261 to 374.267, and expenses incurred for supervision and support of the examiners. The general assembly shall annually provide appropriations sufficient to distribute all receipts into the insurance examiners fund. The provisions of section 33.080, RSMo, relating to the transfer of unexpended balances to the general revenue fund shall not apply to the insurance examiners fund.
 - 4. If any company shall refuse to pay the expenses of any examination, valuation or proceeding assessed by the director pursuant to this section, the company shall be liable for double the amount of such expenses and all costs of collection, including attorney's fees. The company shall not be entitled to

- 1 a credit, pursuant to section 148.400, RSMo, for any fees,
- 2 expenses or costs ordered pursuant to this subsection other than
- 3 in the amount of the expenses originally assessed by the
- 4 director. All amounts collected pursuant to this subsection
- 5 shall be credited to the insurance examiners fund.
- 6 374.180. 1. The director of the department of insurance,
- 7 financial and professional regulation shall prepare the following
- 8 information to be included in the biennial report [of the
- 9 director of the department of economic development] to the
- 10 legislature:
- 11 (1) A brief review of the department during the period
- 12 covered by the report, including a verified statement of the
- various sums received and disbursed by him, and from and to whom,
- and for what purposes;
- 15 (2) Name, address, capital stock, in case of companies
- having a capital stock, resources, insurance in force, and the
- 17 amount and nature of collateral deposited by each insurance
- 18 company or association authorized or licensed to do business in
- 19 this state;
- 20 (3) A tabular statement, and synopsis of the annual
- 21 statements, as accepted by the director, of all insurance
- 22 companies doing business in this state;
- 23 (4) Such other matters as in his opinion may be for the
- 24 benefit of the public and such recommendations as he shall deem
- 25 proper in regard to the insurance laws of this state.
- 26 2. No more than two thousand copies of such report shall be
- 27 published by order of the director, at the expense of the
- department.

- 1 3. The director shall make such additional reports as shall be required by the governor.
- 374.184. 1. The director [of the department of insurance] 3 4 shall prescribe by rule, after due consultation with providers of 5 health care or treatment and their respective licensing boards, accident and sickness insurers, health services corporations and 6 health maintenance organizations, and after a public hearing, 7 8 uniform claim forms for reporting by health care providers. Such 9 prescribed forms shall include but need not be limited to 10 information regarding the medical diagnosis, treatment and 11 prognosis of the patient, together with the details of charges 12 incident to the providing of such care, treatment or services, 13 sufficient for the purpose of meeting the proof requirements of 14 an accident and sickness insurance or hospital, medical or dental 15 services contract. Such prescribed forms shall be based upon the 16 UB-82 form, with respect to hospital claims, and the HCFA 1500 17 form, with respect to physician claims, as such forms are 18 modified or amended from time to time by the National Uniform Billing Committee or the federal Health Care Financing 19 20 Administration.
 - 2. The adoption of any uniform claim forms by the director pursuant to this section shall not preclude an insurer, health services corporation, or health maintenance organization from requesting any necessary additional information in connection with a claims investigation from the claimant, provider of health care or treatment, or certifier of coverage. The provisions of this section shall not be deemed or construed to apply to electronic claims submission. Insurers and providers may by

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contract provide for modifications to the uniform billing document where both insurers and providers feel that such modifications streamline claims processing procedures relating to the claims of the insurer involved in such contract modification. However, a refusal by the provider to agree to modification of the uniform billing format shall not be used by the insurer as grounds for refusing to enter into a contract with the provider for reimbursement or payment for health services rendered to an insured of the insurer.

- 3. Rules adopted or promulgated pursuant to this [act] section shall be subject to notice and hearing as provided in chapter 536, RSMo. The regulations so adopted shall specify an effective date, which shall not be less than one hundred eighty days after the date of adoption, after which no accident and sickness insurer, health services corporation or health maintenance organization shall require providers of health care or treatment to complete forms differing from those prescribed by the director pursuant to this section, and after which no health care provider shall submit claims except upon such prescribed forms; provided that the provisions of this section shall not preclude the use by any insurer, health services corporation or health maintenance organization of the UB-82 form or the HCFA 1500 form.
- 374.194. 1. Notwithstanding any other provision of law to the contrary, and except as provided in this section, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental,

direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the department of insurance, financial and professional regulation, unless the person or other

hospital, or optometric expenses, whether such coverage is by

- entity shows that while providing such services it is subject to
- the jurisdiction of another agency of this state, any subdivision thereof, or the federal government.
 - 2. A person or entity may show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, by providing to the director [of the department of insurance] the appropriate certificate, license or other document issued by the other governmental agency which permits or qualifies it to provide those services.
 - 3. Any person or entity which is unable to show under subsection 2 of this section that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the director [of the department of insurance] to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of chapters 374 to 385, RSMo.
 - 4. Any person or entity unable to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of chapters 374 to 385, RSMo, regarding the conduct of its business.
 - 5. Any production agency or administrator which advertises,

- 1 sells, transacts or administers the coverage of this state
- 2 described in subsection 1 of this section and which is required
- 3 to submit to an examination by the director [of the department of
- 4 insurance] under subsection 3 of this section, if such coverage
- 5 is not fully insured or otherwise fully covered by an admitted
- 6 life of disability insurer, nonprofit health services plan, or
- 7 nonprofit health care plan shall advise every purchaser,
- 8 prospective purchaser, and covered person of such lack of
- 9 insurance or other coverage. Any administrator which advertises
- or administers the coverage in this state described in subsection
- 11 1 of this section and which is required to submit to an
- examination by the director [of the department of insurance]
- under subsection 3 of this section shall advise any production
- agency of the elements of the coverage, including the amount of
- 15 stop-loss insurance in effect.
- 16 374.202. 1. The purpose of sections 374.202 to 374.207 is
- 17 to provide an effective and efficient system for examining the
- 18 activities, operations, financial or market conduct, condition
- and affairs of all persons transacting the business of insurance
- in this state and all persons otherwise subject to the
- jurisdiction of the director. The provisions of sections 374.202
- 22 to 374.207 are intended to enable the director to adopt a
- 23 flexible system of examinations which directs resources as the
- 24 director may deem appropriate and necessary for the
- 25 administration of the insurance related laws of this state.
- 2. As used in sections 374.202 to 374.207, the following
- 27 terms mean:

(1) "Company", any person engaging in or proposing or

- 1 attempting to engage in any transaction or kind of insurance or
- 2 surety business and any person or group of persons who may
- 3 otherwise be subject to the administrative, regulatory or taxing
- 4 authority of the director, not assigned to the functional
- 5 regulation of the divisions of finance, credit unions, or
- 6 professional registration, or boards assigned to or within those
- 7 divisions;
- 8 (2) "Department", the department of insurance, financial
- 9 and professional regulation of this state;
- 10 (3) "Director", the director of the department of
- insurance, financial and professional regulation of this state;
- 12 (4) "Examiner", any individual or firm having been
- authorized by the director to conduct an examination under
- 14 sections 374.202 to 374.207;
- 15 (5) "Insurer" has the same meaning as insurer under
- 16 sections 375.1150 to 375.1246, RSMo;
- 17 (6) "Person", any individual, aggregation of individuals,
- 18 trust, association, partnership or corporation, or any affiliate
- 19 thereof.
- 20 374.216. 1. A person commits the crime of filing a false
- 21 insurance statement if he prepares, makes, submits or files a
- financial report or statement with the department [of insurance]
- 23 with the purpose to misrepresent the financial condition of the
- company in whose behalf such report or statement is prepared,
- 25 made, submitted or filed. The crime shall require no mental
- 26 state other than that specifically provided herein.
- 27 2. The crime of filing a false insurance statement is a
- 28 class C felony.

374.217. 1. The director or any other employee of the department of insurance, financial and professional regulation shall not enter into any covenant not to sue or any agreement to defer, refrain or desist from instituting or asserting against any officer or director of any insurer or any other person or entity in the business of insurance and regulated by the department [of insurance], any claim, demand, action or suit, either administrative or judicial, for injuries, damages or penalties to the state or any person or property.

- 2. Any covenant or agreement entered into in derogation of subsection 1 of this section, [either before or after August 28, 1991,] shall be deemed to be in violation of the public policy of this state that the general assembly shall by law provide adequate regulation of insurers in order to protect citizens of this state; and that the department [of insurance] shall carry out and enforce such regulation. The courts of this state shall not enforce or give effect to any such covenant or agreement.
- 374.220. 1. The expenses of proceedings against insurance companies, and examinations of the assets or liabilities and valuations of policies of insurance companies doing business in this state, shall be assessed by the director upon the company proceeded against or examined, or whose policies have been valued.
- 2. If the company has been or shall be adjudged insolvent, or shall neglect, fail or refuse to pay the expenses, the director may approve the payment of the expenses, in whole or in part, which shall be paid in like manner as other expenses of the [insurance] department; and the amount so paid, together with

- 1 cost, charges and fees for collecting the same, shall be a first
- lien upon all the assets and property of such company, and may be
- 3 recovered by the director of revenue in any court of competent
- 4 jurisdiction; or if said company be in liquidation, or process of
- 5 being wound up, the cost and expenses of settling its affairs
- 6 shall be allowed and taxed as cost against said company, and
- 7 shall be a first lien upon and payable out of its assets. The
- 8 director of revenue shall deposit such sums in the state treasury
- 9 to reimburse the insurance dedicated fund.
- 10 3. Before any costs of any examination or valuation shall
- 11 be paid, vouchers for the same shall be submitted to and approved
- 12 by the commissioner of administration.
- 4. When any examination or valuation is made by the
- director in person or by any salaried employee of the department
- 15 [of insurance], the cost of making the same shall be certified to
- the director of revenue for collection.
- 17 374.245. The director of the department of insurance,
- 18 insurance and professional regulation or the director of revenue
- may, within three years after a return is filed or at any time if
- 20 no return is filed, make a supplemental assessment or
- 21 certification whenever it is found that any assessment or
- 22 certification of premium taxes covered by this section is
- imperfect or incomplete in any material aspect. The provisions
- of this section shall apply to taxes assessed under sections
- 25 148.310 to 148.461, RSMo, and sections 287.690, RSMo, and
- 26 375.916, RSMo.
- 27 374.250. 1. The director shall take proper vouchers for
- 28 all payments made by [him] the department and shall take receipts

from the director of revenue for all moneys [he] the department
pays to the director of revenue.

- 2. <u>No less often than</u> at the close of [each] <u>every other</u> state fiscal year, the state auditor shall audit, adjust and settle [the accounts for] all receipts and disbursements [by the director] <u>in the insurance dedicated fund and the insurance examiners' fund, and taxes certified or collected under sections 148.310 to 148.461, RSMo, or sections 384.011 to 384.071, RSMo.</u>
 - professional regulation, may elect, under the provisions of section 287.030, RSMo, to come under the provisions of chapter 287, governing workers' compensation, and that law is extended to include all employees of the department [of insurance] under any contract of hire, express or implied, oral or written, or under any appointment or election. The state of Missouri may be a self-insurer and assume all liability imposed by chapter 287, in respect to the department [of insurance] employees, without insurance. The attorney general shall appear on behalf of and defend the state in all actions, when the state is a self-insurer, brought by employees of the department [of insurance] referred to herein under the provisions of the workers' compensation law.
 - 2. The workers' compensation coverage may be provided by the purchase of insurance or by the deposit in the commissioner of administration's office of a fund from which workers' compensation benefits to employees shall be paid. Purchase of the insurance or the deposit of a fund shall be made from general appropriations.

- 3. The department [of insurance] shall adopt rules
 classifying the employees mentioned herein who may be eligible
 for compensation under this section, and its classification shall
 be decisive as to whether or not an employee falls within the
 definition of an employee eligible for workers' compensation
 coverage under this section.
 - 4. The director of the department [of insurance] is authorized to perform such duties as may be necessary to carry out effectively the purposes of this section.

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- 10 374.284. The department of insurance, financial and 11 professional regulation shall create an advisory committee to be 12 known as the "Health Insurance Advisory Committee". This 13 committee shall be a voluntary committee comprised of 14 representatives of the insurance industry, provider groups and 15 the public. The committee shall consist of at least, but not limited to, one member representing each of the following areas: 16 17 small group insurance, managed care, doctors of medicine, doctors 18 of osteopathy, pharmacists, dentists and public members 19 representing self-employed workers and the elderly. 20 committee shall meet to discuss and advise the department on 21 issues relating to health care insurance.
 - 374.310. The director [of insurance] shall not grant or renew any life or health insurance license if the license has been or is being used by the applicant or licensee for any purpose prohibited by sections 374.300 to 374.310. Before the director can deny renewal he shall be required to hold a public hearing, with ten days' notice to the applicant, to determine whether the license has been or is being used contrary to the

- 1 mandates of sections 374.300 to 374.310. Appeal from the
- 2 decision of the director shall be to the administrative hearing
- 3 commission which shall conduct a hearing de novo.
- 4 374.400. Unless otherwise clearly indicated by the context,
- 5 the following words and terms as used in sections 374.400 to
- 6 374.410 shall mean:
- 7 (1) "Director", the director of the department of
- 8 insurance, financial and professional regulation;
- 9 (2) "Dwelling-owners' insurance", a policy of insurance on
- 10 a one- or two-family owner-occupied premises which combines fire
- and allied lines with any one or more perils of casualty,
- 12 liability, or other types of insurance within one policy form at
- a single premium, where the insurer's liability for damage to the
- 14 premises under said policy is determined with reference to the
- 15 premises' actual cash value;
- 16 (3) "Homeowners' insurance", a policy of insurance on a
- one- or two-family owner-occupied premises which combines fire
- and allied lines with any one or more perils of casualty,
- 19 liability, or other types of insurance within one policy form at
- a single premium, where the insurer's liability for damage to the
- 21 premises under said policy is determined with reference to the
- 22 premises' replacement value;

- 23 (4) "Insurer", any insurance company, reciprocal or
- inter-insurance exchange, licensed and authorized by the director
- 25 to write homeowners' insurance, dwelling-owners' insurance,
- 26 renters' or tenants' insurance, or residential fire insurance
- 27 upon property located within this state;
 - (5) "Renters' or tenants' insurance", a policy of insurance

on a single- or multiple-family premises which combines fire and allied lines with any one or more perils of casualty, liability, or other types of insurance within one policy form at a single premium, where the insurer's liability for damage to the contents of the premises under said policy is determined with reference to the contents' actual cash value;

- (6) "Residential fire insurance", a policy of insurance which provides fire coverage or fire and allied lines coverage on a residential premises within one policy form, where the insurer's liability for damage to the premises under said policy is determined with reference to the premises' actual cash value.
- 374.410. Whenever any insurer, group, association or other organization of insurers, or rating organization shall change any town grading schedule used in connection with the development of rates under policies of homeowners' insurance, dwelling-owners' insurance, renters' or tenants' insurance, or residential fire insurance written upon property located within this state, such change shall be filed with the director of the department of insurance, financial and professional regulation. The director [of the department of insurance] may set aside any change in town grading schedules that he finds is not supported by substantial evidence and credible data acquired under sections 374.400 to 374.410.
- 374.415. 1. As used in sections 374.400 to 374.425,

 "product liability insurance" or "product liability policy"

 means:
- 27 (1) Any policy of insurance insuring only the insured's 28 legal obligation arising from the product liability exposure of

1 the insured;

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- 2 (2) Any other policy of liability insurance in which the 3 premium computation includes a specific premium charge for
- 4 product liability exposures of the insured; and
- 5 (3) Any other insurance policy designated by the [commissioner of insurance] director as providing product liability insurance.
- 8 Every insurer authorized to transact business in this 9 state and providing product liability insurance shall, if asked 10 by the department [of insurance], on the first day of January of 11 each year in which said insurer actually provides product 12 liability insurance in Missouri or within sixty days thereafter, 13 file with the director of insurance a report containing the 14 information hereinafter specified; provided, however, insurers 15 are not required to report product liability information pursuant to sections 374.400 to 374.425 for business incidental to the 16 17 operation of affiliated companies or organizations. Such report 18 may be made upon forms provided by the director [of insurance] 19 and shall request the following information:
 - (1) The name of the insurance company;
 - (2) The name of all other companies associated with the company submitting the report, as either a holding company, parent, wholly owned subsidiary, division, or through interlocking directorates;
- 25 (3) All the lines of insurance a company offers in all states;
- 27 (4) The states in which the company has been admitted for 28 product liability insurance;

- 1 (5) The total premium dollar amount collected for all lines 2 of insurance in Missouri and in all states in each of the five 3 calendar years next preceding the initial report or in the year 4 next preceding the filing of each annual report thereafter;
 - (6) The dollar amount collected each year in product liability premiums in Missouri and in all states beginning with calendar year 1978;

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- (7) The amount in dollars of product liability premiums for primary coverage and for excess coverage in Missouri and in all states;
- (8) The amounts shown in answer to subdivision (6) which include premises and operations insurance or any other insurance delivered as part of a package which cannot be considered exclusively product liability insurance and the amounts which are nonproduct liability insurance. Such amounts shall be listed separately for amounts relating to experience in all states and amount relating to experience in Missouri only;
- (9) Whether or not the company sets reserves for product liability claims filed;
- 20 (10) Whether or not the company sets reserves for product 21 liability claims for losses which have been incurred but not 22 reported;
- 23 (11) All reserves established in connection with the 24 company's product liability line;
- 25 (12) How dollars reserved are treated in each of the 26 categories listed in subdivisions (9), (10), and (11) for federal 27 income tax purposes;
 - (13) The value of the securities held in the company's

- investment portfolio as of December thirty-first of the year next preceding the filing of each annual report.
- 3. In addition, each company may be required to report to
 4 the director [of insurance] for the year next preceding the
 5 filing of each annual report, beginning with the annual report
 6 for 1978, any claim or action for damages for personal injury,
 7 death or property damage claimed to have been by reason of a

defect in such insured's product, if the claim resulted in:

- 9 (1) A final judgment in any amount;
- 10 (2) A settlement in any amount; or
- 11 (3) A final disposition not resulting in payment on behalf 12 of the insured.

Every insurer authorized to transact business in this state shall be subject to the provisions of this section in regard to claims

against policies issued to Missouri insureds, regardless of the

jurisdiction under which these claims were adjudicated, settled

or otherwise disposed of. Every insurer authorized to transact

business in this state shall be subject to the provisions of this

section in regard to claims adjudicated, settled or disposition

21 made pursuant to the laws of this state regardless of the

- 22 domicile of the insured.
- 4. The reports required by subsection 3 of this section may contain:
 - (1) The city and state of the insured;
- 26 (2) Type of product;
- 27 (3) Rating classification code of product liability
- 28 coverage;

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- 1 (4) Date of occurrence which created the claim, including
- 2 the state or other jurisdiction under whose jurisdiction the
- 3 claim was adjudicated, settled, or disposition made;
- 4 (5) Date of suit if filed;
- 5 (6) Date and amount of judgment or settlement, if any, and 6 the parties involved in the distributions of such judgment or 7 settlement and the amount received by any such party;
- 8 (7) Date and reason for final disposition if no judgment or 9 settlement;
- 10 (8) A summary of the occurrence which created the claim;
- 11 (9) Total number of claims;
- 12 (10) Total claims closed without payment;
- 13 (11) Total claims closed with payment;
- 14 (12) Total amount of payments;

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- (13) Total number of suits filed;
- 16 (14) Total number of verdicts or judgments for defendants;
- 17 (15) Total number of verdicts or judgments for plaintiffs;
- 18 (16) Total amount for plaintiffs; and
- 19 (17) Such other information as the director may require.
- 5. With respect to amounts paid in claims for the year next

preceding the filing of each annual report, each company may be

- 22 required to provide the following information:
- 23 (1) Total amounts reserved with respect to those claims;
- 24 (2) The year in which the reserves were set; and
- 25 (3) The amounts set in each year.
- 26 374.420. There shall be no liability on the part of and no
- 27 cause of action of any nature shall arise against any insurer
- 28 reporting hereunder or its agents or employees, or the director

- [of insurance] or the director's employees, for any action taken by them pursuant to sections 374.400 to 374.425.
- 3 374.426. 1. Any entity in the business of delivering or
- 4 financing health care shall provide data regarding quality of
- 5 patient care and patient satisfaction to the director of the
- 6 department of insurance, financial and professional regulation.
- 7 Failure to provide such data as required by the director [of the
- 8 department of insurance] shall constitute grounds for violation
- 9 of the unfair trade practices act, sections 375.930 to 375.948,
- 10 RSMo.
- 11 2. In defining data standards for quality of care and
- 12 patient satisfaction, the director of the department of
- insurance, financial and professional regulation shall:
- 14 (1) Use as the initial data set the HMO Employer Data and
- 15 Information Set developed by the National Committee for Quality
- 16 Assurance;
- 17 (2) Consult with nationally recognized accreditation
- organizations, including but not limited to the National
- 19 Committee for Quality Assurance and the Joint Committee on
- 20 Accreditation of Health Care Organizations; and
- 21 (3) Consult with a state committee of a national committee
- convened to develop standards regarding uniform billing of health
- 23 care claims.
- 24 374.450. Unless otherwise clearly indicated by the context,
- 25 the following words and terms as used in sections 374.450 and
- 26 374.455 shall mean:
- 27 (1) "Director", the director of the department of
- insurance, financial and professional regulation;

- 1 (2) "Insurer", any insurance company, reciprocal or
 2 inter-insurance exchange, licensed and authorized by the director
 3 to write automobile insurance within this state;
- 4 (3) "Private automobile insurance", a policy of insurance
 5 covering private passenger nonfleet vehicles owned by an
 6 individual or by a husband and wife and providing any one or more
 7 perils of protection against bodily injury liability, property
 8 damage liability, medical payments, uninsured motorist,
 9 comprehensive, collision, or other insurance coverage incidental
 10 to the operation of the vehicle.
- 374.455. 1. The director shall establish statistical bases for the reporting of premium and loss data under policies of automobile insurance.
 - 2. Each insurer shall annually report to the director or a statistical agency designated by the director all premium and loss data under policies of automobile insurance in such a manner as the director may require.
- 18 3. The director shall have the authority to review and verify the accuracy of the data reported.

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- 4. The director [of the department of insurance] shall make reports of data acquired hereunder and such reports shall be made available to the public.
- 23 374.500. As used in sections 374.500 to 374.515, the following terms mean:
- 25 (1) "Certificate", a certificate of registration granted by 26 the department of insurance, financial and professional
- 28 (2) "Director", the director of the department of

regulation to a utilization review agent;

insurance, financial and professional regulation;

- "Enrollee", an individual who has contracted for or who participates in coverage under a health insurance policy, an employee welfare benefit plan, a health services corporation plan or any other benefit program providing payment, reimbursement or indemnification for health care costs for himself or eligible dependents or both himself and eligible dependents. The term "enrollee" shall not include an individual who has health care coverage pursuant to a liability insurance policy, workers' compensation insurance policy, or medical payments insurance issued as a supplement to a liability policy;
 - (4) "Provider of record", the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment and services rendered to an enrollee;
 - designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning or retrospective review. Utilization review shall not include elective requests for clarification of coverage;
 - (6) "Utilization review agent", any person or entity performing utilization review, except:
 - (a) An agency of the federal government;
- 27 (b) An agent acting on behalf of the federal government, 28 but only to the extent that the agent is providing services to

- 1 the federal government; or
- 2 (c) Any individual person employed or used by a utilization
- 3 review agent for the purpose of performing utilization review
- 4 services, including, but not limited to, individual nurses and
- 5 physicians, unless such individuals are providing utilization
- 6 review services to the applicable benefit plan, pursuant to a
- 7 direct contractual relationship with the benefit plan;
- 8 (d) An employee health benefit plan that is self-insured
- 9 and qualified pursuant to the federal Employee Retirement Income
- 10 Security Act of 1974, as amended;
- 11 (e) A property-casualty insurer or an employee or agent
- working on behalf of a property-casualty insurer;
- 13 (f) A health carrier, as defined in section 376.1350, RSMo,
- 14 that is performing a review of its own health plan;
- 15 (7) "Utilization review plan", a summary of the utilization
- 16 review procedures of a utilization review agent.
- 17 374.503. 1. A utilization review agent may not conduct
- utilization review in this state unless the [Missouri] department
- of insurance, financial and professional regulation has granted
- 20 the utilization review agent a certificate.
- 2. No certificate is required for those review agents
- 22 conducting general in-house utilization review for hospitals,
- 23 home health agencies, clinics, private offices or any other
- health facility or entity, so long as the review does not result
- 25 in the approval or denial of payment for hospital or medical
- 26 services for a particular case.
- 27 374.505. 1. An applicant for a certificate shall:
- 28 (1) Submit an application to the department [of insurance];

- 1 and
- 2 (2) Pay to the department [of insurance] the application
- 3 fee established by the department through regulation.
- 4 2. The application shall:
- 5 (1) Be on a form and accompanied by any reasonably related
- 6 supporting documentation that the department [of insurance]
- 7 requires; and
- 8 (2) Be signed and verified by the applicant.
- 9 3. The application fee required under this subsection shall
- 10 be sufficient to pay for the administrative cost of the
- 11 certification program and any other cost associated with carrying
- out the provisions of sections 374.500 to 374.515.
- 13 374.507. In conjunction with the application, the
- 14 utilization review agent shall submit additional information as
- required by the department [of insurance].
- 16 374.700. As used in sections 374.695 to 374.789, the
- 17 following terms shall mean:
- 18 (1) "Bail bond agent", a surety agent or an agent of a
- 19 property bail bondsman who is duly licensed pursuant to the
- provisions of sections 374.695 to 374.789, is employed by and is
- 21 working under the authority of a licensed general bail bond
- 22 agent;
- 23 (2) "Bail bond or appearance bond", a bond for a specified
- 24 monetary amount which is executed by the defendant and a
- qualified licensee pursuant to sections 374.695 to 374.789, and
- 26 which is issued to a court or authorized officer as security for
- 27 the subsequent court appearance of the defendant upon the
- defendant's release from actual custody pending the appearance;

- 1 (3) "Department", the department of insurance, financial and professional regulation of the state of Missouri;
- 3 (4) "Director", the director of the department of insurance, financial and professional regulation;

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- (5) "General bail bond agent", a surety agent or a property bail bondsman, as defined in sections 374.700 to 374.775, who is licensed in accordance with sections 374.700 to 374.775 and who devotes at least fifty percent of his working time to the bail bond business in this state;
- 10 (6) "Insurer", any surety insurance company which is 11 qualified by the department to transact surety business in 12 Missouri;
- 13 (7) "Licensee", a bail bond agent or a general bail bond 14 agent;
- 15 (8) "Property bail bondsman", a person who pledges United
 16 States currency, United States postal money orders or cashier's
 17 checks or other property as security for a bail bond in
 18 connection with a judicial proceeding, and who receives or is
 19 promised therefor money or other things of value;
 - (9) "Surety bail bond agent", any person appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings, and who receives or is promised money or other things of value therefor;
 - (10) "Surety recovery agent", a person not performing the duties of a sworn peace officer who tracks down, captures and surrenders to the custody of a court a fugitive who has violated a bail bond agreement, excluding a bail bond agent or general bail bond agent;

(11) "Taking a bail" or "take bail", the acceptance by a person authorized to take bail of the undertaking of a sufficient surety for the appearance of the defendant according to the terms of the undertaking or that the surety will pay to the court the sum specified. Taking of bail or take bail does not include the fixing of the amount of bail and no person other than a competent court shall fix the amount of bail.

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- 374.740. Any person applying to be licensed as a nonresident general bail bond agent who has been licensed in another state shall devote fifty percent of his or her working time in the state of Missouri and shall file proof with the director [of insurance] as to his or her compliance, and accompany his or her application with the fees set by the director by regulation and, if applying for a nonresident general bail bond agent's license, with a duly executed assignment of twenty-five thousand dollars to the state of Missouri, which assignment shall become effective upon the applicant's violating any provision of sections 374.695 to 374.789. Failure to comply with this section will result in revocation of the nonresidence The assignment required by this section shall be in the form and executed in the manner prescribed by the department. All licenses issued pursuant to this section shall be subject to the same renewal requirements set for other licenses issued pursuant to sections 374.695 to 374.789.
 - 374.764. 1. The director shall examine and inquire into all alleged violations or complaints filed with the department [of insurance] of the bail bond law of the state, and inquire into and investigate the bail bond business transacted in the

- state by any bail bond agent, general bail bond agent, or surety recovery agent.
- The director or any of his or her duly appointed agents may compel the attendance before him or her, and may examine, under oath, the directors, officers, bail bond agents, general bail bond agents, surety recovery agents, employees, or any other person in reference to the condition, affairs, management of the bail bond or surety recovery business, or any matters relating thereto. He or she may administer oaths or affirmations and shall have power to summon and compel the attendance of witnesses and to require and compel the production of records, books, papers, contracts, or other documents if necessary.

- 3. The director may make and conduct the investigation in person or the director may appoint one or more persons to make and conduct the investigation. If made by a person other than the director, the person duly appointed by the director shall have the same powers as granted to the director pursuant to this section. A certificate of appointment under the official seal of the director shall be sufficient authority and evidence thereof for the person to act. For the purpose of making the investigations, or having the same made, the director may employ the necessary clerical, actuarial, and other assistance.
- 374.790. The department of insurance, financial and professional regulation shall prepare and submit a plan to the general assembly by September 1, 1993, to reduce the number of employers insured through the residual market. The department shall specifically examine and address in its plan the following topics:

- 1 (1) The use of an employer's experience modification factor 2 and the appropriate level thereof as an objective criterion in 3 determining eligibility for coverage;
- 4 (2) The maximum amount of such coverage an insurer would be 5 required to issue, expressed as a percentage of its voluntary 6 business;

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- (3) Providing a system of incentives to insurers to voluntarily cover employers which had been insured through the residual market by reducing the amount of coverage required to be provided by such insurer under the plan;
- (4) The effect of the implementation of such plan on the competitive voluntary insurance workers' compensation market in Missouri in terms of the number of insurers actively competing, the availability of coverage by classification and pricing by classification;
- (5) Permitting insurers to file separate rates by classification for employers which they may be required to insure under such plan;
- (6) Requiring that only agents which have been appointed by such insurer may submit applications for coverage under such plan;
- 22 (7) The results of this plan in other jurisdictions where 23 it has been implemented in either workers' compensation or other 24 lines of insurance;
 - (8) Requiring nonexperienced rated employers or employers not eligible for experience rating, as a condition to receive coverage, to utilize the insurer's managed care medical program and to comply with the insurer's loss control or safety

engineering program.

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- Upon receipt of the plan, the general assembly shall, by

 concurrent resolution disapprove such plan by September 24, 1993.

 If the plan is not disapproved it shall be implemented by rule on

 January 1, 1994. If the plan is not submitted to the general

 assembly under the provisions of this section, it shall not be

 implemented by rule.
 - 374.800. 1. Notwithstanding any other provision of law, when the department of insurance, financial and professional regulation intends to enter into any contract or other written agreement or approve any letter of intent for payment of money by the state in excess of one hundred thousand dollars, modification or potential reduction of a party's financial obligation to the state in excess of one hundred thousand dollars, the [department of insurance] director shall forward a copy to the attorney general before entering into that contract, subcontract or other written agreement or approving the letter of intent.
 - 2. Upon receiving the contract, other written agreement or letter of intent, the attorney general shall, within ten days, review and approve that contract, other written contract or letter of intent for its legal form and content as may be necessary to protect the legal interest of the state. If the attorney general does not approve, then the attorney general shall return the contract, other written agreement or letter of intent with additional proposed provisions as may be necessary to the proper enforcement of the contract as required to protect the state's legal interest. If the attorney general does not respond

- 1 within ten days or, in the case of any contract that involves a
- 2 payment of money by the state or a modification or potential
- 3 reduction of a party's financial obligation to the state of one
- 4 million dollars or more, within thirty days, the contract shall
- 5 be deemed approved.
- 6 3. Communications related to the attorney general's review
- 7 are attorney-client communications. The attorney general's
- 8 written disposition shall be subject to chapter 610, RSMo.
- 9 375.001. <u>1. As used in this chapter, unless otherwise</u>
- 10 clearly indicated by the context, the following words mean:
- 11 (1) "Department", the department of insurance, financial
- 12 <u>and professional regulation;</u>
- 13 (2) "Director", the director of the department of
- insurance, financial and professional regulation.
- 15 2. As used in sections 375.001 to 375.008 the following
- 16 words and terms mean:
- 17 (1) "Insurer", all insurance companies, reciprocals, or
- interinsurance exchanges transacting the business of insurance in
- 19 this state;
- 20 (2) "Nonpayment of premium", failure of the named insured
- 21 to discharge when due any of his obligations in connection with
- 22 the payment of premiums on the policy, or any installment of the
- 23 premium, whether the premium is payable directly to the insurer
- or its agent or indirectly under any premium finance plan or
- 25 extension of credit;
- 26 (3) "Nonrenewal", the determination of an insurer not to
- issue or deliver a policy replacing at the end of the policy
- 28 period a policy previously issued and delivered by the same

insurer or a certificate or notice extending the term of a policy beyond its policy period or term;

- (4) "Policy", a contract of insurance providing fire and extended coverage insurance, whether separately or in combination with other coverages, on owner-occupied habitational property not exceeding two families. "Policy" does not include any insurance contracts issued under a property insurance inspection and placement program ("FAIR" plan) or an assigned risk plan, or any insurance contracts insuring property not used predominantly for habitational purposes, or an insurance contract insuring a mobile home;
- "Renewal" or "to renew", the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of the policy beyond its policy period or term. Any policy with a policy period or term of less than six months shall for the purposes of sections 375.001 to 375.008 be considered as if written for a policy period or term of six months. Any policy written for a term longer than one year or any policy with no fixed expiration date, shall for the purpose of sections 375.001 to 375.008, be considered as if written for successive policy periods or terms of one year, and the policy may be terminated at the expiration of any annual period upon giving thirty days' notice of cancellation prior to the anniversary date, and the cancellation shall not be subject to any other provisions of sections 375.001 to 375.008.
 - 375.006. There shall be no liability on the part of, and no

- 1 cause of action of any nature shall arise against, the director
- 2 [of insurance] or against any insurer, its authorized
- 3 representative, its agents, its employees, or any firm, person or
- 4 corporation furnishing to the insurer information as to reasons
- 5 for cancellation or nonrenewal, for any statement made by any of
- 6 them in any written notice of cancellation or nonrenewal, or in
- 7 any other communication, oral or written, specifying the reasons
- 8 for cancellation or nonrenewal, or the providing of information
- 9 pertaining thereto, or for statements made or evidence submitted
- 10 at any hearings conducted in connection therewith.
- 11 375.018. 1. Unless denied licensure pursuant to section
- 12 375.141, persons who have met the requirements of sections
- 375.014, 375.015 and 375.016 shall be issued an insurance
- 14 producer license for a term of two years. An insurance producer
- may qualify for a license in one or more of the following lines
- 16 of authority:
- 17 (1) Life insurance coverage on human lives including
- 18 benefits of endowment and annuities, and may include benefits in
- 19 the event of death or dismemberment by accident and benefits for
- 20 disability income;
- 21 (2) Accident and health or sickness insurance coverage for
- 22 sickness, bodily injury or accidental death and may include
- 23 benefits for disability income;
- 24 (3) Property insurance coverage for the direct or
- consequential loss or damage to property of every kind;
- 26 (4) Casualty insurance coverage against legal liability,
- 27 including that for death, injury or disability or damage to real
- 28 or personal property;

- 1 (5) Variable life and variable annuity products insurance 2 coverage provided under variable life insurance contracts and 3 variable annuities;
- 4 (6) Personal lines property and casualty insurance coverage 5 sold to individuals and families for primarily noncommercial 6 purposes;
 - (7) Credit-limited line credit insurance;

- (8) Any other line of insurance permitted under state laws or regulations.
- 2. Any insurance producer who is certified by the Federal
 Crop Insurance Corporation on September 28, 1995, to write
 federal crop insurance shall not be required to have a property
 license for the purpose of writing federal crop insurance.
 - 3. The biennial renewal fee for a producer's license is one hundred dollars for each license. A producer's license shall be renewed biennially on the anniversary date of issuance and continue in effect until refused, revoked or suspended by the director in accordance with section 375.141.
 - 4. An individual insurance producer who allows his or her license to expire may, within twelve months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. The insurance producer seeking relicensing pursuant to this subsection shall provide proof that the continuing education requirements have been met and shall pay a penalty of twenty-five dollars per month that the license was expired in addition to the requisite renewal fees that would have been paid had the license been renewed in a timely manner.

Nothing in this subsection shall require the director to

- relicense any insurance producer determined to have violated the provisions of section 375.141.
- 5. A business entity insurance producer that allows the license to expire may, within twelve months of the due date of the renewal, reinstate the license by paying the license fee that would have been paid had the license been renewed in a timely manner plus a penalty of twenty-five dollars per month that the license was expired.
 - 6. The license shall contain the name, address, identification number of the insurance producer, the date of issuance, the lines of authority, the expiration date and any other information the director deems necessary.

- 7. Insurance producers shall inform the director by any means acceptable to the director of a change of address within thirty days of the change. Failure to timely inform the director of a change in legal name or address may result in a forfeiture not to exceed the sum of ten dollars per month.
- 8. In order to assist the director in the performance of his or her duties, the director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or any affiliates or subsidiaries that the organization oversees or through any other method the director deems appropriate, to perform any ministerial functions, including the collection of fees, related to producer licensing that the director may deem appropriate.
 - 9. Any bank or trust company in the sale or issuance of insurance products or services shall be subject to the insurance laws of this state and rules adopted by the [department of

- insurance] director.
- 2 10. A licensed insurance producer who is unable to comply
- 3 with license renewal procedures due to military service or some
- 4 other extenuating circumstance, such as a long-term medical
- 5 disability, may request a waiver of those procedures. The
- 6 producer may also request a waiver of any other fine or sanction
- 7 imposed for failure to comply with renewal procedures.
- 8 375.031. As used in sections 375.031 to 375.039, the
- 9 following words and terms mean:
- 10 (1) "Director", the director of the department of
- insurance, financial and professional regulation;
- 12 (2) "Exclusive insurance producer", any licensed insurance
- producer whose contract with an insurer requires the insurance
- 14 producer to act as an agent only for that insurer or a group of
- insurers under common ownership or control or other insurers
- 16 authorized by that insurer;
- 17 (3) "Independent insurance producer", any licensed
- insurance producer representing an insurance company as an
- independent contractor and not as an employee, or any individual,
- 20 partnership or corporation transacting business with the public
- or insurance companies as an agent is an independent insurance
- 22 producer, but shall not include an exclusive insurance producer;
- 23 (4) "Insurer", any property and casualty insurance company
- 24 doing business in the state of Missouri.
- 25 375.033. 1. All contracts between an insurer and an
- independent insurance producer in effect in the state of Missouri
- on or after September 28, 1979, shall not be terminated or
- canceled by the insurer except by mutual agreement or unless

- ninety days' written notice in advance has been given to the independent insurance producer and the director [of insurance].
- 2. During the ninety days' notice period the independent insurance producer shall not write or bind any new business on behalf of the insurer without specific written approval.

- 375.037. 1. The director [of insurance], on the written complaint of any person, or when the director deems it necessary without a complaint, shall determine whether there has been a violation of sections 375.031 to 375.037. After such determination, the director shall notify all parties concerned by certified mail and shall prescribe a method of cancellation to be followed by the concerned parties. Any party who is aggrieved by the decision of the director [of insurance] shall be entitled to judicial review thereof, as provided in sections 536.100 to 536.140, RSMo.
 - 2. Sections 375.031 to 375.037 shall not apply if the director determines nonrenewal is necessary to preserve an insurer's solvency or to protect the insured's interest. Nor shall sections 375.031 to 375.037 apply in the case of fraud, failure to properly remit premiums, or whenever the director determines the license of the insurance producer could be revoked or not renewed pursuant to the provisions of section 375.141.
 - 3. If any provision of sections 375.031 to 375.037 or the application thereof to any person or circumstances is held invalid, the validity of the remainder of sections 375.031 to 375.037 and of the application of such provision to other persons and circumstances shall not be affected thereby.
- 28 375.039. 1. No insurer may cancel, terminate or otherwise

- withdraw coverage for a certain class of commercial risk, unless
 written notice of such cancellation, termination, or withdrawal
 is given to the insurer's independent insurance producer
- authorized to sell such insurance coverage at least sixty days prior to such cancellation, termination or withdrawal.
- 2. The provisions of subsection 1 of this section shall not apply if the cancellation, termination or withdrawal of coverage by an insurer is by reason of reinsurance requirements, adverse loss experience, or by the requirement of the [Missouri department of insurance] director. In these circumstances, the notice described in subsection 1 of this section shall be given at least thirty days prior to such cancellation, termination or

withdrawal.

- 375.146. 1. Any person who knowingly employs, uses or engages in any act, scheme, device or practice in violation of section 375.144 with the purpose to defraud shall upon conviction be fined not more than one hundred thousand dollars and imprisoned not more than ten years, or both. In addition to any fine, imprisonment, or fine and imprisonment imposed, the court may order restitution to the victim in an amount equal to twice the losses due to such offense. If the offender holds a license under these sections, the court imposing sentence shall order the [department of insurance] director to revoke such license.
- 2. Any person willfully violating any of the provisions of sections 375.012 to 375.141 is guilty of a class A misdemeanor and on conviction thereof, if the offender holds a license under these sections, the court imposing sentence shall order the [department of insurance] director to revoke the license.

- 3. The director may refer such evidence as is available concerning violations of this chapter to the proper prosecuting attorney or circuit attorney who may, with or without reference, initiate the appropriate criminal proceedings.
 - 4. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime in any other state statute.
- 8 375.147. 1. Sections 375.147 to 375.153 may be cited as 9 the "Managing General Agents Act".

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- 2. Sections 375.147 to 375.153 shall take effect on July 1,
 11 1991. No insurer may continue to utilize the services of a
 12 managing general agent after June 30, 1991, unless such
 13 utilization is in compliance with sections 375.147 to 375.153.
- 3. As used in sections 375.147 to 375.153, the following words and phrases shall mean:
- 16 (1) "Actuary", a person who is a member in good standing of 17 the American Academy of Actuaries;
 - (2) "Director", the director of the department of insurance, financial and professional regulation;
 - (3) "Insurer", any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to section 375.161 or 375.791;
 - (4) "Managing general agent" or "MGA", any person, firm, association or corporation who manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the

- 1 authority, either separately or together with affiliates,
- 2 produces, directly or indirectly, and underwrites an amount of
- 3 gross direct written premiums equal to or more than five percent
- 4 of the policyholder surplus as reported in the last annual
- 5 statement of the insurer in any one quarter or year together with
- one or more of the following:
- 7 (a) Adjusts or pays claims in excess of an amount
- 8 determined by the director. The threshold amount set by the
- 9 director pursuant to this paragraph shall be applied equally to
- 10 both domestic and foreign insurers; or
- 11 (b) Negotiates reinsurance on behalf of the insurer.
- 12
- 13 Notwithstanding the above, the following persons shall not be
- 14 considered as managing general agents for the purposes of
- 15 sections 375.147 to 375.153:
- 16 a. An employee of the insurer;
- 17 b. A manager of the United States branch of an alien
- 18 insurer;
- c. An underwriting manager which, pursuant to contract,
- 20 manages all the insurance operation of the insurer, is under
- 21 common ownership or control with the insurer, subject to the
- 22 provisions of chapter 382, RSMo;
- d. A person holding a valid certificate of registration as
- 24 an administrator and acting solely as an "administrator" as
- defined in section 376.1075; or
- 26 e. The attorney authorized by and acting for the
- 27 subscribers of a reciprocal insurer or interinsurance exchange
- 28 under powers of attorney;

- 1 (5) "Underwrite", the authority to accept or reject risk on 2 behalf of the insurer.
- 3 375.159. 1. The provisions of this section shall apply to
- 4 all domestic, foreign and alien insurers who are authorized to
- 5 transact business in this state, and shall also apply to those
- 6 companies organized and authorized to transact business in this
- 354, 377, 378 or 381,
- 8 RSMo.
- 9 <u>2. Each domestic, foreign and alien insurer who is</u>
- authorized to transact insurance in this state, and each company
- 11 <u>organized and authorized to transact business in this state</u>
- pursuant to the provisions of chapter 354, 377, 378 or 381, RSMo,
- shall annually, on or before March first of each year, file with
- 14 the National Association of Insurance Commissioners a copy of its
- annual statement convention blank, along with such additional
- filings as prescribed by the director for the preceding year.
- 17 The information filed with the National Association of Insurance
- 18 Commissioners shall be in the same format and scope as that
- 19 required by the director and shall include the signed jurat page
- and the actuarial certification. Any amendments and addendums to
- 21 the annual statement filing subsequently filed with the director
- 22 shall also be filed with the National Association of Insurance
- 23 Commissioners. Foreign insurers that are domiciled in a state
- 24 which has a law substantially similar to this subsection shall be
- deemed in compliance with this subsection.
- 26 3. In the absence of actual malice, or gross negligence,
- 27 members of the National Association of Insurance Commissioners,
- their duly authorized committees, subcommittees and task forces,

- 1 their delegates, National Association of Insurance Commissioners'
- 2 <u>employees</u>, and all others charged with the responsibility of
- 3 collecting, reviewing, analyzing and disseminating the
- 4 information developed from the filing of the annual statement
- 5 convention blanks shall be acting as agents of the director under
- 6 the authority of this section and shall not be subject to civil
- 7 liability for libel, slander or any other cause of action by
- 8 virtue of their collection, review and analysis or dissemination
- 9 of the data and information collected from the filings required
- 10 under this section.
- 11 <u>4. The director may suspend, revoke or refuse to renew the</u>
- 12 <u>certificate of authority of any insurer failing to file its</u>
- annual statement when due or within any extension of time which
- the director, for good cause, may have granted.
- 15 375.164. 1. All agreements or contracts under which any
- person, organization or corporation enjoys in fact the exclusive
- or dominant right to manage or control any insurer doing business
- under any of the insurance laws of this state to the substantial
- 19 exclusion of the board of directors, officers, attorney in fact
- or other lawful management shall be filed with the director on
- 21 his request.
- 22 2. The director, for the purpose of ascertaining the
- assets, conditions and affairs of any insurer, may examine the
- 24 books, records, documents and assets of any person having a
- 25 contract or agreement as provided in subsection 1 to the extent
- 26 necessary to determine the financial condition of the insurer.
- 27 The failure or refusal of any such person to submit his books,
- 28 papers, accounts, records or affairs to the reasonable inspection

or examination of the director shall be grounds for the suspension or revocation of the certificate of authority of the insurer to do business in this state.

- 3. No agreement or contract as provided in subsection 1 shall operate to the financial detriment of the insurer in such manner as to endanger the financial stability of the insurer or otherwise be hazardous to the policyholders and creditors of the insurer.
- 9 4. On examination of any agreement or contract, if the director finds it violates the provisions of this section, he shall proceed in accordance with the provisions of section 374.046, RSMo.
 - 5. Any person, organization or corporation having a management contract as provided in subsection 1 hereof shall within five days of execution of such contract provide notice of such contract to the director [of insurance].
 - 375.176. 1. Whenever it appears to the director [of the insurance department] from any examination made by himself, or from the report of the person or persons appointed by him to make an examination, or from the statements of the company, or its officers or promoters, or from any knowledge or information in his possession that it would be hazardous to the public or to its stockholders for the company to proceed with its organization, the director may, if the company is a domestic corporation, institute proceedings in the circuit court of the county or city in which the company was organized, or in which it has, or last had, its principal or chief office or place of business, and enjoin the company from further proceeding with its organization,

either temporarily or perpetually, or for an injunction or dissolution of the company and the settlement or winding up of its affairs or for any or all of these remedies combined and for such other decrees and relief as the court shall deem advisable.

- 2. In the event that the court appoints a receiver for any company, the director [of insurance] may be appointed as receiver, or some person other than the director [of insurance] may be appointed, in the discretion of the court.
- 3. The compensation paid to any receiver appointed, upon petition of the [insurance] director filed against any company under this section, shall, in all cases, be fair and reasonable, and when approved by the court, shall be paid out of any assets which may be in the hands of the receiver.
- 375.198. 1. Any capital stock insurance company shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes shall consist of shares with a minimum par value of one dollar, with such designations, preferences, qualifications, limitations, restrictions and such special or relative rights including the right of conversion into any other class of shares as shall be stated in the articles of incorporation; provided, that the authorized number of shares of any class or classes without voting rights shall not exceed in the aggregate a ratio of two shares of such class or classes to one share of the voting stock of the company to be outstanding when the corporation commences business.
 - 2. In case a corporation is authorized by its articles of

incorporation to issue preferred shares entitled to limited 1 2 preferential dividends and to a limited amount on dissolution or liquidation, the board of directors may, if expressly authorized 3 so to do by the articles of incorporation, and with the written approval of the director [of insurance], cause such shares to be 5 issued from time to time in series and may, to the extent 6 7 expressly authorized by such articles of incorporation, by 8 resolution adopted prior to the issue of shares of a particular 9 series, fix the distinctive serial designation of the shares of such series, the dividend rate thereof, the date from which 10 11 dividends on shares issued prior to date for payment of the first 12 dividend thereon shall be cumulative, the redemption price and 13 the terms of redemption, the amounts payable thereon on dissolution or liquidation and the terms and amount of any 14 15 sinking fund for the purchase or redemption thereof, and the 16 terms and conditions, if any, under which said shares may be converted; and in respect of the terms so fixed by the board of 17 18 directors, the shares of a particular series may vary from those of any or all other series, but only in respects and within the 19 20 limits, if any, set forth in the articles of incorporation; and, 21 except as so varied by the board of directors, all of the shares 22 of the same class, regardless of series, shall in all respects be equal and shall have the preferences, rights, privileges and 23 24 restrictions fixed by the articles of incorporation. Before the 25 issue of any preferred shares of any series, the number of shares of such series and the designation, description and terms thereof 26 27 fixed by the board of directors pursuant to such authority shall 28 be set forth in a certificate signed and verified by the

president or a vice president and countersigned by the secretary or an assistant secretary of the corporation, which certificates shall be filed with the director [of insurance] and secretary of state and otherwise dealt with as in the case of articles of

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incorporation.

- 3. In the event of the conversion or exchange of any issued shares into or for other shares of the corporation, whether of the same or of a different class or classes, the consideration for the shares so issued in such conversion or exchange is deemed to be:
- (1) The consideration originally received for the shares so converted or exchanged; and
 - (2) That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so converted or exchanged; and
 - (3) Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.
 - 4. When payment of the consideration for which shares are to be issued shall have been received by the corporation, the shares are full-paid and nonassessable. In the absence of actual fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.
 - 375.206. Upon receipt by the director [of insurance] of any certificate of amendment in triplicate, he shall file it if he finds that the certificate of amendment conforms to law and that the proceedings were regular, and that the same will not be

- prejudicial to the interest of the policyholders and, if the 1 2 amendment increases or reduces the capital stock, that the condition and the assets of the company justify the increase or 3 reduction. Keeping one of the copies as a permanent record, he 5 shall issue his certificate of amendment and shall certify the 6 same to the secretary of state, who shall affix his certificate 7 of amendment to a copy thereof retaining the same as a permanent record and shall forward to the company his certificate of 8 amendment. The secretary of state shall also forward to the 9 10 director [of insurance] a certified copy of his certificate of 11 amendment.
 - 375.221. 1. After the adoption of an amendment of the articles, a certificate of amendment shall be executed in triplicate by the insurance company by its president or vice president and its secretary or assistant secretary verified by one of the officers signing with corporate seal affixed. If the insurance company is a reciprocal or interinsurance exchange, the certificate of amendment shall be executed in a like manner by its attorney in fact.
 - 2. The certificates of amendment shall be delivered to the director [of insurance] and shall state:
 - (1) The name of the insurance company;
 - (2) The date of the adoption of the amendment by the shareholders, members or other group of persons entitled to vote on the amendment;
- 26 (3) The amendment adopted;

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27 (4) The number of shares, members, or other group of 28 persons entitled to vote, or if a mutual, the number of the members present either in person or by proxy entitled to vote;

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- (5) The number of shares, members, or other group of persons that voted for and against said amendment respectively;
- (6) If the amendment effects a change in the number or par value of authorized shares, then a statement showing the number of shares and par value thereof previously authorized.

375.231. Any insurance company incorporated under the laws of this state, the capital stock of which has not been fully subscribed, may, by the vote of a majority of its stockholders and subscribers of its capital stock, reduce its capital stock to the extent prescribed by law in the following manner: The stockholders and subscribers of its capital stock of any company desiring so to reduce its stock, shall file or cause to be filed with the director [of the insurance department] a certified copy of the proceedings of the stockholders and subscribers of its capital stock at which it was determined to reduce the stock, which copy of the proceedings shall set forth in full the amount of the capital stock after the reduction, the number of shares and the par value of each, a list of the stockholders of the company, together with their residences and the amount of stock subscribed by each and the amount paid therefor and such other information as shall be necessary to give the director [of the insurance department] a complete record of all transactions of the insurance company from its incorporation to the time of the reduction of its capital stock as voted by the stockholders and subscribers of its capital stock, and the director [of insurance] may, in his discretion, make an examination of the records and books of the insurance company; and if the director [of the

insurance department] is satisfied that the provisions of this section have been fully complied with, and that the proceedings were regular, the director shall issue a certificate authorizing the reduction and showing that the capital stock of the company has been reduced, the number and par value of the shares; and the certificate shall be filed and recorded as in sections 375.010 to 375.920 is provided for filing and recording the certificates of incorporation; and thereafter the company shall, with the reduced capital, be subject to the same liabilities that it possessed or was subject to at the time of the reduction of its capital; and the charter or certificate of incorporation of the company shall be deemed to be amended in respect to the amount of capital stock, and the par value and number of shares, so as to conform to the reduction.

375.246. 1. Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subdivisions (1) to (5) of this subsection. Credit shall be allowed pursuant to subdivision (1), (2) or (3) of this subsection only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed pursuant to subdivision (3) or (4) of this subsection only if the applicable requirements of subdivision (6) have been satisfied.

- 1 (1) Credit shall be allowed when the reinsurance is ceded 2 to an assuming insurer that is licensed to transact insurance in 3 this state:
- 4 (2) Credit shall be allowed when the reinsurance is ceded 5 to an assuming insurer that is accredited as a reinsurer in this 6 state. An accredited reinsurer is one that:
- 7 (a) Files with the director evidence of its submission to 8 this state's jurisdiction;
 - (b) Submits to the authority of the department [of insurance] to examine its books and records;

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- (c) Is licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer is entered through and licensed to transact insurance or reinsurance in at least one state;
 - (d) Files annually with the director a copy of its annual statement filed with the insurance [department] regulator of its state of domicile and a copy of its most recent audited financial statement; and
 - (e) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars and whose accreditation has not been denied by the director within ninety days of its submission; or
- (f) Maintains a surplus as regards policyholders in an amount less than twenty million dollars and whose accreditation has been approved by the director.
- No credit shall be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the director

1 after notice and hearing;

- 2 (3) Credit shall be allowed when the reinsurance is ceded 3 to an assuming insurer that is domiciled in, or in the case of a 4 United States branch of an alien assuming insurer is entered 5 through, a state that employs standards regarding credit for 6 reinsurance substantially similar to those applicable under this 7 statute and the assuming insurer or United States branch of an 8 alien assuming insurer:
 - (a) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; except that this paragraph does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system; and
 - (b) Submits to the authority of the department of insurance, financial and professional regulation to examine its books and records;
 - (4) (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution, as defined in subdivision (2) of subsection 3 of this section, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the director to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the director.

- 1 (b) Credit for reinsurance shall not be granted pursuant to 2 this subdivision unless the form of the trust and any amendments 3 to the trust have been approved by:
- a. The commissioner or director of the state agency regulating insurance in the state where the trust is domiciled; or
 - b. The commissioner or director of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

- also be filed with the commissioner or director in every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the director.
- (d) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February twenty-eighth of each year the trustees of the trust shall report to the director in writing the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust will not expire prior to the

- 1 next following December thirty-first.
- 2 (e) The following requirements apply to the following
- 3 categories of assuming insurers:
- a. The trust fund for a single assuming insurer shall

 consist of funds in trust in an amount not less than the assuming

 insurer's liabilities attributable to reinsurance ceded by the

 United States ceding insurers, and, in addition, the assuming

 insurer shall maintain a trusteed surplus of not less than twenty
- 9 million dollars;

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- b. In the case of a group of incorporated and individualunincorporated underwriters:
- (i) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, the trust shall consist of a trusteed account in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group;
 - (ii) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trustee account in an amount not less than the group's several insurance and reinsurance liabilities attributable to business in the United States; and
 - (iii) In addition to these trusts, the group shall maintain in trust a trusteed surplus of which one hundred million dollars shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all

- 1 years of account;
- 2 c. The incorporated members of the group shall not be
- 3 engaged in any business other than underwriting as a member of
- 4 the group and shall be subject to the same level of regulation
- 5 and solvency control by the group's domiciliary regulator as are
- 6 the unincorporated members;
- 7 d. Within ninety days after its financial statements are
- 8 due to be filed with the group's domiciliary regulator, the group
- 9 shall provide to the director an annual certification by the
- 10 group's domiciliary regulator of the solvency of each underwriter
- 11 member; or if a certification is unavailable, financial
- 12 statements, prepared by independent public accountants, of each
- 13 underwriter member of the group;
- 14 (5) Credit:
- 15 (a) Shall be allowed when the reinsurance is ceded to an
- assuming insurer not meeting the requirements of subdivision (1),
- 17 (2), (3) or (4) of this subsection, but only as to the insurance
- of risks located in a jurisdiction of the United States where the
- 19 reinsurance is required by applicable law or regulation of that
- 20 jurisdiction;
- 21 (b) May be allowed in the discretion of the director when
- 22 the reinsurance is ceded to an assuming insurer not meeting the
- requirements of subdivision (1), (2), (3) or (4) of this
- 24 subsection, but only as to the insurance of risks located in a
- foreign country where the reinsurance is required by applicable
- law or regulation of that country;
- 27 (6) If the assuming insurer is not licensed or accredited
- 28 to transact insurance or reinsurance in this state, the credit

permitted by subdivisions (3) and (4) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

- (a) That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer shall submit to the jurisdiction of the courts of this state, will comply with all requirements necessary to give such courts jurisdiction, and will abide by the final decisions of such courts or of any appellate courts in this state in the event of an appeal; and
- (b) To designate the director or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the ceding company. This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement and the jurisdiction and situs of the arbitration is, with respect to any receivership of the ceding company, any jurisdiction of the United States;
- (7) If the assuming insurer does not meet the requirements of subdivision (1), (2) or (3) of this subsection, the credit permitted by subdivision (4) of this subsection shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:
- (a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by paragraph (e) of

subdivision (4) of this subsection, or if the grantor of the 1 2 trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws 3 of its state or country of domicile, the trustee shall comply 5 with an order of the commissioner or director with regulatory 6 oversight over the trust or with an order of a court of competent 7 jurisdiction directing the trustee to transfer to the commissioner or director with regulatory oversight all of the 8 assets of the trust fund;

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- The assets shall be distributed by and claims shall be filed with and valued by the commissioner or director with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies;
- If the commissioner or director with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner or director with regulatory oversight to the trustee for distribution in accordance with the trust agreement; and
- The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this subsection.
- An asset or reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of subsection 1 of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding

- 1 insurer. The reduction shall be in the amount of funds held by
- or on behalf of the ceding insurer, including funds held in trust
- 3 for the ceding insurer, under a reinsurance contract with the
- 4 assuming insurer as security for the payment of obligations
- 5 thereunder, if the security is held in the United States subject
- 6 to withdrawal solely by, and under the exclusive control of, the
- 7 ceding insurer; or, in the case of a trust, held in a qualified
- 8 United States financial institution, as defined in subdivision
- 9 (2) of subsection 3 of this section. This security may be in the
- 10 form of:
- 11 (1) Cash;
- 12 (2) Securities listed by the securities valuation office of
- 13 the National Association of Insurance Commissioners and
- 14 qualifying as admitted assets;
- 15 (3) (a) Clean, irrevocable, unconditional letters of
- 16 credit, as defined in subdivision (1) of subsection 3 of this
- 17 section, issued or confirmed by a qualified United States
- 18 financial institution no later than December thirty-first of the
- 19 year for which filing is being made, and in the possession of, or
- in trust for, the ceding company on or before the filing date of
- 21 its annual statement.
- 22 (b) Letters of credit meeting applicable standards of
- issuer acceptability as of the dates of their issuance or
- 24 confirmation, notwithstanding the issuing or confirming
- 25 institution's subsequent failure to meet applicable standards of
- 26 issuer acceptability, shall continue to be acceptable as security
- 27 until their expiration, extension, renewal, modification or
- amendment, whichever first occurs;

- 1 (4) Any other form of security acceptable to the director.
- 2 3. (1) For purposes of subdivision (3) of subsection 2 of this section, a "qualified United States financial institution" means an institution that:

- (a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
- (b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies; and
- (c) Has been determined by either the director, or the securities valuation office of the National Association of Insurance Commissioners, to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the director.
- (2) A "qualified United States financial institution" means, for purposes of those provisions of this law specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
- (a) Is organized, or in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
- (b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.
 - 4. The director may adopt rules and regulations

1 implementing the provisions of this section.

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- 2 The director shall disallow any credit as an asset or as a deduction from liability for any reinsurance found by him 3 to have been arranged for the purpose principally of deception as to the ceding company's financial condition as of the date of any 5 6 financial statement of the company. Without limiting the general 7 purport of this provision, reinsurance of any substantial part of the company's outstanding risks contracted for in fact within 8 9 four months prior to the date of any such financial statement and 10 canceled in fact within four months after the date of such 11 statement, or reinsurance under which the assuming insurer bears 12 no substantial insurance risk or substantial risk of net loss to 13 itself, shall prima facie be deemed to have been arranged for the purpose principally of deception within the intent of this 14 15 provision.
 - (2) (a) The director shall also disallow as an asset or deduction from liability to any ceding insurer any credit for reinsurance unless the reinsurance is payable to the ceding company, and if it be insolvent to its receiver, by the assuming insurer on the basis of the liability of the ceding company under the contracts reinsured without diminution because of the insolvency of the ceding company.
 - (b) Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:
 - a. Where the contract of insurance or reinsurance specifically provides for payment to the named insured, assignee or named beneficiary of the policy issued by the ceding insurer in the event of the insolvency of the ceding insurer; or

b. Where the assuming insurer, with the consent of it and the direct insured or insureds in an assumption reinsurance transaction subject to sections 375.1280 to 375.1295, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

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- (c) Notwithstanding paragraphs (a) and (b) of this subdivision, in the event that a life and health insurance guaranty association has made the election to succeed to the rights and obligations of the insolvent insurer under the contract of reinsurance, then the reinsurer's liability to pay covered reinsured claims shall continue under the contract of reinsurance, subject to the payment to the reinsurer of the reinsurance premiums for such coverage. Payment for such reinsured claims shall only be made by the reinsurer pursuant to the direction of the guaranty association or its designated successor. Any payment made at the direction of the guaranty association or its designated successor by the reinsurer will discharge the reinsurer of all further liability to any other party for such claim payment.
- (d) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own

expense, in the proceeding where such claim is to be adjudicated any defenses which it deems available to the ceding insurer, or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.

- 6. To the extent that any reinsurer of an insurance company in liquidation would have been required under any agreement pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon the last financial statement filed with a regulatory authority immediately prior to receivership, such reinsurer shall be required to post letters of credit or other security to cover reserves after a company has been placed in liquidation or receivership. If a reinsurer shall fail to post letters of credit or other security as required by a reinsurance agreement or the provisions of this subsection, the director may consider disallowing as a credit or asset, in whole or in part, any future reinsurance ceded to such reinsurer by a ceding insurance company that is incorporated under the laws of the state of Missouri.
 - 7. The provisions of section 375.420 shall not apply to any action, suit or proceeding by a ceding insurer against an

assuming insurer arising out of a contract of reinsurance effectuated in accordance with the laws of Missouri.

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- 8. The provisions of this section shall become effective on January 1, 2003, and shall be applicable to the financial statements of a reinsurer as of December 31, 2002.
 - 375.251. 1. Civil actions may be maintained by any insurance corporation formed under the laws of this state against any of its members or stockholders, for any cause relating to the business of the company.
 - 2. Civil actions may also be prosecuted and maintained by any member or stockholder of the corporation against the corporation for loss which may have accrued in favor of any member or stockholder on any risk or policy, if payment is withheld for more than two months after the loss shall have become due; but no action shall be brought or maintained by any person other than the director [of the insurance department of this state] for the winding up or dissolution of any insurance company, or the distribution of its assets among its creditors.
 - 375.256. Any insurance company, association, or other insurer not incorporated or authorized under the laws of this state, which shall do or cause to be done any of the following acts in this state, effected by mail or otherwise: the issuance or delivery of contracts of insurance to residents of this state or to corporations authorized to do business in this state, the solicitation of applications for contracts of insurance, the collection of premiums, membership fees, assessments or other considerations for contracts, or any other transaction of business, shall be deemed to have constituted and appointed the

director [of insurance of the state of Missouri], and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit, or proceeding instituted in any county in this state, by or on behalf of an insured or beneficiary arising out of any contract of insurance, and any such act shall be signification of its agreement that the service of process is of the same legal force and validity as personal service of process in this state upon the insurer, notwithstanding the fact that the insurance company, association, or other insurer has failed or neglected to file written power of attorney appointing and authorizing the director [of insurance] of this state to acknowledge or receive service of all lawful process for and on behalf of the insurance company, association or other insurer, as provided in section 375.906.

375.261. 1. Service of process as provided herein shall be made by delivery of two copies of the summons, with copies of the petition thereto attached, to the director [of the insurance department of this state], or in his absence to the deputy director of the [insurance] department, or in the absence of both the director and deputy director, to the chief clerk of the department [of insurance], at the office of the director of the [insurance division] department of insurance, financial and professional regulation of this state at Jefferson City, Missouri. The director [of the insurance department] shall forthwith mail by certified mail, with return receipt requested, one of the copies of the summons, with petition thereto attached, to the defendant at its last known principal place of business,

and shall keep a record of all process so served upon the
director, deputy director or chief clerk, and the date of
service, and the return receipt showing delivery thereof to the
defendant shall be filed therewith.

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- The director [of the insurance department], upon receiving the return receipt, shall so certify the fact to the clerk of the court in which the action is pending. The service of process shall be deemed sufficient provided notice of service, and a copy of the summons, with a copy of plaintiff's petition thereto attached, are sent certified mail, with return receipt requested, within ten days after service of process upon the director [of the insurance department], or his deputy or chief clerk, as aforesaid, by plaintiff or plaintiff's attorney to the defendant at its last known principal place of business, and the return receipt therefor issued by the post office and the affidavit of plaintiff or plaintiff's attorney showing compliance with the aforesaid provisions are filed in the office of the clerk of the court in which the action is pending on or before the date the defendant is required to appear and defend the cause of action.
 - 375.271. No plaintiff shall be entitled to a judgment against the defendant by default under this section until after the expiration of forty-five days from the date of service of summons with copy of plaintiff's petition thereto attached upon the director [of the insurance department], his deputy or chief clerk as provided in section 375.261, or upon either of the persons referred to in section 375.266.
- 28 375.330. 1. No insurance company formed under the laws of

this state shall be permitted to purchase, hold or convey real estate, excepting for the purpose and in the manner herein set forth, to wit:

- (1) Such as shall be necessary for its accommodation in the transaction of its business; provided that before the purchase of real estate for any such purpose, the approval of the director [of the department of insurance] must be first had and obtained, and except with the approval of the director, the value of such real estate, together with all appurtenances thereto, purchased for such purpose shall not exceed twenty percent of the insurance company's capital and surplus as shown by its last annual statement; or
- 13 (2) Such as shall have been mortgaged in good faith by way
 14 of security for loans previously contracted, or for moneys due;
 15 or
 - (3) Such as shall have been conveyed to it in satisfaction of debts contracted in the course of its dealings; or
 - (4) Such as shall have been purchased at sales upon the judgments, decrees or mortgages obtained or made for such debts; or
 - (5) Such as shall be necessary and proper for carrying on its legitimate business under the provisions of the Urban Redevelopment Corporations Act; or
 - (6) Such as shall have been acquired under the provisions of the Urban Redevelopment Corporations Act permitting such company to purchase, own, hold or convey real estate; or
 - (7) Such real estate, or any interest therein, as may be acquired or held by it by purchase, lease or otherwise, as an

interest therein may thereafter be held, improved, developed,

investment for the production of income, which real estate or

- 3 maintained, managed, leased, sold or conveyed by it as real
- 4 estate necessary and proper for carrying on its legitimate
- 5 business; or

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- (8) A reciprocal or interinsurance exchange may, in its own name, purchase, sell, mortgage, hold, encumber, lease, convey, or otherwise affect the title to real property for the purposes and objects of the reciprocal or interinsurance exchange. Such deeds, notes, mortgages or other documents relating to real property may be executed by the attorney in fact of the reciprocal or interinsurance exchange. This provision shall be retroactive and shall apply to real estate owned or sold by a reciprocal insurer prior to August 28, 1990.
- 2. The investments acquired under subdivision (7) of subsection 1 of this section may be in either existing or new business or industrial properties, or for new residential properties or new housing purposes.
- than ten percent of its admitted assets, as shown by its last annual statement preceding the date of acquisition, as filed with the director [of the department of insurance of the state of Missouri], in the total amount of real estate acquired under subdivision (7) of subsection 1, nor more under subdivision (7) of subsection 1 than one percent of its admitted assets or ten percent of its capital and surplus, whichever is greater, in any one property, nor more under subdivision (7) of subsection 1 than one percent of its admitted assets or ten percent of its admitted assets or ten percent of its admitted assets or ten percent of its capital

- and surplus, whichever is greater, in total properties leased or rented to any one individual, partnership or corporation.
- It shall not be lawful for any company incorporated as aforesaid to purchase, hold or convey real estate in any other case or for any other purpose; and all such real estate acquired in payment of a debt, by foreclosure or otherwise, and real estate exchanged therefor, shall be sold and disposed of within ten years after such company shall have acquired absolute title to the same, unless the company owning such real estate or interest therein shall elect to hold it pursuant to subdivision (7) of subsection 1.

- 5. The director [of the department of insurance] may, for good cause shown, extend the time for holding such real estate acquired in paying of a debt, by foreclosure or otherwise, and real estate exchanged therefor, and not held by the company under subdivision (7) of subsection 1, for such period as he may find to be to the best interests of the policyholders of said company.
- 6. If a life insurance company depositing under section 376.170, RSMo, becomes the owner of real estate pursuant to this section, the company may execute its own deed for the real estate to the director [of the department of insurance], as trustee. The deed may be deposited with the director as proper security, under and according to the provisions of sections 376.010 to 376.670, RSMo, the value to be subject to the approval of the director.
- 26 375.345. 1. As used in this section, the following words and terms mean:
 - (1) "Admitted assets", assets permitted to be reported as

- 1 admitted assets on the statutory financial statement of the
- 2 insurance company most recently required to be filed with the
- director, but excluding assets of separate accounts, the
- 4 investments of which are not subject to the provisions of law
- 5 governing the general investment account of the insurance
- 6 company;
- 7 (2) "Cap", an agreement obligating the seller to make
- 8 payments to the buyer, with each payment based on the amount by
- 9 which a reference price, level, performance, or value of one or
- 10 more underlying interests exceeds a predetermined number,
- 11 sometimes called the strike rate or strike price;
- 12 (3) "Collar", an agreement to receive payments as the buyer
- of an option, cap, or floor and to make payments as the seller of
- 14 a different option, cap, or floor;
- 15 (4) "Counterparty exposure amount":
- 16 (a) The amount of credit risk attributable to an
- 17 over-the-counter derivative instrument. The amount of credit
- 18 risk equals:
- 19 a. The market value of the over-the-counter derivative
- 20 instrument if the liquidation of the derivative instrument would
- 21 result in a final cash payment to the insurance company; or
- 22 b. Zero if the liquidation of the derivative instrument
- 23 would not result in a final cash payment to the insurance
- 24 company;
- 25 (b) If over-the-counter derivative instruments are entered
- 26 into under a written master agreement which provides for netting
- of payments owed by the respective parties, and the domicile of
- 28 the counterparty is either within the United States or within a

- 1 foreign jurisdiction listed in the Purposes and Procedures of the
- 2 Securities Valuation Office as eligible for netting, the net
- 3 amount of credit risk shall be the greater of zero or the net sum
- 4 of:
- 5 a. The market value of the over-the-counter derivative
- 6 instruments entered into under the agreement, the liquidation of
- 7 which would result in a final cash payment to the insurance
- 8 company; and
- 9 b. The market value of the over-the-counter derivative
- 10 instruments entered into under the agreement, the liquidation of
- which would result in a final cash payment by the insurance
- 12 company to the business entity;
- 13 (c) For open transactions, market value shall be determined
- 14 at the end of the most recent quarter of the insurance company's
- 15 fiscal year and shall be reduced by the market value of
- acceptable collateral held by the insurance company or placed in
- 17 escrow by one or both parties;
- 18 (5) "Derivative instrument", an agreement, option,
- 19 instrument, or a series or combination thereof that makes, takes
- delivery of, assumes, relinquishes, or makes a cash settlement in
- 21 lieu of a specified amount of one or more underlying interests,
- 22 or that has a price, performance, value, or cash flow based
- 23 primarily upon the actual or expected price, level, performance,
- value or cash flow of one or more underlying interests.
- 25 Derivative instruments also include options, warrants used in a
- 26 hedging transaction and not attached to another financial
- instrument, caps, floors, collars, swaps, forwards, futures and
- any other agreements, options or instruments substantially

- 1 similar thereto, and any other agreements, options, or
- 2 instruments permitted under rules or orders promulgated by the
- 3 director;

- 4 (6) "Derivative transaction", a transaction involving the use of one or more derivative instruments;
 - (7) "Director", the director of the department of insurance, financial and professional regulation of this state;
 - (8) "Floor", an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one or more underlying interests;
 - (9) "Forward", an agreement other than a future to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests, but not including spot transactions effected within customary settlement periods, when issued purchases or other similar cash market transactions;
 - (10) "Future", an agreement traded on an exchange to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of one or more underlying interests and which includes an insurance future;
 - (11) "Hedging transaction", a derivative transaction that is entered into and maintained to reduce:
 - (a) The risk of economic loss due to a change in the value, yield, price, cash flow or quantity of assets or liabilities that the insurance company has acquired or incurred or anticipates acquiring or incurring;

- 1 (b) The currency exchange rate risk or the degree of 2 exposure as to assets or liabilities that the insurance company
- 3 has acquired or incurred or anticipates acquiring or incurring;
- 4 or
- 5 (c) Risk through such other derivative transactions as may 6 be specified to constitute hedging transactions by rules or
- 7 orders adopted by the director;
- 8 (12) "Income generation transaction":
- 9 (a) A derivative transaction involving the writing of
- 10 covered call options, covered put options, covered caps or
- 11 covered floors that is intended to generate income or enhance
- 12 return; or
- 13 (b) Such other derivative transactions as may be specified
- 14 to constitute income generation transactions in rules or orders
- 15 adopted by the director;
- 16 (13) "Initial margin", the amount of cash, securities or
- other consideration initially required to be deposited to
- 18 establish a futures position;
- 19 (14) "NAIC", the National Association of Insurance
- 20 Commissioners;
- 21 (15) "Option", an agreement giving the buyer the right to
- 22 buy or receive, sell or deliver, enter into, extend, terminate or
- 23 effect a cash settlement based on the actual or expected price,
- level, performance or value of one or more underlying interests;
- 25 (16) "Over-the-counter derivative instrument", a derivative
- instrument entered into with a business entity other than through
- 27 an exchange or clearinghouse;
- 28 (17) "Potential exposure", the amount determined in

- 1 accordance with the NAIC Annual Statement Instructions;
- 2 (18) "Replication transaction", a derivative transaction
- 3 effected either separately or in conjunction with cash market
- 4 investments included in the insurer's investment portfolio and
- 5 intended to replicate the investment characteristic of another
- 6 authorized transaction, investment or instrument or to operate as
- 7 a substitute for cash market transactions. A derivative
- 8 transaction that is entered into as a hedging transaction or an
- 9 income generation transaction shall not be considered a
- 10 replication transaction;
- 11 (19) "SVO", the Securities Valuation Office of the NAIC or
- any successor office established by the NAIC;
- 13 (20) "Swap", an agreement to exchange or to net payments at
- one or more times based on the actual or expected price, level,
- performance or value of one or more underlying interests;
- 16 (21) "Underlying interest", the assets, liabilities, other
- 17 interests, or a combination thereof underlying a derivative
- instrument, such as any one or more securities, currencies,
- 19 rates, indices, commodities or derivative instruments;
- 20 (22) "Warrant", an instrument that gives the holder the
- 21 right to purchase an underlying financial instrument at a given
- 22 price and time or at a series of prices and times outlined in the
- 23 warrant agreement.
- 24 2. An insurance company may, directly or indirectly through
- 25 an investment subsidiary, engage in derivative transactions
- 26 pursuant to this section under the following conditions:
- 27 (1) In general:
- 28 (a) An insurance company may use derivative instruments

pursuant to this chapter to engage in hedging transactions and
certain income generation transactions;

- (b) Upon request, an insurance company shall demonstrate to the director the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses;
 - (2) An insurance company shall only maintain its position in any outstanding derivative instrument used as part of a hedging transaction for as long as the hedging transaction continues to be effective;
- (3) An insurance company may enter into hedging transactions if as a result of and after giving effect to the transaction:
 - (a) The aggregate statement value of options, caps, floors and warrants not attached to another financial instrument purchased and used in hedging transactions then engaged in by the insurer does not exceed seven and one-half percent of its admitted assets;
 - (b) The aggregate statement value of options, caps and floors written in hedging transactions then engaged in by the insurer does not exceed three percent of its admitted assets; and
 - (c) The aggregate potential exposure of collars, swaps, forwards and futures used in hedging transactions then engaged in by the insurer does not exceed six and one-half percent of its admitted assets;
- (4) An insurance company may only enter into the following types of income generation transactions if as a result of and

after giving effect to an income generation transaction, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, shall not exceed ten percent of its admitted assets:

- (a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;
- (b) Sales of covered call options on equity securities if the insurance company holds in its portfolio or can immediately acquire through the exercise of options, warrants or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;
- (c) Sales of covered puts on investments that the insurance company is permitted to acquire under the applicable insurance laws of the state, if the insurance company has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or
- (d) Sales of covered caps or floors if the insurance company holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding;
 - (5) An insurance company may use derivative instruments for

- replication transactions only after the director promulgates reasonable rules that set forth methods of disclosure, reserving for risk-based capital, and determining the asset valuation reserve for these instruments. Any asset being replicated is subject to all the provisions and limitations on the making thereof specified in this chapter and chapters 376 and 379, RSMo, with respect to investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset;
 - (6) An insurance company shall include all counterparty exposure amounts in determining compliance with this state's single-entity investment limitations;

- (7) The director may approve, by rule or order, additional transaction conditions involving the use of derivative instruments for other risk management purposes.
- 3. Written investment policies and record-keeping procedures shall be approved by the board of directors of the insurance company or by a committee authorized by such board before the insurance company may engage in the practices and activities authorized by this section. These policies and procedures must be specific enough to define and control permissible and suitable investment strategies with regard to derivative transactions with a view toward the protection of the policyholders. The minutes of any such committee shall be recorded and regular reports of such committee shall be submitted to the board of directors.
- 4. The director may promulgate reasonable rules and regulations pursuant to the provisions of chapter 536, RSMo, not

inconsistent with this section and any other insurance laws of this state, establishing standards and requirements relating to practices and activities authorized in this section, including, but not limited to, rules which impose financial solvency standards, valuation standards, and reporting requirements.

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- 375.350. 1. No insurance company shall, directly or indirectly, purchase or hold, either absolutely or as collateral, its own stock, after the same has been once issued, without prior approval of the director [of insurance]. The written application shall specify the number of shares offered, their description, the price offered by the company, the book value of said shares and any other pertinent information regarding the value of said shares. A copy of said application shall be given to the seller prior to the filing of said written application with the director [of insurance]. This section shall not prevent a company from buying its own stock, if the same shall be forfeited and sold to the company for nonpayment of assessments thereon, in which case it shall be treated and issued as part of the original stock. Any person willfully making a false statement or representation in the application mentioned above shall be deemed guilty of a felony and be imprisoned for a period of not less than two years nor more than five years.
- 2. Notwithstanding the limitations set out in subsection 1 of this section, an insurance company may purchase or otherwise acquire its own stock, after the same has once been issued, without prior approval of the director [of insurance] provided that:
 - (1) The insurance company does not thereby reduce its

- capital and surplus below the minimums required by law for such company to continue to do business; and
- 3 (2) The insurance company, within ten days after the end of 4 any three-month period in which it acquires more than five 5 percent of any class of its outstanding shares, files a report 6 with the director [of insurance] showing:
- 7 (a) The date of such purchase;

- (b) The class of stock purchased;
- 9 (c) The number of shares of each class so purchased;
- 10 (d) The aggregate price paid for such shares of each class
 11 so purchased; and
- 12 (e) The authorized capital, actual capital, and surplus of 13 such company immediately prior to such purchase.
- 3. No shares which are or have been reacquired, purchased, pledged, or held by an insurance company pursuant to subsection 1 or 2 of this section shall be considered an admitted asset, nor shall be considered in determining the solvency of any insurance company.
- 375.355. 1. Any insurance company organized under the laws of this state may hereafter, with the approval of the director first obtained,
- 22 (1) Organize any subsidiary insurance company in which it 23 shall own and hold not less than a majority of the common stock; 24 or
- 25 (2) Acquire control of another insurance company by
 26 purchase, merger or otherwise, regardless of the domicile of any
 27 company so organized or acquired, for the purpose of operating
 28 any such company under a plan of common control.

Whenever any insurance company shall propose under the provisions of this section to acquire control of another insurance company by purchase, merger or otherwise or to dispose of any stock so purchased or so acquired, it shall present its petition to the director setting forth the terms and conditions of the proposed acquisition or disposition and praying for the approval of the acquisition or disposition. The director shall thereupon issue an order of notice, requiring notice to be given, to the policyholders of a mutual company and stockholders of a stock company, of the pendency of the petition, and the time and place at which the same will be heard, by publication of the order of notice in two daily newspapers designated by the director for at least once a week for two weeks before the time appointed for the hearing upon the petition; and any further notice which the director may require shall be given by the petitioners. At the time and place fixed in the notice, or at such time and place as shall be fixed by adjournment, the director shall proceed with the hearing, and may make such examination into the affairs and conditions of the companies as he may deem proper. For the purpose of making the examination, or having the same made, the director may employ the necessary clerical, actuarial, legal, and other assistance. The director [of the insurance department of this state] shall have the same power to summon and compel the attendance and testimony of witnesses and the production of books and papers at the hearing as by law granted in examinations of companies. Any policyholder or stockholder of the company or companies may appear before the director and be heard in reference to the petition.

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director, if satisfied that the proposed acquisition or disposition was properly approved after notice as required by the articles and bylaws of the company or companies, and that the interest of the policyholders of the company or companies is protected, and that no reasonable objection exists as to the acquisition or disposition, and that the acquisition will not tend to substantially lessen competition or create a monopoly, shall approve and authorize the proposed acquisition or disposition. All expenses and costs incident to the proceedings under this subsection shall be paid by the company or companies bringing the petition.

- 3. The shares of any subsidiary life insurance company acquired or held under the provisions of this section by a parent life insurance company organized under the provisions of chapter 376, RSMo, shall be eligible for deposit by the parent life insurance company as provided in section 376.170, RSMo, at a value no greater than the proportion of the capital and surplus of the subsidiary company as shown by its last annual statement filed in the state of its domicile represented by the shares held by the parent life insurance company, but only to the extent that the capital and surplus is represented by cash or securities of the kind and type eligible for deposit under the provisions of section 376.170, RSMo, and other applicable statutes.
- 4. (1) The provisions of this section shall not apply to the acquisition or disposition by purchase, sale or otherwise of not less than the majority of the stock of any insurance company domiciled outside of the state of Missouri, if the consideration involved in such acquisition or disposition does not exceed the

following threshold:

- (a) With respect to an insurance holding company, so long as such consideration does not exceed the lesser of three percent of its consolidated assets or twenty percent of its consolidated stockholders' equity as of the thirty-first day of December of the preceding year according to its consolidated balance sheet prepared in accordance with generally accepted accounting principles and audited by independent certified accountants in accordance with generally acceptable auditing standards; or
- (b) With respect to an insurance company organized under the laws of this state, so long as such consideration does not exceed the lesser of three percent of its assets or ten percent of its capital and surplus as of the thirty-first day of December of the preceding year according to its balance sheet prepared in accordance with accounting practices prescribed or permitted by the department [of insurance] and in conformity with the practices of the National Association of Insurance Commissioners and audited by independent certified accountants in accordance with generally acceptable auditing standards.
- (2) In calculating the amount of consideration involved in such acquisition or disposition for the purposes of subdivision (1) of this subsection, there shall be included total net moneys or other consideration expended, and obligations assumed in the acquisition or disposition, including all organizational expenses and contributions to capital and surplus of such insurance company domiciled outside of the state of Missouri, whether represented by the purchase of capital stock or issuance of other securities. For the purposes of this subsection, the term

- "insurance holding company" means a domestic insurance holding
 company in which the majority of stock is owned by a domestic
 insurance company, or a domestic insurance holding company which
- 4 owns the majority of the stock of a domestic insurance company.
- 5 375.400. 1. The director [of insurance] shall, as often as
- 6 he may deem proper, make careful inquiry and investigation as to
- 7 the manner in which the money, funds or securities of insurance
- 8 companies, doing business in this state, are invested or
- 9 employed, and record the result of such inquiry or investigation
- 10 in records kept in his office for the inspection of policyholders
- 11 and public officials.
- 12 2. In the event of a violation of this section or of
- section 375.390, the prosecuting attorney of the proper county,
- or in the city of St. Louis, the circuit attorney, shall proceed
- 15 at once by information or indictment against the offenders.
- 16 375.422. Every person who is directly or indirectly the
- beneficial owner of more than ten percent of any class of any
- 18 equity security of any insurance company organized under the laws
- of this state and having capital stock, or who is a director or
- an officer of such company, shall file in the office of the
- 21 director of the department [of insurance of the state of
- 22 Missouri] on or before January 1, 1966, or within ten days after
- 23 he becomes such beneficial owner, director or officer, a
- 24 statement in such form as the director may prescribe, of the
- amount of all equity securities of such company of which he is
- the beneficial owner, and within ten days after the close of each
- 27 calendar month thereafter, if there has been a change in such
- ownership during such month, any such person shall file in the

office of the director a statement, in such form as the director 1 may prescribe, indicating his ownership at the close of each such calendar month and such changes in his ownership as have occurred during such calendar month.

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375.430. Whenever any judgment shall be obtained in any of the courts of this state against any insurance company doing business in this state, and said judgment shall remain unsatisfied for fifteen days after execution shall have been lawfully issued thereon, the certificate of authority or license to do business issued or granted to such insurance company shall immediately be suspended or revoked by the director [of the insurance department], upon said director being notified thereof, and such insurance company shall, after such suspension or revocation, be prohibited from transacting any business in this state until such judgment shall be satisfied.

375.440. Any person, who has heretofore obtained or may hereafter obtain, in any of the courts of this state, a decree against any insurance company, doing business in this state, commanding or directing said insurance company to specifically perform a contract of insurance, may, if the insurance company against which said decree is obtained, fails, for a period of fifteen days after the rendition of said decree, to comply with the same, obtain a copy of said decree, certified to under the hand and seal of the clerk of the court in which said decree was rendered, and transmit the same, together with the certificate of said clerk, reciting therein, the failure of such insurance company to comply with said decree, and transmit the same to the director [of the insurance department of the state of Missouri],

- and immediately upon receipt thereof, the said director [of
- 2 insurance] shall cause such insurance company to be notified of
- 3 the fact of the filing of such certified copy of said decree and
- 4 certificate, and if such insurance company fails for a period of
- 5 thirty days thereafter to comply with said decree, the
- 6 certificate of authority or license to do business issued or
- 7 granted to such insurance company, shall immediately be suspended
- 8 or revoked by the director [of the insurance department], until
- 9 such decree shall be satisfied; provided, however, the foregoing
- shall not be applicable while an appeal is pending if a
- 11 supersedeas bond shall have been given.
- 12 375.460. 1. The director [of the insurance department]
- shall receive the deposits and securities required by law to be
- 14 transferred to and deposited with him, and shall give vouchers
- for the same to the parties so depositing.
- 16 2. He shall at all times require each company to keep up
- its deposits aforesaid to the full actual value required by law.
- 3. It shall be the duty of the director [of the insurance
- department], upon receipt of securities from any insurance
- 20 company, to forthwith deposit the same in the presence of the
- 21 president, vice president or authorized agent of the company, in
- 22 a strong iron box, which shall require two distinct and different
- 23 keys to unlock the same, one key to be kept by the director and
- 24 the other by the company; and the box shall not be opened except
- in the presence of the director or deputy, and said president,
- vice president, or authorized agent of the company; provided,
- however, that in case the company having such securities on
- deposit shall be adjudged insolvent, or be dissolved, or in cases

arising under section 375.490, the court shall make and enforce the necessary orders to place said securities, or any part of them, at the sole disposal of the director.

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- 4. The boxes shall be kept in the vault of the Safe Deposit Company of St. Louis, or other like depositary to be selected by said director, and the insurance companies shall pay the several fees for the safekeeping of their respective boxes.
 - 5. So long as any company so depositing shall continue solvent, the director shall permit such company to collect and receive the interest or dividends on its securities so deposited and transferred, and from time to time to withdraw any such securities on depositing other securities in the stead of those to be withdrawn, such new securities to be of the same value and of the kinds required by law in the first instance.
 - 6. The director shall not be subject to garnishment, attachment or any other process or order in respect to such securities than by law provided.
 - 375.500. 1. Whenever any company has been or shall be adjudged insolvent, or shall be or has been dissolved, if a distribution of its assets among its policyholders and creditors is or shall be decreed, it shall be the duty of the director [of insurance] to hold all securities on deposit for the benefit of all policyholders in such company, whether the claims of such policyholders are in judgment or not, to reduce such securities to money, and when so reduced, to apply the same, less the expenses herein provided for, to the liquidation of policy claims pro rata; in case there should be any surplus after the payment of all policy claims in full, such surplus shall become a part of

- the general assets of the company.
- 2 2. If the policy claimants are not paid in full out of the
- 3 proceeds of said securities, they shall be entitled to share in
- 4 the distribution of its general assets for the remainder of their
- 5 claims, as is provided by law, and as to said remainder shall not
- 6 be charged with the amount received by them on their policy
- 7 claims out of the proceeds of said securities; provided, however,
- 8 that when said securities have been deposited to secure
- 9 registered policies or annuity bonds, as provided by sections
- 375.010 to 375.920, the proceeds of the securities so deposited
- shall be first applied to the payment of the registered policies
- 12 and annuity bonds, for the security of which the same were
- deposited.

- 14 375.510. 1. If any insolvent and dissolved company shall
- be reinsured under the provisions of law, the securities on
- deposit with the director at the date of the dissolution of the
- 17 said company shall remain on deposit with him, as a fund for the
- benefit of the policyholders of the reinsured company, so long as
- 19 their said policies remain in force; and the same shall not, by
- virtue of the reinsurance, be transferred to or become a part of
- 21 the deposit of the reinsuring company, except that said
- 22 reinsuring company shall have the same right as to the withdrawal
- or substitution, and as to receiving the interest thereon, as the
- depositing company had; and said reinsuring company shall be
- subject to the same liabilities, penalties and obligations as the
- 26 company depositing would have been with respect to policy claims
- 27 against it.

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2. In case the reinsuring company becomes insolvent, the

- director [of insurance] shall dispose of the deposits as provided
- 2 in case of insolvent companies, paying first, out of the net
- 3 proceeds thereof, the policy claims against the reinsured
- 4 company, and the remainder, if any, into the general assets of
- 5 the reinsuring company.
- 6 375.537. 1. As used in this section, the following terms
- 7 mean:
- 8 (1) "Chief executive officer", the person, irrespective of
- 9 his title, designated by the board of directors or trustees of an
- 10 insurer as the person charged with the responsibility of
- administering and implementing the insurer's policies and
- 12 procedures;
- 13 (2) "Director", the director of the department of
- insurance, financial and professional regulation;
- 15 (3) "Impaired", a financial situation in which the assets
- of an insurer are less than the sum of the insurer's minimum
- 17 required capital, minimum required surplus and all liabilities as
- 18 determined in accordance with the requirements for the
- 19 preparation and filing of the annual statement of an insurer;
- 20 (4) "Insurer", any insurance company or other insurer
- 21 licensed to do business in this state.
- 22 2. Whenever an insurer is impaired, its chief executive
- officer shall immediately notify the director in writing of such
- impairment and shall also immediately notify in writing all of
- 25 the board of directors or trustees of the insurer.
- 26 3. Any officer, director or trustee of an insurer shall
- 27 notify the person serving as chief executive officer of the
- impairment of such insurer in the event such officer, director or

- 1 trustee knows or has reason to know that the insurer is impaired.
- 2 4. Any person who knowingly or recklessly violates
- 3 subsection 2 or 3 of this section shall, upon conviction thereof,
- 4 be fined not more than fifty thousand dollars or be imprisoned
- for not more than one year, or both. Any person who knowingly
- does any of the following shall be guilty of a class D felony:
- 7 (1) Conceals any property belonging to an insurer;
- 8 (2) Transfers or conceals in contemplation of a state
- 9 insolvency proceeding his own property or property belonging to
- 10 an insurer;
- 11 (3) Conceals, destroys, mutilates, alters or makes a false
- 12 entry in any document which affects or relates to the property of
- 13 an insurer or withholds any such document from a receiver,
- 14 trustee or other officer of a court entitled to its possession;
- 15 (4) Gives, obtains or receives a thing of value for acting
- or forbearing to act in any court proceedings; and any such act
- or acts results in or contributes to an insurer's becoming
- impaired or insolvent.
- 19 375.740. 1. In proceedings to enjoin, rehabilitate,
- dissolve, wind up or otherwise settle the affairs and dispose of
- 21 the assets of insurers, the director shall receive no fees nor
- 22 compensation for any services personally performed by him.
- 23 2. He shall have power and authority, however, in such
- cases, and through the course of the whole case, to employ the
- 25 necessary legal counsel and assistance, and clerical and
- 26 actuarial force. The compensation of legal counsel and
- 27 assistance, and clerical and actuarial force shall be fixed and
- 28 all expenses of taking possession of the property of the insurer

- and the administration thereof shall be approved by the director,
- 2 all subject to the approval of the court, and shall be paid out
- 3 of the funds or assets of the insurer; provided, however, that
- 4 the salaries of those persons employed by the director under this
- 5 section together with the expenses of such employment, may be
- 6 paid out of amount appropriated to the department [of insurance];
- 7 provided, further, that the amount paid out under this section
- 8 for salaries and expenses from appropriated funds shall be repaid
- 9 to the state treasury from any available funds or assets of the
- 10 insurer.
- 11 3. The director shall keep a full account of all receipts
- and disbursements, and make report of the same to the court at
- 13 least once in twelve months, and oftener if required by the
- 14 court, and shall be responsible on his official bond for all
- assets coming into his possession.
- 16 4. The court may, in its discretion, require of the
- director a bond in addition to his official bond.
- 18 5. This section shall apply only to proceedings instituted
- 19 prior to August 28, 1991.
- 20 375.772. 1. There is created a nonprofit unincorporated
- 21 legal entity to be known as the "Missouri Property and Casualty
- 22 Insurance Guaranty Association", hereinafter referred to as
- 23 "association". All member insurers shall be and remain members
- of the association as a condition of their authority to transact
- 25 insurance in this state. The association shall perform its
- functions under a plan of operation and through a board of
- directors established by section 375.776.
- 28 2. As used in sections 375.771 to 375.779, the following

1 terms mean:

- 2 (1) "Account", any one of the four accounts established by section 375.773;
- 4 (2) "Affiliate", a person who directly or indirectly
 5 through one or more intermediaries controls, is controlled by, or
 6 is under common control with another person;
 - (3) "Affiliate of an insolvent insurer", a person who directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with an insolvent insurer on December thirty- first of the year immediately preceding the date the insurer becomes an insolvent insurer;
 - (4) "Association", the Missouri property and casualty insurance guaranty association;
 - (5) "Claimant", any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant;
 - (6) "Control", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with the corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. Such presumption may be rebutted by a showing that control does not exist in fact;

unearned premiums, presented by a claimant within the time specified in accordance with subsection 1 and subdivision (2) of subsection 2 of section 375.775, and is for a loss arising out of and is within the coverage of an insurance policy to which sections 375.771 to 375.779 apply made by a person insured under such policy or by a person suffering injury or for which a person insured under such policy is legally liable, if:

- (a) The policy is issued by a member insurer and such member insurer becomes an insolvent insurer after August 28, 2004; and
- (b) The claimant or insured is a resident of this state at the time of the insured event, or the claim is a first-party claim by an insured for damage to property and the property from which the claim arises is permanently located in this state or in the case of an unearned premium, the policyholder is a resident of this state at the time the policy is issued. The residency of the claimant, insured, or policyholder, other than an individual, is the state in which its principal place of business is located at the time of the insured event;
 - (c) "Covered claim" shall not include:
- 22 a. Any amount awarded as punitive or exemplary damages, or 23 which is a fine or penalty;
- 24 b. Any amount sought as a return of premium under any 25 retrospective rating plan; or
- c. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, health maintenance organization, hospital plan corporation, health services corporation, or

- 1 self-insurer as subrogation recoveries, reinsurance recoveries,
- 2 contribution, indemnity, or otherwise. To the extent of any
- 3 amount due any reinsurer, insurer, insurance pool, or
- 4 underwriting association, health maintenance organization,
- 5 hospital plan corporation, health services corporation, or
- 6 self-insurer as subrogation recoveries or otherwise there shall
- 7 be no right of recovery by any person against a tortfeasor
- 8 insured of an insolvent insurer, except that such limitation
- 9 shall not apply with respect to those amounts that exceed the
- 10 limits of the policy issued such tortfeasor by the insolvent
- 11 insurer;
- d. A claim by or against an insured of an insolvent
- insurer, if such insured has a net worth of more than twenty-five
- 14 million dollars on the later of the end of the insured's most
- 15 recent fiscal year or the December thirty-first of the year next
- 16 preceding the date the insurer becomes an insolvent insurer;
- 17 provided that an insured's net worth on such date shall be deemed
- to include the aggregate net worth of the insured and all of its
- 19 affiliates as calculated on a consolidated basis;
- e. Any first-party claim by an insured which is an
- 21 affiliate of the insolvent insurer;
- 22 f. Supplementary payment obligations incurred prior to the
- 23 final order of liquidation, including but not limited to
- 24 adjustment fees and expenses, fees for medical cost containment
- 25 services, including but not limited to medical case management
- 26 fees, attorney's fees and expenses, court costs, penalties, and
- 27 bond premiums;
- 28 q. Any claims for interest;

1 h. Any amount that constitutes a portion of a covered claim 2 that is within an insured's deductible or self-insured retention;

- i. Any fee or other amount sought by or on behalf of an attorney or other provider of goods or services retained by an insured or claimant in connection with the assertion or prosecuting of any claim, covered or otherwise, against the association:
 - j. Any amount that constitutes a claim under a policy issued by an insolvent insurer with a deductible or self-insured retention of three hundred thousand dollars or more. However, such a claim shall be considered a covered claim, if, as of the deadline set forth for the filing of claims against the insolvent insurer or its liquidator, the insured is a debtor under 11 U.S.C. Section 701, et seq.;
 - k. Any amount to the extent that it is covered by any insurance that is available to the claimant or the insured, whether such other insurance is primary, pro rata, or excess. In all such instances, the association's obligations to the insured or claimant shall not be deemed to be other insurance;
 - insurance in this state, either at the time the policy was issued or when the insured event occurred, and against whom a final order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction in the insurer's state of domicile or of this state under the provisions of sections 375.950 to 375.990 or sections 375.1150 to 375.1246, and which such order of liquidation has not been stayed or been the subject of a writ of supersedeas or other comparable order;

1 (9) "Insured", any named insured, additional insured,
2 vendor, lessor, or any other party identified as an insured under
3 the policy;

- (10) "Member insurer", any person who writes any kind of insurance to which sections 375.771 to 375.779 apply, including the exchange of reciprocal or interinsurance contracts, and possesses a certificate of authority to transact the business of insurance in this state issued by the director [of the department of insurance]. Whether or not approved by the director [of the department of insurance] for the placing of lines of insurance by producers so authorized under the provisions of chapter 384, RSMo, an insurance company not licensed to do business in this state shall not be a member insurer. Missouri mutual and extended Missouri mutual insurance companies doing business under chapter 380, RSMo, shall be considered member insurers for the purposes of sections 375.771 to 375.779, and a special account shall be established applicable only to such companies;
 - (11) "Net direct written premiums", direct gross premiums written in this state on insurance policies to which sections 375.771 to 375.779 apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers;
 - (12) "Net worth", the total assets of a person less the total liabilities against those assets. Where the person is one who prepares an annual report to shareholders such report for the fiscal year immediately preceding the date of insolvency of the insurance carrier shall be used to determine net worth. If the

- 1 person is one who does not prepare such an annual report, but
- 2 does prepare an annual financial report for management which
- 3 reflects net worth, then such report for the fiscal year
- 4 immediately preceding the date of insolvency of the insurance
- 5 carrier shall be used to determine net worth;
- 6 (13) "Ocean marine insurance" includes marine insurance
- 7 that insures against maritime perils or risks and other related
- 8 perils or risks which are usually insured against by traditional
- 9 marine insurance, such as hull and machinery, marine builders'
- 10 risks, and marine protection and indemnity. Such perils and
- 11 risks insured against include, without limitation, loss, damage,
- or expense or legal liability of the insured arising out of an
- incident related to ownership, operation, chartering,
- 14 maintenance, use, repair, or construction of any vessel, craft,
- 15 or instrumentality in use in ocean or inland waters for
- 16 commercial purposes, including liability of the insured for
- 17 personal injury, illness, or death for loss or damage to the
- 18 property of the insured or another person;
- 19 (14) "Person", any individual, corporation, partnership,
- 20 association or voluntary organization, municipality, or political
- 21 subdivision;
- 22 (15) "Political subdivision", the same meaning as such term
- is defined in section 70.210, RSMo;
- 24 (16) "Self-insurer", a person that covers its liability
- 25 through a qualified individual or group self-insurance program or
- any other formal program created for the specific purpose of
- 27 covering liabilities typically covered by insurance.
- 28 Self-insurer does not include the Missouri private sector

individual self-insurers guaranty corporation created pursuant to section 287.860, RSMo, et seq.

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375.788. 1. Any act of transacting an insurance business as set forth in section 375.786 by any unauthorized insurance company is equivalent to and shall constitute an irrevocable appointment by such insurance company, binding upon him, his executor or administrator, or successor in interest if a corporation, of the secretary of state or his successor in office, to be the true and lawful attorney of such insurance company upon whom may be served all lawful process in any action, suit, or proceeding in any court by the director [of insurance] or by the state, and upon whom may be served any notice, order, pleading or process in any proceeding before the director [of insurance] and which arises out of transacting an insurance business in this state by such insurance company. Any act of transacting an insurance business in this state by any unauthorized insurance company shall be signification of its agreement that any such lawful process in such court action, suit, or proceeding and any such notice, order, pleading or process in such administrative proceeding before the director [of insurance] so served shall be of the same legal force and validity as personal service of process in this state upon such insurance company.

2. Service of process in such action shall be made by delivering to and leaving with the secretary of state, or some person in apparent charge of his office, two copies thereof and by payment to the secretary of state of the fee prescribed by law. Service upon the secretary of state as such attorney shall

be service upon the principal.

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- The secretary of state shall forthwith forward by certified mail one of the copies of such process or such notice, order, pleading, or process in proceedings before the director to the defendant in such court proceeding or to whom the notice, order, pleading, or process in such administrative proceeding is addressed or directed at its last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. Such service is sufficient, provided:
 - (1) Notice of such service and a copy of the court process or the notice, order, pleading, or process in such administrative proceeding are sent within ten days thereafter by certified mail by the plaintiff or the plaintiff's attorney in the court proceeding or by the director [of insurance] in the administrative proceeding to the defendant in the court proceeding or to whom the notice, order, pleading or process in such administrative proceeding is addressed or directed at the last known principal place of business of the defendant in the court or administrative proceeding.
 - (2) The defendant's receipt or receipts issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurance company to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in court proceeding or of the director [of insurance] in administrative proceeding, showing compliance therewith, are filed with the clerk of the court in which such action, suit, or proceeding is

- 1 pending or with the director in administrative proceedings, on or
- 2 before the date the defendant in the court or administrative
- 3 proceeding is required to appear or respond thereto, or within
- 4 such further time as the court or director [of insurance] may
- 5 allow.
- 6 4. No plaintiff shall be entitled to a judgment or a
- 7 determination by default in any court or administrative
- 8 proceeding in which court process or notice, order, pleading or
- 9 process in proceedings before the director [of insurance] is
- served under this section until the expiration of forty-five days
- from the date of filing of the affidavit of compliance.
- 12 5. Nothing in this section shall limit or affect the right
- 13 to serve any process, notice, order, or demand upon any person or
- insurance company in any other manner now or hereafter permitted
- 15 by law.
- 16 375.789. 1. Before any unauthorized insurance company
- files or causes to be filed any pleading in any court action,
- suit or proceeding or in any notice, order, pleading, or process
- 19 in such administrative proceeding before the director instituted
- against such person or insurance company, by services made and
- 21 provided in section 375.788, such insurance company shall either:
- 22 (1) Deposit with the clerk of the court in which such
- 23 action, suit, or proceeding is pending, or with the director [of
- insurance] in administrative proceedings before the director,
- 25 cash or securities, or file with such clerk or director a bond
- 26 with good and sufficient sureties, to be approved by the clerk or
- 27 director in an amount to be fixed by the court or director
- sufficient to secure the payment of any final judgment which may

- 1 be rendered in such action or administrative proceeding;
- 2 (2) Procure a certificate of authority to transact the
- 3 business of insurance in this state. In considering the
- 4 application of an insurance company for a certificate of
- 5 authority, for the purposes of this paragraph the director need
- 6 not assert the provisions of section 375.916 against such
- 7 insurance company with respect to its application if he
- 8 determines that such insurance company would otherwise comply
- 9 with the requirements for such certificate of authority.
- 10 2. The director [of insurance], in any administrative
- 11 proceeding in which service is made as provided in section
- 12 375.788, may, in his discretion, order such postponement as may
- be necessary to afford the defendant reasonable opportunity to
- 14 comply with the provisions of this section and to defend such
- 15 action.
- 16 3. Nothing in this section shall be construed to prevent an
- 17 unauthorized insurance company from filing a motion to quash a
- 18 writ or to set aside service thereof made in the manner provided
- in section 375.788 on the ground that such unauthorized insurance
- 20 company has not done any of the acts enumerated in section
- 21 375.786.

- 22 375.790. 1. The attorney general upon request of the
- 23 director may proceed in the courts of this state or any
- 24 reciprocal state to enforce an order or decision in any court
- 25 proceeding or in any administrative proceeding before the
- 26 director [of insurance].
- 27 2. As used in this section:
 - (1) "Foreign decree" means any decree or order in equity of

- a court located in a "reciprocal state", including a court of the
 United States located therein, against any insurance company
 incorporated or authorized to do business in this state;
 - (2) "Qualified party" means a state regulatory agency acting in its capacity to enforce the insurance laws of its state;

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- (3) "Reciprocal state" means any state or territory of the United States the laws of which contain procedures substantially similar to those specified in this section for the enforcement of decrees or orders in equity issued by courts located in other states or territories of the United States against any insurance company incorporated or authorized to do business in said state or territory.
- 3. The director [of insurance] shall determine which states and territories qualify as reciprocal states and shall maintain at all times an up-to-date list of such states.
- 4. A copy of any foreign decree authenticated in accordance with the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk, upon verifying with the director [of insurance] that the decree or order qualifies as a "foreign decree", shall treat the foreign decree in the same manner as a decree of a circuit court of this state. A foreign decree so filed has the same effect and shall be deemed as a decree of a circuit court of this state, and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a decree of a circuit court of this state and may be enforced or satisfied in like manner; provided, however, the maximum money judgment which may be

- 1 enforced under this section shall be five thousand dollars.
- 2 5. (1) At the time of the filing of the foreign decree,
- 3 the attorney general shall make and file with the clerk of the
- 4 court an affidavit setting forth the name and last known
- 5 post-office address of the defendant.
- 6 (2) Promptly upon the filing of the foreign decree and the
- 7 affidavit, the clerk shall mail notice of the filing of the
- 8 foreign decree to the defendant at the address given and to the
- 9 director [of insurance of this state] and shall make a note of
- 10 the mailing in the docket. In addition, the attorney general may
- 11 mail a notice of the filing of the foreign decree to the
- defendant and to the director [of insurance of this state] and
- may file proof of mailing with the clerk. Lack of mailing notice
- of filing by the clerk shall not affect the enforcement
- proceedings if proof of mailing by the attorney general has been
- 16 filed.

- 17 (3) No execution or other process for enforcement of a
- 18 foreign decree filed hereunder shall issue until thirty days
- 19 after the date the decree is filed.
- 20 6. (1) If the defendant shows the circuit court that an
- 21 appeal from the foreign decree is pending or will be taken, or
- 22 that a stay of execution has been granted, the court shall stay
- 23 enforcement of the foreign decree until the appeal is concluded,
- 24 the time for appeal expires, or the stay of execution expires or
- is vacated, upon proof that the defendant has furnished the
- security for the satisfaction of the decree required by the state
- in which it was rendered.
 - (2) If the defendant shows the circuit court any ground

upon which enforcement of a decree of any circuit court of this state would be stayed, the court shall stay enforcement of the foreign decree for an appropriate period, upon requiring the same security for satisfaction of the decree which is required in this

state.

- 7. Any person filing a foreign decree shall pay to the clerk of court fifty dollars. Fees for docketing, transcription or other enforcement proceedings shall be as provided for decrees of the circuit court.
- 8. Any unauthorized insurance company who transacts any unauthorized act of an insurance business as set forth in section 375.786 may be fined not more than five thousand dollars.
 - 375.791. 1. Upon complying with the provisions of this chapter, a foreign insurance company organized under the laws of any state of the United States other than this state or the laws of any foreign government as a stock company, mutual company, assessment life company, reciprocal, fraternal benefit society may be admitted to transact in this state the kind or kinds of business which a domestic company similarly organized may be authorized to transact under the laws of this state.
 - 2. No insurance company shall transact any business in this state on an admitted basis without first obtaining a certificate of authority issued by the director [of insurance] as provided for in this chapter.
 - 375.811. 1. A foreign insurance company in order to secure a certificate of authority to transact business in this state shall make application therefor to the director. The application shall set forth:

- 1 (1) The name of the company and the state under the laws of which it was incorporated or organized;
- 3 (2) The date of its incorporation and the period of its duration;
- 5 (3) The address, including street and number of its 6 principal office, in the state under the laws of which it is 7 organized;
- 8 (4) The names of the states and countries, if any, in which 9 it is admitted or qualified to transact business;
- 10 (5) The kinds of insurance it is authorized to write in its state of organization;
- 12 (6) The kinds of insurance it proposes to write in this state;

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- 14 (7) A statement of the aggregate number of shares it has
 15 outstanding, if any, and the par value thereof and the amount of
 16 surplus as regards to policyholders; and
 - (8) Any additional information which the director may require to enable him to determine whether the company is entitled to a certificate of authority to transact business in this state and to determine and assess the taxes, fees and charges payable as prescribed by Missouri law.
- 22 2. The application shall be made on forms prescribed and
 23 furnished by the director and shall be executed by the company by
 24 its president or a vice president or executive officer
 25 corresponding thereto and verified by the officer, and if a
 26 corporation, the corporate seal shall be thereto affixed,
 27 attested by its secretary or other proper officer.
 - 3. There shall be delivered to the director the application

- for the certificate of authority, and attached thereto shall be the following:
- 3 (1) A copy of its articles of incorporation or articles of 4 association as amended, duly certified by the proper officer of 5 the state under whose laws the company is organized or 6 incorporated;

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- (2) A copy of its bylaws or regulations and if a fraternal benefit society, a copy of its constitution certified by its secretary or officer corresponding thereto;
- (3) A certificate from the proper official of the state or country wherein the company is incorporated or organized that it is duly incorporated or organized and is authorized to write the kinds of insurance which it proposes to write in this state and is duly licensed to do business in its home state;
- (4) The appointment of the Missouri director [of insurance] as attorney to accept service of legal process in Missouri executed on the forms furnished by his office as prescribed by section 375.906;
- (5) A copy of the most recent annual statement of the company on the standard form prescribed by the National Association of Insurance Commissioners or a financial statement as of such later date as the director may require;
- (6) A copy of the last report of examination certified to by an insurance commissioner or other proper supervisory official;
- 26 (7) Duplicate copies of all policy forms which the company 27 proposes to use in this state;
 - (8) A biographical sketch of the directors and officers of

the company listed on the annual statement submitted by the
company; and

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- 3 (9) Such other information as the director deems necessary.
 - 375.892. 1. Any foreign insurance company organized under the laws of any foreign government entering through this state to transact insurance in the United States to qualify for authority to transact business in this state shall, in addition to deposits required of like domestic insurers, maintain deposits under trust agreements approved by the director [of insurance]. Such deposits shall be not less than the amount of liabilities with respect to the insurer's business in the United States. Such deposits shall be held for the benefit of policyholders and creditors within the United States.
 - 2. Whenever an insurer which is organized under the laws of any foreign government is required or permitted to deposit assets with a trustee for the benefit and security of its policyholders, or of its policyholders and creditors, in the United States, the trustee of any such trust hereafter created shall be a solvent bank or trust company in the United States acceptable to the director [of insurance] and authorized to act as such trustee by the laws of any state or of the United States. All trusteed assets shall be continuously kept within the United States. Any such trust heretofore created and now existing, and any such trust hereafter created and existing when such insurer seeks to be admitted, shall be continued in accordance with the terms of the instrument creating it, unless inconsistent with the provisions of this section, in which case the instrument shall, after reasonable notice to and hearing of such insurer by the

- director [of insurance], be amended to conform to the
- 2 requirements of this section. No amendment to any trust
- 3 agreement, whether heretofore or hereafter created, shall be
- 4 effective unless approved in writing by the director [of
- 5 insurance]. If the trustees of any such trust heretofore created
- 6 are natural persons and if the number of such trustees is reduced
- 7 by death, resignation, or from any other cause, to less than
- 8 three, then the director [of insurance] shall require the
- 9 substitution for such trustees of a solvent bank or trust company
- in the United States acceptable to him and authorized to act as
- 11 such trustee by the laws of any state or of the United States.
- 12 The director [of insurance] may from time to time approve
- modifications of, or variations in, any trust agreement which in
- 14 his judgment are not prejudicial to the interests of the people
- of this state.
- 3. Such trust agreements shall:
- 17 (1) Vest the legal title to the trusteed assets in the
- 18 trustee and its successors lawfully appointed, in trust for the
- 19 benefit and security of all the policyholders, or of all the
- 20 policyholders and creditors, of such insurer organized under the
- 21 laws of any foreign government;
- 22 (2) Provide for the substitution of a new trustee in the
- event of a vacancy by death, resignation or from any other cause,
- subject to the approval of the director [of insurance];
- 25 (3) Require that the trusteed assets shall at all times be
- 26 maintained within the United States as a trust fund separate and
- 27 distinct from all other assets, and that the trustee shall
- 28 continuously maintain a record at all times sufficient to

identify such fund;

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- 2 (4) Prescribe the conditions, satisfactory to the director
 3 [of insurance] and not inconsistent with the purposes of this
 4 section, under which any or all income, earnings, dividends or
 5 interest accumulations of such fund may be paid over to the
 6 United States manager of such insurer organized under the laws of
 7 any foreign government;
 - (5) Prohibit the withdrawal, other than as provided in accordance with subdivision (4) of this subsection, of any trusteed assets from such fund without the written approval of the director [of insurance], except as follows:
 - (a) For the purpose of making general state deposits required by law in any state;
 - (b) For the purpose of paying obligations due from such insurer organized under the laws of any foreign government to policyholders and creditors in the United States, and for the purpose of making special state deposits required by law in any state if such payments and deposits do not impair the insurer's assets to an amount less than the minimum capital and surplus required of like insurers organized under the laws of this state and such fact is certified to the trustee by the insurer or its United States manager duly authorized for that purpose;
 - (c) For the purpose of substituting other assets permitted by law and at least equal in value to those to be withdrawn, upon the specific written direction of the United States manager or an assistant United States manager or other representative in the United States of such insurer organized under the laws of any foreign government when duly empowered and acting pursuant to

either general or specific written authority previously given or delegated by the board of directors thereof, except as provided in paragraph (e) of this subdivision;

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- (d) For the purpose of transferring such assets to an official conservator, rehabilitator, or liquidator pursuant to an order of a court of competent jurisdiction;
- (e) In the case of a life insurer organized under the laws of the Dominion of Canada or of any province thereof, the provisions of this section applicable to the United States manager or an assistant United States manager or other representative in the United States of such insurer shall be deemed to refer to the president, vice president, secretary or treasurer of such insurer at its principal place of business in said dominion or province thereof, when duly authorized for such purpose.
- 4. The director [of insurance] may from time to time examine the trusteed assets of an insurer organized under the laws of any foreign government and may from time to time require the trustee holding trusteed assets of an admitted insurer organized under the laws of any foreign government to file with the director [of insurance] a statement, in such form as he may prescribe, certifying such trusteed assets and the amounts thereof. Refusal or neglect on the part of the trustee to comply with such requirement shall be ground for the revocation of the insurer's certificate of authority and for proceedings against it under the provisions of this chapter.
- 375.906. 1. No insurance company or association not incorporated or organized under the laws of this state shall

directly or indirectly issue policies, take risks, or transact 1 2 business in this state, until it shall have first executed an irrevocable power of attorney in writing, appointing and 3 authorizing the director [of the department of insurance of this 5 state] to acknowledge or receive service of all lawful process, for and on behalf of the company, in any action against the 6 7 company, instituted in any court of this state, or in any court of the United States in this state, and consenting that service 9 upon the director shall be deemed personal service upon the 10 company.

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- 2. Service of process shall be made by delivery of a copy of the petition and summons to the director [of the department of insurance], the deputy director [of the department of insurance], or the chief clerk [of the department of insurance] at the office of the director of the department of insurance, financial and professional regulation at Jefferson City, Missouri, and service as aforesaid shall be valid and binding in all actions brought by residents of this state upon any policy issued or matured, or upon any liability accrued in this state, or on any policy issued in any other state in which the resident is named as beneficiary, and in all actions brought by nonresidents of this state upon any policy issued in this state in which the nonresident is named beneficiary or which has been assigned to the nonresident, and in all actions brought by nonresidents of this state on a cause of action, other than an action on a policy of insurance, which arises out of business transacted, acts done, or contracts made in this state.
 - 3. In case the process is issued by an associate circuit

judge, the same may be directed to and served by any officer authorized to serve process in the city or county where the director [of the department of insurance] has his office, at least fifteen days before the return thereof.

- 4. Every instrument of appointment executed by the company shall be attested by the seal of the company and shall recite the whole of this section, and shall be accompanied by a copy of a resolution of the board of directors or trustees of the company similarly attested, showing that the president and secretary or other chief officers of the company are authorized to execute the instruments on behalf of the company; and if any company fails, neglects, or refuses to appoint and maintain within this state an attorney or agent in the manner herein described, it shall forfeit the right to do or continue business in this state.
- 5. Whenever process is served upon the director [of the department of insurance], the deputy director [of the department of insurance], or the chief clerk [of the department of insurance] under the provisions of this section, the process shall immediately be forwarded by first class mail prepaid and directed to the secretary of the company, or, in the case of an alien company, to the United States manager or last appointed general agent of the company in this country; provided, that there shall be kept in the office of the director [of the department of insurance] a permanent record showing for all process served the name of the plaintiff and defendant, the court from which the summons issued, the name and title of the officer serving same, and the day and hour of the service.
 - 375.908. 1. Any insurer which is organized under the laws

of any other state and is admitted to do business in this state
for the purpose of writing insurance may become a domestic
insurer by complying with all of the requirements of law relative
to the organization and licensing of a domestic insurer of the
same type and by designating its principal place of business at a
place in this state. Such domestic insurer shall be entitled to
like certificates and licenses to transact business in this

state, and shall be subject to the authority and jurisdiction of

this state.

- 2. Any domestic insurer may, upon the approval of the director [of the department of insurance], transfer its domicile to any other state in which it is admitted to transact the business of insurance, and upon such a transfer shall cease to be a domestic insurer, and shall be admitted to transact the business of insurance in this state if qualified as a foreign insurer. The director shall approve any such proposed transfer unless he shall determine such transfer is not in the interest of the policyholders of this state.
 - 3. The certificate of authority, agent appointments and licenses, rates, and other items which the director allows, in his discretion, which are in existence at the time any insurer licensed to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation or any other lawful method shall continue in full force and effect upon such transfer if such insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as

- to the new name of the company or its new location unless so ordered by the director. Every transferring insurer shall file new policy forms with the director on or before the effective date of the transfer, but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the director; however, every such transferring insurer shall notify the director of the details of the proposed transfer, and shall file promptly, any resulting amendments to corporate documents filed or required to be filed with the director.
 - 4. The director may promulgate rules and regulations to carry out the provisions of this section.

- 375.911. In case of a vacancy in the office of the director of the [insurance] department of insurance, financial and professional regulation or in case of the absence or inability or suspension of the director, the service upon the deputy appointed under the provisions of section 374.080, RSMo, shall be valid and sufficient for the purpose of section 375.906; provided, further, that in the absence or inability of both the director and deputy or in case of a vacancy in both of the offices, service upon the chief clerk, appointed under the provisions of section 374.130, RSMo, shall be valid and sufficient for the purpose of section 375.906.
- 375.916. 1. When by the laws of any other state or foreign country any premium or income or other taxes, or any fees, fines, penalties, licenses, deposit requirements or other obligations, prohibitions or restrictions are imposed upon Missouri insurance companies or carriers doing business, or that might seek to do

business, in the other state or country, which in the aggregate 1 are in excess of the taxes, fees, fines, penalties, licenses, 2 3 deposit requirements or other obligations, prohibitions or restrictions directly imposed upon insurance companies of the 5 other state or foreign country under the statutes of this state, 6 so long as the laws continue in force, the same obligations, 7 prohibitions, and restrictions of whatever kind shall be imposed upon insurance companies or carriers of the other state or 8 9 foreign country doing business in Missouri. Any tax, license or 10 other obligation imposed by any city, county or other political 11 subdivision of a state or foreign country on Missouri insurance 12 companies or carriers shall be deemed to be imposed by the state 13 or foreign country within the meaning of this section, and the 14 director [of the department of insurance] for the purpose of this 15 section shall compute the burden of the tax, license or other 16 obligations on an aggregate statewide or foreign-countrywide 17 basis as an addition to the tax and other charges payable by 18 similar Missouri insurance companies or carriers in the state or foreign country. The provisions of this section shall not apply 19 20 to ad valorem taxes on real or personal property, personal income 21 taxes or to assessments on or credits to insurers for the payment 22 of claims of policyholders of insolvent insurers.

2. All licenses, fees, taxes, fines or penalties collectible under this section shall be paid to the director of revenue. The payment and assessment of retaliatory tax shall be made on an estimated quarterly basis in the same manner as premium insurance tax as provided in sections 148.310 to 148.461, RSMo.

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- 1 375.918. 1. As used in this section, the following terms 2 mean:
- 3 (1) "Adverse action", a denial, nonrenewal of, or a
 4 reduction in the amount of benefits payable or types of coverages
 5 under any contract, existing or applied for, in connection with
 6 the underwriting of insurance. An offer by an insurer to write a
 7 contract through an affiliated insurer does not constitute an
 8 adverse action;

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- in section 379.110, RSMo, or any property insurance policy as defined in section 375.001, including such a policy on a mobile home or residential condominium unit or a policy of renters' or tenants' insurance. Contract shall not include any policy of mortgage insurance or commercial insurance;
- (3) "Credit report", any written or electronic communication of any information by a consumer reporting agency that:
- 18 (a) Bears on a person's credit worthiness, credit standing,
 19 or credit capacity; and
- 20 (b) Is used or collected wholly or partly to serve as a 21 factor in the underwriting of a contract;
- 22 (4) "Credit scoring entity", any entity that is involved in 23 creating, compiling, or providing insurance credit scores;
- (5) "Insurance credit score", a numerical representation of the insurance risk a person presents using the person's attributes derived from a credit report or credit information in a formula to assess insurance risk on an actuarial or statistical basis;

1 (6) "Insurer", any insurance company or entity that offers 2 a contract;

- (7) "Underwriting", the selection of the risk that will be assumed by the insurer on a contract, and specifically the decision whether to accept, deny, renew, nonrenew, reduce, or increase the amount of benefits payable or types of coverages under the contract.
 - 2. An insurer using a credit report or insurance credit score as a factor in underwriting shall not take an adverse action based on such factor without consideration of another noncredit-related underwriting factor.
 - 3. No insurer shall take an adverse action against an applicant or insured based on inability to compute an insurance credit score without consideration of another underwriting factor, unless the insurer can justify the credibility that the lack of an insurance credit score has in underwriting to the director [of insurance].
 - 4. An insurer using a credit report or insurance credit score as a factor in underwriting a contract shall disclose at the time of the original application for the contract or on the application itself that the insurer may gather credit information.
 - 5. An insurer using a credit report or insurance credit score as a factor in underwriting of a contract shall not take an adverse action on such contract based on information that is the subject of a written dispute between the policyholder or applicant and a consumer reporting agency, as noted in such person's credit report, until such dispute has reached final

- 1 determination in accordance with the federal Fair Credit
- 2 Reporting Act, 15 U.S.C. Section 1681, et seq. In the event that
- 3 information is the subject of a written dispute under this
- 4 subsection, the sixty-day period provided by section 375.002 or
- 5 section 379.110, RSMo, shall be extended until fifteen days after
- 6 the dispute reaches final determination. Nothing in this
- 7 subsection shall be construed to require any consumer reporting
- 8 agency, as defined by the federal Fair Credit Reporting Act, 15
- 9 U.S.C. Section 1681, et seq., to include any information on a
- 10 credit report beyond the extent required by the federal Fair
- 11 Credit Reporting Act, 15 U.S.C. Section 1681, et seq.
- 12 6. If the use of a credit report or insurance credit score
- on a contract results in an adverse action, the insurer shall
- 14 provide the policyholder or applicant:
- 15 (1) Notice that a credit report or insurance credit score
- adversely affected the underwriting of the contract;
- 17 (2) The name, address, and telephone number of the consumer
- 18 credit reporting agency that furnished the credit information, in
- 19 compliance with the notice requirements of the federal Fair
- 20 Credit Reporting Act, 15 U.S.C. Section 1681, et seg.;
- 21 (3) Notice of the right to obtain a free credit report from
- 22 the consumer credit reporting agency within sixty days; and
- 23 (4) Notice of the right to lodge a dispute with the
- 24 consumer credit reporting agency to have any erroneous
- 25 information corrected in accordance with the federal Fair Credit
- Reporting Act, 15 U.S.C. Section 1681, et seq.
- 7. Within thirty days from the date the insurer provides
- 28 notice of an adverse action pursuant to subdivision (1) of

- subsection 6 of this section, the applicant or insured may in writing request from the insurer a statement of reasons for such action. For purposes of determining the thirty-day period, the notice of an adverse action is deemed received three days after mailing. The statement of reasons shall be sufficiently clear and specific so that a person of average intelligence can identify the basis for the insurer's decision without further inquiry. An insurer may provide an explanation of significant characteristics of the credit history that may have impacted such person's insurance credit score to meet the requirements of this subsection. Standardized credit explanations provided by credit scoring entities comply with this subsection.
 - 8. If an insurer bases an adverse action in part on a credit report or insurance credit score, the applicant or insured may within thirty days of such adverse action make a written request for reunderwriting following any correction relating to the credit report or insurance credit score.

- 9. An insurer may obtain and use a current credit report or insurance credit score on new business or renewal contracts, but shall not take an adverse action with respect to renewal contracts based upon such credit report or insurance credit score until or after the third anniversary date of the initial contract.
 - 10. Insurance inquiries shall not directly or indirectly be used as a negative factor in any insurance credit scoring formula or in the use of a credit report in underwriting.
- 11. Nothing in this section shall be construed as superceding the provisions of section 375.002 and section

- 379.114, RSMo. Nothing in this section shall be construed as prohibiting any insurer from using credit information in determining whether to offer a policyholder or applicant the option to finance or establish a payment plan for the payment of any premium for a contract. Nothing in this section shall apply
- to any entity not acting as an insurer or credit scoring entity
 as defined in subsection 1 of this section.
- 8 No credit scoring entity shall provide or sell to any 9 party, other than the insurer, its insurance company affiliates 10 or holding companies, and the producer from whom the inquiry was 11 generated, data or lists that include any information that in 12 whole or in part is submitted in conjunction with credit 13 inquiries about consumers. Such information includes, but is not limited to, expiration dates, information that may identify time 14 15 periods during which a consumer's insurance may expire, or other nonpublic personal information as defined under the Gramm-Leach-16 Bliley Act, 15 U.S.C. Sections 6801 to 6809. The provisions of 17 18 this subsection shall not preclude the exchange of information 19 specifically authorized under the federal Fair Credit Reporting Act, 15 U.S.C. Section 1681, et seq., the Gramm-Leach-Bliley Act, 20 15 U.S.C. Sections 6801 to 6809 and other applicable federal law. 21 22 The provisions of this subsection shall not apply to data 23 disclosed in connection with a proposed or actual sale, merger, 24 transfer or exchange of all or a portion of an insurer's or producer's business or operating unit, including but not limited 25 to, the sale of a portfolio of contracts, if such disclosure 26 27 concerns solely consumers of the business or unit and such 28 disclosure is not the primary reason for the sale, merger,

- 1 transfer or exchange.
- 2 13. A violation of this section may be enforceable under
- 3 section 374.280, RSMo.
- 4 14. The provisions of this section shall apply to all
- 5 contracts entered into on or after July 1, 2003.
- 6 375.920. No insurer shall deliver any policy of private
- 7 passenger automobile insurance, homeowner's insurance,
- 8 dwelling-owner's insurance, residential fire insurance, or
- 9 tenant's or renter's insurance written upon property within this
- state until such policy form shall have been approved as provided
- for in sections 375.920 to 375.923. Upon submission of any form
- to the director [of the department of insurance], such form shall
- 13 be deemed approved. The director [of the department of
- insurance] shall review such form within sixty days, and may have
- 15 a hearing during that time. If within that time he determines
- 16 the policy form is not in compliance with the insurance laws of
- 17 this state and does not contain such words, phraseology,
- 18 conditions and provisions which are specific, certain and
- unambiguous and reasonably adequate to meet the needed
- 20 requirements of those insured under such policies, he may file a
- 21 petition with the administrative hearing commission asking that
- 22 the policy be disapproved, stating specifically the reasons why
- 23 such policy form shall be disapproved.
- 24 375.922. The director [of the department of insurance]
- 25 shall have no power to promulgate rules or regulations to
- 26 implement sections 375.920 to 375.923.
- 27 375.923. All forms on file with the director [of the
- 28 division of insurance] on or before January 1, 1980, shall be

- 1 exempt from the provisions of sections 375.920 to 375.923.
- 2 375.932. When used in sections 375.930 to 375.948, the
- 3 following terms mean:
- 4 (1) "Consultant", an individual, partnership or corporation
- 5 who, for a fee, holds himself or itself out to the public as
- 6 engaged in the business of offering any advice, counsel, opinion
- 7 or service with respect to the benefits, advantages or
- 8 disadvantages promised under any policy of insurance that could
- 9 be issued in this state;
- 10 (2) "Director", the director of the department of
- insurance, financial and professional regulation of this state;
- 12 (3) "Insurer", any person, reciprocal exchange,
- interinsurer, Lloyds insurer, fraternal benefit society, and any
- 14 other legal entity engaged in the business of insurance,
- 15 including agents, brokers, adjusters and third-party
- 16 administrators. "Insurer" also includes health services
- 17 corporations, health maintenance organizations, prepaid limited
- health care service plans, dental, optometric and other similar
- 19 health service plans. For purposes of sections 375.930 to
- 375.948 such entities shall be deemed to be engaged in the
- 21 business of insurance. "Insurer" shall also include all
- 22 companies organized, incorporated or doing business under the
- 23 provisions of chapters 325, 375, 376, 377, 378, 379, 381 and 383,
- 24 RSMo;
- 25 (4) "Person", any natural or artificial entity, including,
- 26 but not limited to, individuals, partnerships, associations,
- 27 trusts or corporations;
- 28 (5) "Policy", "certificate" or "contract" includes any

- 1 contract of insurance, indemnity, medical, health or hospital
- 2 service, suretyship, or annuity issued, proposed for issuance, or
- 3 intended for issuance by any insurer.
- 4 375.950. 1. Sections 375.950 to 375.990 may be cited as
- 5 the "Uniform Insurer's Liquidation Act".
- 6 2. Sections 375.950 to 375.990 shall apply only to
- 7 proceedings instituted prior to August 28, 1991.
- 8 3. For the purposes of sections 375.950 to 375.990:
- 9 (1) "Ancillary state" means any state other than a
- 10 domiciliary state;
- 11 (2) "Delinquency proceeding" means any proceeding commenced
- against an insurer for the purpose of liquidating,
- rehabilitating, reorganizing, or conserving such insurer;
- 14 (3) "Domiciliary state" means the state in which an insurer
- is incorporated or organized, or, in the case of an alien
- insurer, the state in which such insurer, having become
- 17 authorized to do business in such state, has, at the commencement
- of delinquency proceedings, the largest amount of its assets held
- 19 in trust and assets held on deposit for the benefit of its
- 20 policyholders or policyholders and creditors in the United
- 21 States; and any such insurer is deemed to be domiciled in such
- 22 state;
- 23 (4) "Foreign country" means territory not in any state;
- 24 (5) "General assets" means all property, real, personal, or
- otherwise, not specifically mortgaged, pledged, deposited, or
- otherwise encumbered for the security or benefit of specified
- persons or a limited class or classes of persons, and as to such
- specifically encumbered property the term includes all such

- 1 property or its proceeds in excess of the amount necessary to
- 2 discharge the sum or sums secured thereby. Assets held in trust
- 3 and assets held on deposit for the security or benefit of all
- 4 policyholders, or all policyholders and creditors in the United
- 5 States, shall be deemed general assets, except that general
- 6 assets shall not mean unearned premiums due or owed the insurer
- 7 by the policyholder, agent or broker at the time an insolvency or
- 8 liquidation is declared by a court of competent jurisdiction, nor
- 9 shall general assets mean unearned premiums held in trust or held
- on deposit by the agent, broker or insurer;
- 11 (6) "Insurer" means any person, firm, corporation,
- 12 association, or aggregation of persons doing an insurance
- business under the provisions of chapter 375, 376, 377, 378, 379,
- 380, 381 or 383, RSMo, and subject to the insurance supervisory
- authority of, or to liquidation, rehabilitation, reorganization,
- or conservation by the director [of the department of insurance
- of this state], or the equivalent insurance supervisory official
- 18 of another state;
- 19 (7) "Preferred claim" means any claim with respect to which
- 20 the law of a state or of the United States accords priority of
- 21 payment from the general assets of the insurer;
- 22 (8) "Receiver" means receiver, liquidator, rehabilitator,
- or conservator as the context may require;
- 24 (9) "Reciprocal state" means any state other than this
- 25 state in which in substance and effect the provisions of sections
- 375.950 to 375.990 are in force, including the provisions
- 27 requiring that the insurance commissioner or equivalent insurance
- 28 supervisory official be the receiver of a delinquent insurer;

1 (10) "Secured claim" means any claim secured by mortgage,
2 trust, deed, pledge, deposit as security, escrow, or otherwise,
3 but not including special deposit claims or claims against
4 general assets. The term also includes claims which more than
5 four months prior to the commencement of delinquency proceedings
6 in the state of the insurer's domicile have become liens upon
7 specific assets by reason of judicial process;

- (11) "Special deposit claim" means any claim secured by a deposit for the security or benefit of a limited class or classes of persons, but not including any general assets;
- (12) "State" means any state of the United States, and also the District of Columbia and Puerto Rico.
- 375.954. 1. Whenever under the laws of this state a receiver is to be appointed in delinquency proceedings for an insurer domiciled in this state, the court shall appoint the director [of the department of insurance] as such receiver. The court shall direct the receiver forthwith to take possession of the assets of the insurer and to administer the same under the orders of the court.
- 2. The domiciliary receiver and his successors in office shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer wherever located, as of the date of entry of the order directing possession to be taken, and he shall have the right to recover the same and reduce the same to possession; except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are hereinafter prescribed for ancillary

receivers appointed in this state as to assets located in this state. The filing or recording of the order directing possession to be taken, or a certified copy thereof, in the office where instruments affecting title to property are required to be filed or recorded shall impart the same notice as would be imparted by a deed, bill of sale, or other evidence of title duly filed or recorded. The court may at any time require an additional bond from him or his deputies if deemed desirable for the protection of the assets.

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Upon taking possession of the assets of a delinquent insurer the domiciliary receiver shall, subject to the direction of the court, immediately proceed to conduct the business of the insurer or to take such other steps as are authorized by the laws of this state for the purpose of liquidating, rehabilitating, reorganizing, or conserving the affairs of the insurer. connection with delinquency proceedings he may appoint or employ one or more special deputies to act for him, and may employ such counsel, clerks, and assistants as he deems necessary. compensation of the special deputies, counsel, clerks, or assistants and all expenses of taking possession of the delinquent insurer and of conducting the delinquency proceedings shall be fixed by the receiver, subject to the approval of the court, and shall be paid out of the funds or assets of the insurer in accordance with section 375.740. Within the limits of the duties imposed upon them, special deputies shall possess all the powers given to, and, in the exercise of those powers, shall be subject to all of the duties imposed upon the receiver with respect to delinquency proceedings.

375.958. 1. Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the director [of the department of insurance] as ancillary receiver. The director shall file a petition requesting the appointment if he finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver. Notwithstanding any other provision of the insurance laws of this state, said petition may be filed in the circuit court in the county or city in which the insurer has or last had its principal or chief office or place of business in this state or in the county of Cole.

The domiciliary receiver of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he shall have the immediate right to recover balances due from local agents and to obtain possession of any books and records of the insurer found in this state. He shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets

- shall be promptly transferred to the domiciliary receiver.
- 2 Subject to the foregoing provisions the ancillary receiver and
- 3 his deputies shall have the same powers and be subject to the
- 4 same duties with respect to the administration of such assets as
- 5 a receiver of an insurer domiciled in this state.
- 6 375.991. 1. As used in sections 375.991 to 375.994, the
- 7 term "statement" means any communication, notice statement, proof
- 8 of loss, bill of lading, receipt for payment, invoice, account,
- 9 estimate of damages, bills for services, diagnosis, prescription,
- 10 hospital or doctor records, x-rays, test results or other
- 11 evidence of loss, injury or expense.
- 12 2. For the purposes of sections 375.991 to 375.994, a
- person commits a "fraudulent insurance act" if such person
- 14 knowingly presents, causes to be presented, or prepares with
- 15 knowledge or belief that it will be presented, to or by an
- insurer, purported insurer, broker, or any agent thereof, any
- oral or written statement including computer generated documents
- as part of, or in support of, an application for the issuance of,
- or the rating of, an insurance policy for commercial or personal
- insurance, or a claim for payment or other benefit pursuant to an
- insurance policy for commercial or personal insurance, which such
- 22 person knows to contain materially false information concerning
- 23 any fact material thereto or if such person conceals, for the
- 24 purpose of misleading another, information concerning any fact
- 25 material thereto.
- 3. A "fraudulent insurance act" shall also include but not
- be limited to knowingly filing false insurance claims with an
- insurer, health services corporation, or health maintenance

- organization by engaging in any one or more of the following false billing practices:
- 3 (1) "Unbundling", an insurance claim by claiming a number 4 of medical procedures were performed instead of a single 5 comprehensive procedure;

- (2) "Upcoding", an insurance claim by claiming that a more serious or extensive procedure was performed than was actually performed;
- (3) "Exploding", an insurance claim by claiming a series of tests was performed on a single sample of blood, urine, or other bodily fluid, when actually the series of tests was part of one battery of tests; or
- (4) "Duplicating", a medical, hospital or rehabilitative insurance claim made by a health care provider by resubmitting the claim through another health care provider in which the original health care provider has an ownership interest. Nothing in sections 375.991 to 375.994 shall prohibit providers from making good faith efforts to ensure that claims for reimbursement are coded to reflect the proper diagnosis and treatment.
- 4. If, by its own inquiries or as a result of complaints, the [department of insurance] director has reason to believe that a person has engaged in, or is engaging in, any fraudulent insurance act or has violated any provision of chapters 375 to 385, RSMo, it may administer oaths and affirmations, serve subpoenas ordering the attendance of witnesses or proffering of matter, and collect evidence. The director may refer such evidence as is available concerning violations of this chapter to the proper prosecuting attorney or circuit attorney who may, with

- or without such reference, initiate the appropriate criminal proceedings.
- 5. If the matter that the [department of insurance] director seeks to obtain by request is located outside the state, the person so requested may make it available to the department or its representative to examine the matter at the place where it is located. The department may designate representatives, including officials of the state in which the matter is located, to inspect the matter on its behalf, and it may respond to similar requests from officials of other states.

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- 6. A fraudulent insurance act for a first offense is a class D felony. Any person who pleads guilty to or is found guilty of a fraudulent insurance act who has previously pled guilty to or has been found guilty of a fraudulent insurance act shall be guilty of a class C felony.
- 7. Any person who pleads guilty or is found guilty of a fraudulent insurance act shall be ordered by the court to make restitution to any person or insurer for any financial loss sustained as a result of such violation. The court shall determine the extent and method of restitution.
- 8. Nothing in this section shall limit the power of the state to punish any person for any conduct that constitutes a crime by any other state statute.
- 375.992. Any company which believes that a fraudulent claim is being made shall, within sixty days of the receipt of such notice, send to the department [of insurance], on a form prescribed by the department, the information requested and such additional information relative to the claim and the parties

claiming loss or damages because of the accident as the department may require. The department [of insurance] shall review such reports and select such claims as, in its judgment, may require further investigation. It shall then cause an independent examination of the facts surrounding such claim to be made to determine the extent, if any, to which fraud, deceit, or intentional misrepresentation of any kind exists in the submission of the claim. The department [of insurance] shall report any alleged violations of law which its investigations disclose to the appropriate licensing agency and prosecutive authority having jurisdiction with respect to any such violation.

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- 375.993. 1. The department's papers, documents, reports, or evidence relative to the subject of an investigation under this section shall not be subject to public inspection for so long as the department deems reasonably necessary to complete the investigation and any subsequent legal action. Further, such papers, documents, reports, or evidence relative to the subject of an investigation under sections 375.991 to 375.994 shall not be subject to subpoena until opened for public inspection by the department, unless the department consents, or until, after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge pursuant to a pending insurance fraud investigation by the department.
- 2. No insurer, employees or agents of any insurer, or any other person acting without malice, shall be subject to civil

- 1 liability for libel or otherwise by virtue of the filing of
- 2 reports or furnishing other information required by sections
- 3 375.991 to 375.994 or required by the department [of insurance]
- 4 as a result of the authority granted in sections 375.991 to
- 5 375.994.
- 6 375.1002. As used in sections 375.1000 to 375.1018, the
- 7 following terms mean:
- 8 (1) "Director", the director of the department of
- 9 insurance, financial and professional regulation;
- 10 (2) "Insurer", any person, reciprocal exchange,
- interinsurer, Lloyds insurer, fraternal benefit society, and any
- other legal entity engaged in the business of insurance,
- including agents, brokers, adjusters, public adjuster and third
- 14 party administrators. "Insurer" shall also mean health services
- 15 corporations, health maintenance organizations, prepaid limited
- health care service plans, dental, optometric and other similar
- health service plans. For the purposes of sections 375.1000 to
- 18 375.1018, these foregoing entities shall be deemed to be engaged
- in the business of insurance. "Insurer" shall also include all
- 20 companies organized, incorporated or doing business under the
- 21 provisions of chapters 325, 375, 376, 377, 378, 379, 381 and 383,
- 22 RSMo;
- 23 (3) "Person", any natural or artificial entity, or
- 24 aggregate of such entities, including, but not limited to,
- 25 individuals, partnerships, associations, trusts or corporations;
- 26 (4) "Policy", "certificate" or "contract" includes any
- 27 contract of insurance, indemnity, medical, health or hospital
- service, suretyship, or annuity issued, proposed for issuance, or

- intended for issuance by any insurer. "Policy" or "certificate",
- for the purposes of sections 375.1000 to 375.1018, shall not mean
- 3 contracts of workers' compensation, fidelity, suretyship or
- 4 boiler and machinery insurance. This definition shall include
- 5 all entities and activities to the extent not preempted by the
- 6 federal Employees' Retirement Income Security Act.
- 7 375.1025. As used in sections 375.1025 to 375.1062, the
- 8 following terms shall mean:
- 9 (1) "Audited financial report" means and includes those
- 10 items specified in section 375.1032;
- 11 (2) "Accountant" and "independent certified public
- 12 accountant", an independent certified public accountant or
- accounting firm in good standing with the American Institute of
- 14 Certified Public Accountants and in all states in which they are
- 15 licensed to practice. For Canadian and British companies, it
- means a Canadian-chartered or British-chartered accountant;
- 17 (3) "Director", the director of the department of
- insurance, financial and professional regulation;
- 19 (4) "Insurer", an insurer certified to do business in this
- state pursuant to section 375.161 or 375.831, and to companies
- 21 authorized to transact business in this state pursuant to
- 22 chapters 354, 376, 377, 378, 379 and 381, RSMo.
- 23 375.1032. 1. The annual audited financial report shall
- 24 report the financial condition of the insurer as of the end of
- 25 the most recent calendar year and the results of its operation,
- 26 cash flows and changes in capital and surplus for the previous
- year ended in conformity with accounting practices prescribed, or
- 28 otherwise permitted, by law or rule of the department [of

- insurance of the state of domicile of the insurer.
- 2 2. The annual audited financial report shall include the
- 3 following:

- (1) Report of independent certified public accountant;
- 5 (2) Balance sheet reporting admitted assets, liabilities,
- 6 capital and surplus;
- 7 (3) Statement of gain or loss from operations;
- 8 (4) Statement of cash flows;
- 9 (5) Statement of changes in capital and surplus;
- 10 (6) Notes to financial statements. These notes shall be
- 11 those required by the National Association of Insurance
- 12 Commissioners' Annual Statement Instructions and any other notes
- 13 required by generally accepted accounting principles and shall
- 14 include:
- 15 (a) A reconciliation of differences, if any, between the
- 16 audited statutory financial statements and the annual statement
- 17 filed pursuant to section 375.041 and section 354.105, 354.435,
- 18 RSMo, 376.350, RSMo, 377.100, 377.380, RSMo, 378.350, RSMo,
- 19 379.105, RSMo, 380.051 or 380.482, RSMo, with a written
- 20 description of the nature of these differences;
- 21 (b) A summary of ownership and relationships of the insurer
- 22 and all affiliated companies; and
- 23 (c) A narrative explanation of all significant intercompany
- 24 transactions and balances.
- 25 3. The financial statements included in the audited
- 26 financial report shall be prepared in a form and using language
- 27 and groupings substantially the same as the relevant sections of
- 28 the annual statement of the insurer filed with the director:

- 1 (1) The financial statement shall be comparative,
 2 presenting the amounts as of December thirty-first of the current
 3 year and the amounts as of the immediately preceding December
 4 thirty-first. However, in the first year in which an insurer is
 5 required to file an audited financial report, the comparative
 6 data may be omitted;
- 7 (2) Amounts may be rounded to the nearest thousand dollars;
 - (3) Insignificant amounts may be combined.

- 375.1035. 1. Each insurer required by sections 375.1025 to 375.1057 to file an annual audited financial report shall, within sixty days after becoming subject to such requirement, register with the director in writing the name and address of its independent certified public accountant or accounting firm (generally referred to in sections 375.1025 to 375.1057 as the "accountant") retained to conduct the annual audit set forth in sections 375.1025 to 375.1057. Any insurer not retaining an independent certified public accountant on the effective date of sections 375.1025 to 375.1057 shall register the name and address of its retained certified public accountant not less than six months before the date when the first audited financial report is to be filed.
 - 2. The insurer shall obtain a letter from such accountant, and file a copy with the director stating that the accountant is aware of the provisions of the insurance laws and the rules and regulations of the department [of insurance] of the state of domicile that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory

- accounting practices prescribed or otherwise permitted by that department [of insurance], specifying such exceptions as he may believe appropriate.
- If an accountant who was the accountant for the 5 immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify 6 the director of this event. The insurer shall also furnish the 7 8 director with a separate letter within ten business days of the 9 notification stating whether in the twenty-four months preceding 10 such event there were any disagreements with the former 11 accountant on any matter of accounting principles or practices, 12 financial statement disclosure, or auditing scope or procedure, 13 which disagreements, if not resolved to the satisfaction of the 14 former accountant, would have caused him to make reference to the 15 subject matter of the disagreement in connection with his 16 opinion. Disagreements required to be reported by this section 17 include both disagreements resolved to the former accountant's 18 satisfaction, and disagreements not resolved to the former accountant's satisfaction. Disagreements contemplated by this 19 20 section are those that occur at the decision-making level, 21 between personnel of the insurer responsible for the presentation 22 of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also in 23 24 writing request such former accountant to furnish a letter 25 addressed to the director stating whether the accountant agrees 26 with the statements contained in the insurer's letter and, if 27 not, stating the reasons for which he does not agree, and the 28 insurer shall furnish such responsive letter from the former

accountant to the director together with its own.

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375.1050. 1. As used in this section, "workpapers" are the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to his examination of the financial statements of an insurer. Workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, any communications between the accountant and the insurer, and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his examination of the financial statements of an insurer which relate to his opinion thereof.

- 2. Every insurer required to file an audited financial report pursuant to sections 375.1025 to 375.1062 shall require the accountant to make available for review by the examiners of the department [of insurance] all workpapers prepared in the conduct of his examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department [of insurance] or at any other reasonable place designated by the director. The insurer shall require that the accountant retain the audit workpapers until the department has filed a report on examination covering the period of the audit, but no longer than seven years from the date of the audit report.
- 3. In the conduct of any examination or review by the department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the

- 1 director. Such reviews by the director or his examiners shall be
- 2 considered investigations and all working papers and
- 3 communications obtained during the course of such investigations
- 4 shall be afforded the same confidentiality as other examination
- 5 workpapers generated by the department.
- 6 375.1080. As used in sections 375.1080 to 375.1105, the
- 7 following terms mean:
- 8 (1) "Completed operations liability", liability arising out
- 9 of the installation, maintenance, or repair of any product at a
- 10 site which is not owned or controlled by:
- 11 (a) Any person who performs that work; or
- 12 (b) Any person who hires an independent contractor to
- perform that work; but shall include liability for activities
- 14 which are completed or abandoned before the date of the
- occurrence giving rise to the liability;
- 16 (2) "Director", the director of the department of
- 17 insurance, financial and professional regulation;
- 18 (3) "Domicile", for purposes of determining the state in
- 19 which a purchasing group is domiciled, is:
- 20 (a) For a corporation, the state in which the purchasing
- 21 group is incorporated; and
- 22 (b) For an unincorporated entity, the state of its
- 23 principal place of business;
- 24 (4) "Hazardous financial condition", that, based on its
- 25 present or reasonably anticipated financial condition, a risk
- 26 retention group, although not yet financially impaired or
- insolvent, is unlikely to be able:
- 28 (a) To meet obligations to policyholders with respect to

- 1 known claims and reasonably anticipated claims; or
- 2 (b) To pay other obligations in the normal course of
- 3 business;
- 4 (5) "Insurance", primary insurance, excess insurance,
- 5 reinsurance, surplus lines insurance, and any other arrangement
- 6 for shifting and distributing risk which is determined to be
- 7 insurance under the laws of this state;
- 8 (6) "Liability":
- 9 (a) Legal liability for damages, including costs of
- defense, legal costs and fees, and other claims expenses, because
- of injuries to other persons, damage to their property, or other
- damage or loss to such other persons resulting from or arising
- 13 out of:
- 14 a. Any business whether profit or nonprofit, trade,
- product, services, including professional services, premises, or
- 16 operations; or
- b. Any activity of any state or local government, or any
- 18 agency or political subdivision thereof; and
- 19 (b) Does not include personal risk liability and an
- 20 employer's liability with respect to its employees other than
- 21 legal liability under the Federal Employers' Liability Act (45
- 22 U.S.C. 51 et seq.);
- 23 (7) "Personal risk liability", liability for damages
- because of injury to any person, damage to property, or other
- loss or damage resulting from any personal, familial, or
- 26 household responsibilities or activities;
- 27 (8) "Plan of operation or a feasibility study", an analysis
- which presents the expected activities and results of a risk

1 retention group including, at a minimum:

- 2 (a) Information sufficient to verify that its members are
 3 engaged in businesses or activities similar or related with
 4 respect to the liability to which such members are exposed by
 5 virtue of any related, similar or common business, trade,
 6 product, services, premises or operations;
 - (b) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer;
 - (c) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
 - (d) Pro forma financial statements and projections;
 - (e) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
 - (f) Identification of management, underwriting and claims procedures, marketing methods, managerial oversight methods, investment policies and reinsurance agreements;
 - (g) Identification of each state in which the risk retention group has obtained, or sought to obtain, a charter and license, and a description of its status in each such state; and
 - (h) Such other matters as may be prescribed by the commissioner of the state in which the risk retention group is chartered for liability insurance companies authorized by the insurance laws of that state;

- 1 "Product liability", liability for damages because of 2 any personal injury, death, emotional harm, consequential economic damage, or property damage, including damages resulting 3 from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or 5 6 sale of a product, but does not include the liability of any 7 person for those damages if the product involved was in the possession of such a person when the incident giving rise to the 8 claim occurred; 9
- 10 (10) "Purchasing group", any group which:

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- 11 (a) Has as one of its purposes the purchase of liability 12 insurance on a group basis;
 - (b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (c) of this subdivision;
 - (c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and
 - (d) Is domiciled in any state;
- 21 (11) "Risk retention group", any corporation or other 22 limited liability association:
 - (a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
- 26 (b) Which is organized for the primary purpose of
 27 conducting the activity described under paragraph (a) of this
 28 subdivision;

1 (c) Which:

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- 2 a. Is chartered and licensed as a liability insurance 3 company and authorized to engage in the business of insurance 4 under the laws of any state; or
 - b. Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability;
 - (d) Which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;
- 18 (e) Which:
 - a. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
 - b. Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
 - (f) Whose members are engaged in businesses or activities similar or related with respect to the liability of which such

- members are exposed by virtue of any related, similar or common 1
- 2 business trade, product, services, premises or operations;
- Whose activities do not include the provision of 3 4 insurance other than:
- 5 Liability insurance for assuming and spreading all or a. 6 any portion of the liability of its group members; and
- 7 b. Reinsurance with respect to the liability of any other 8 risk retention group or any members of such other group which is 9 engaged in businesses or activities so that such group or member 10 meets the requirement described in paragraph (f) of this 11 subdivision from membership in the risk retention group which
- 12 provides such reinsurance; and
- 13 The name of which includes the phrase "risk retention group"; 14
- 15 "State", any state of the United States or the District of Columbia. 16
- 17 375.1112. As used in sections 375.1110 to 375.1140, the 18 following terms mean:
- 19 "Actuary", a person who is a member in good standing of 20 the American Academy of Actuaries;
- "Controlling person", any person, firm, association or 21 22 corporation who directly or indirectly has the power to direct or 23 cause to be directed, the management, control or activities of
- 24 the reinsurance intermediary;
- 25 "Director", the director of the department of 26 insurance, financial and professional regulation;
- 27 "Insurer", any person, firm, association or corporation 28 duly licensed in this state pursuant to the laws of this state as

- 1 an insurer;
- 2 (5) "Licensed producer", an agent, broker or reinsurance
- 3 intermediary licensed pursuant to the applicable laws of this
- 4 state;
- 5 (6) "Qualified United States financial institution", an
- 6 institution that:
- 7 (a) Is organized, or is licensed, under the laws of the
- 8 United States or any state thereof;
- 9 (b) Is regulated, supervised and examined by United States
- 10 federal or state authorities having regulatory authority over
- 11 banks and trust companies; and
- 12 (c) Has been determined by either the director, or the
- 13 Securities Valuation Office of the National Association of
- 14 Insurance Commissioners, to meet such standards of financial
- 15 condition and standing as are considered necessary and
- appropriate to regulate the quality of a financial institution
- 17 whose letter of credit will be acceptable to the director;
- 18 (7) "Reinsurance intermediary", a reinsurance
- 19 intermediary-broker or a reinsurance intermediary-manager, as
- these terms are defined in subdivisions (8) and (9) of this
- 21 section;
- 22 (8) "Reinsurance intermediary-broker" or "RB", any person,
- other than an officer or employee of the ceding insurer, firm,
- 24 association or corporation who solicits, negotiates or places
- 25 reinsurance cessions or retrocessions on behalf of a ceding
- insurer without the authority or power to bind reinsurance on
- 27 behalf of such insurer:
- 28 (9) "Reinsurance intermediary-manager" or "RM", any person,

- 1 firm, association or corporation who has authority to bind or
- 2 manages all or part of the assumed reinsurance business of a
- 3 reinsurer, including the management of a separate division,
- 4 department or underwriting office, and acts as an agent for such
- 5 reinsurer whether known as an RM, manager or other similar term.
- 6 The following persons shall not be considered an RM, with respect
- 7 to such reinsurer, for the purposes of sections 375.1110 to
- 8 375.1140:
- 9 (a) An employee of the reinsurer;
- 10 (b) A United States manager of the United States branch of 11 an alien reinsurer;
- 12 (c) An underwriting manager which, pursuant to contract,
 13 manages all the reinsurance operations of the reinsurer, is under
 14 common control with the reinsurer, subject to chapter 382, RSMo,
 15 and whose compensation is not based on the volume of premiums
- 16 written;

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- 17 (d) The manager of a group, association, pool or
 18 organization of insurers which engages in joint underwriting or
 19 joint reinsurance and who is subject to examination by the
 20 insurance regulatory agency of the state in which the manager's
 21 principal business office is located;
 - (10) "Reinsurer", any person, firm, association or corporation duly licensed in this state pursuant to the laws of this state as an insurer with the authority to assume reinsurance;
- 26 (11) "To be in violation", the reinsurance intermediary, 27 insurer or reinsurer for whom the reinsurance intermediary was 28 acting failed to substantially comply with the provisions of

- 1 sections 375.1110 to 375.1140.
- 2 375.1152. For purposes of sections 375.570 to 375.750 and 375.1150 to 375.1246, the following words and phrases shall mean:
- 4 (1) "Allocated loss adjustment expenses", those fees, costs
- or expenses reasonably chargeable to the investigation,
- 6 negotiation, settlement or defense of an individual claim or loss
- 7 or to the protection and perfection of the subrogation rights of
- 8 any insolvent insurer arising out of a policy of insurance issued
- 9 by the insolvent insurer. "Allocated loss adjustment expenses"
- shall include all court costs, fees and expenses; fees for
- 11 service of process; fees to attorneys; costs of undercover
- operative and detective services; fees of independent adjusters
- or attorneys for investigation or adjustment of claims beyond
- initial investigation; costs of employing experts for preparation
- of maps, photographs, diagrams, chemical or physical analysis or
- for advice, opinion or testimony concerning claims under
- 17 investigation or in litigation; costs for legal transcripts or
- 18 testimony taken at coroner's inquests, criminal or civil
- 19 proceedings; costs for copies of any public records; costs of
- depositions and court-reported or -recorded statements.
- 21 "Allocated loss adjustment expenses" shall not include the
- 22 salaries of officials, administrators or other employees or
- 23 normal overhead charges such as rent, postage, telephone,
- 24 lighting, cleaning, heating or similar expenses;
- 25 (2) "Ancillary state", any state other than a domiciliary
- 26 state;
- 27 (3) "Creditor", a person having any claim, whether matured
- or unmatured, liquidated or unliquidated, secured or unsecured,

- 1 absolute, fixed or contingent;
- 2 (4) "Delinquency proceeding", any proceeding instituted
- 3 against an insurer for the purpose of liquidating,
- 4 rehabilitating, reorganizing or conserving such insurer, and any
- 5 summary proceeding under sections 375.1160, 375.1162 and
- 6 375.1164;
- 7 (5) "Director", the director of the department of
- 8 insurance, financial and professional regulation;
- 9 (6) "Doing business" includes any of the following acts,
- 10 whether effected by mail or otherwise:
- 11 (a) The issuance or delivery of contracts of insurance to
- 12 persons resident in this state;
- 13 (b) The solicitation of applications for such contracts, or
- other negotiations preliminary to the execution of such
- 15 contracts;
- 16 (c) The collection of premiums, membership fees,
- 17 assessments, or other consideration for such contracts;
- 18 (d) The transaction of matters subsequent to execution of
- 19 such contracts and arising out of them; or
- 20 (e) Operating under a license or certificate of authority,
- as an insurer, issued by the department [of insurance];
- 22 (7) "Domiciliary state", the state in which an insurer is
- incorporated or organized or, in the case of an alien insurer,
- 24 its state of entry;
- 25 (8) "Fair consideration" is given for property or
- 26 obligation:
- 27 (a) When in exchange for such property or obligation, as a
- fair equivalent thereof, and in good faith, property is conveyed

- or services are rendered or an obligation is incurred or an antecedent debt is satisfied; or
- 3 (b) When such property or obligation is received in good 4 faith to secure a present advance or antecedent debt in an amount 5 not disproportionately small as compared to the value of the 6 property or obligation obtained;
- 7 (9) "Foreign country", any jurisdiction not in the United 8 States;

- (10) "Formal delinquency proceeding", any liquidation or rehabilitation proceeding;
- otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or classes of persons. As to specifically encumbered property, "general assets" includes all such property or its proceeds in excess of the amount necessary to discharge the sum or sums secured thereby. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets;
- (12) "Guaranty association", the Missouri property and casualty insurance guaranty association created by sections 375.771 to 375.779, as amended, the Missouri life and health insurance guaranty association created by sections 376.715 to 376.758, RSMo, as amended, and any other similar entity now or hereafter created by the laws of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence or hereafter created

- 1 by the laws of any other state;
- 2 (13) "Insolvency" or "insolvent" means:
- 3 (a) For an insurer issuing only assessable fire insurance
- 4 policies:
- 5 a. The inability to pay an obligation within thirty days
- 6 after it becomes payable; or
- 7 b. If an assessment be made within thirty days after such
- 8 date, the inability to pay such obligation thirty days following
- 9 the date specified in the first assessment notice issued after
- 10 the date of loss;
- 11 (b) For any other insurer, that it is unable to pay its
- obligations when they are due, or when its admitted assets do not
- 13 exceed its liabilities plus the greater of:
- 14 a. Any capital and surplus required by law for its
- 15 organization; or
- 16 b. The total par or stated value of its authorized and
- 17 issued capital stock;
- 18 (c) As to any insurer licensed to do business in this state
- 19 as of August 28, 1991, which does not meet the standards
- 20 established under paragraph (b) of this subdivision, the term
- "insolvency" or "insolvent" shall mean, for a period not to
- 22 exceed three years from August 28, 1991, that it is unable to pay
- 23 its obligations when they are due or that its admitted assets do
- 24 not exceed its liabilities plus any required capital contribution
- ordered by the director under any other provisions of law;
- 26 (d) For purposes of this subdivision "liabilities" shall
- include but not be limited to reserves required by statute or by
- [insurance] department of insurance, financial and professional

- regulation regulations or specific requirements imposed by the director upon a subject company at the time of admission or
- 3 subsequent thereto;

- 4 (e) For purposes of this subdivision, an obligation is 5 payable within ninety days of the resolution of any dispute 6 regarding the obligation;
- 7 (14) "Insurer", any person who has done, purports to do, is
 8 doing or is licensed to do insurance business as described in
 9 section 375.1150, and is or has been subject to the authority of,
 10 or to liquidation, rehabilitation, reorganization, supervision,
 11 or conservation by, any insurance department of any state. For
 12 purposes of sections 375.1150 to 375.1246, any other persons
 13 included under section 375.1150 shall be deemed to be insurers;
 - (15) "Preferred claim", any claim with respect to which the terms of sections 375.1150 to 375.1246 accord priority of payment from the general assets of the insurer;
 - (16) "Receiver", a receiver, liquidator, administrative supervisor, rehabilitator or conservator, as the context requires;
 - which in substance and effect, provisions substantially similar to subsection 1 of section 375.1176 and sections 375.1235, 375.1236, 375.1240, 375.1242 and 375.1244 have been enacted and are in force, and in which laws are in force requiring that the director of the state insurance department or equivalent official be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers;

- "Secured claim", any claim secured by mortgage, trust (18)deed, pledge, deposit as security, escrow, or otherwise, including a pledge of assets allocated to a separate account established pursuant to section 376.309, RSMo; but not including special deposit claims or claims against general assets. term also includes claims which have become liens upon specific deposit claims or claims against general assets. The term also includes claims which have become liens upon specific assets by reason of judicial process;
 - (19) "Special deposit claim", any claim secured by a deposit made pursuant to statute for the security or benefit of a limited class or classes of persons, but not including any claim secured by general assets;
 - (20) "State", any state, district, or territory of the United States and the Panama Canal Zone;

- (21) "Transfer" shall include the sale and every other and different mode, direct or indirect, of disposing of or of parting with property or with an interest therein, or with the possession thereof, or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.
 - 375.1158. 1. Unless otherwise provided, the portions of sections 375.1150 to 375.1246 which substantively affect the rights of any person shall be only applicable prospectively. The provisions of sections 375.650 to 375.700, sections 375.740 and 375.750, and sections 375.950 to 375.990 shall be effective and

- 1 apply only to proceedings instituted pursuant to those sections
- 2 prior to August 28, 1991. The provisions of sections 375.1150 to
- 3 375.1246 which are procedural in nature and which do not conflict
- 4 with any provision of sections 375.570 to 375.750 and sections
- 5 375.950 to 375.990 applicable to any proceeding instituted prior
- 6 to August 28, 1991, shall be applicable to proceedings instituted
- 7 prior to August 28, 1991; provided that the provisions of this
- 8 subsection shall not affect any final order entered by a court of
- 9 competent jurisdiction prior to August 28, 1991.
- 10 2. No insurer that is subject to any delinquency
- 11 proceedings, whether formal or informal, administrative or
- 12 judicial, shall:
- 13 (1) Be released from such proceeding, unless such
- 14 proceeding is converted into a judicial rehabilitation or
- 15 liquidation proceeding;
- 16 (2) Be permitted to solicit or accept new business or
- 17 request or accept the restoration of any suspended or revoked
- 18 license or certificate of authority;
- 19 (3) Be returned to the control of its shareholders or
- 20 private management; or

- 21 (4) Have any of its assets returned to the control of its
- 22 shareholders or private management.
- 24 Until all payments of or on account of the insurer's contractual
- obligations by all guaranty associations and all expenses on
- account of such delinquency proceedings, along with all expenses
- thereof and interest on all such payments and expenses, shall
- have been repaid to the department of insurance, financial and

- 1 <u>professional regulation</u> and guaranty associations or a plan of
- 2 repayment by the insurer shall have been approved by the
- 3 director. Moneys collected by the director pursuant to this
- 4 section shall be transferred to the state treasurer and deposited
- 5 to the general revenue fund.
- 6 3. In any delinquency proceeding under sections 375.1150 to
- 7 375.1246, certified copies of the statement made by the company
- 8 proceeded against, or of reports of examinations of the company
- 9 made by the director or persons appointed by him, shall be
- 10 received, if offered by the director, as prima facie evidence of
- 11 the facts therein contained pertaining to the condition and
- 12 affairs of the insurer.
- 13 375.1160. 1. As used in this section:
- 14 (1) "Exceeded its powers" means one or more of the
- 15 following conditions:
- 16 (a) The insurer has refused to permit examination of its
- books, papers, accounts, records or affairs by the director, his
- deputy, employees or duly commissioned examiners;
- 19 (b) A domestic insurer has unlawfully removed from this
- state or is unable to produce books, papers, accounts or records
- 21 necessary for an examination of the insurer;
- 22 (c) The insurer has failed to promptly comply with the
- 23 applicable financial reporting statutes or rules and requests
- 24 relating thereto;
- 25 (d) The insurer has neglected or refused to observe an
- order of the director to make good, within the time prescribed by
- law, any prohibited deficiency in its capital, capital stock or
- 28 surplus;

- 1 (e) The insurer is continuing to transact insurance or
 2 write business after its license has been revoked or suspended by
 3 the director:
- 4 (f) The insurer, by contract or otherwise, has unlawfully 5 or has in violation of an order of the director or has without 6 first having obtained written approval of the director if 7 approval is required by law:
- 8 a. Totally reinsured its entire outstanding business, or
- 9 b. Merged or consolidated substantially its entire property10 or business with another insurer;
 - (g) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;

- 13 (h) A domestic insurer has committed or engaged in, or is 14 about to commit or engage in, any act, practice or transaction 15 that would subject it to delinquency proceedings under sections 16 375.1150 to 375.1246; or
- 17 (i) The insurer refused to comply with a lawful order of the director;
- 19 (2) "Consent" means agreement to administrative supervision 20 by the insurer.
- 2. (1) An insurer may be subject to administrative 22 supervision by the director if upon examination or at any other 23 time it appears in the director's discretion that:
- 24 (a) The insurer's condition renders the continuance of its 25 business hazardous to the public or to its insureds;
- 26 (b) The insurer exceeded its powers granted under its certificate of authority and applicable law;
- 28 (c) The insurer has failed to comply with the laws of this

- state relating to insurance;
- 2 (d) The business of the insurer is being conducted
- 3 fraudulently; or
 - (e) The insurer gives its consent.
- 5 (2) If the director determines that the conditions set
- 6 forth in subdivision (1) of this subsection exist, the director
- 7 shall:
- 8 (a) Notify in writing the insurer of his determination;
- 9 (b) Furnish to the insurer a written list of his
- 10 requirements to rescind his determination; and
- 11 (c) Notify the insurer that it is under the supervision of
- 12 the director and that the director is applying and effectuating
- 13 the provisions of this section.
- 14 (3) The notice of supervision under this subsection and any
- order issued pursuant to this section shall be served upon the
- insurer in writing by registered mail. The notice of supervision
- 17 shall state the conduct, condition or ground upon which the
- 18 director bases his order.
- 19 (4) If placed under administrative supervision, the insurer
- 20 shall have sixty days, or another period of time as designated by
- 21 the director, to comply with the requirements of the director
- 22 subject to the provisions of this section. In the event of such
- insurer's failure to comply with such time periods, the director
- 24 may institute proceedings under section 375.1165 or 375.1175 to
- 25 have a rehabilitator or liquidator appointed, or to extend the
- 26 period of supervision.
- 27 (5) If it is determined that none of the conditions giving
- 28 rise to the supervision exist, the director shall release the

- 1 insurer from supervision.
- 2 3. (1) Except as set forth in this subsection, all
- 3 proceedings, hearings, notices, orders, correspondence, reports,
- 4 records and other information in the possession of the director
- or the department of insurance, financial and professional
- 6 <u>regulation</u> relating to the supervision of any insurer are
- 7 confidential except as provided by this section.
- 8 (2) Personnel of the department of insurance, financial and
- 9 <u>professional regulation</u> shall have access to these proceedings,
- 10 hearings, notices, orders, correspondence, reports, records or
- information as permitted by the director.
- 12 (3) The director may open the proceedings or hearings or
- disclose the notices, orders, correspondence, reports, records or
- information to a department, agency or instrumentality of this or
- 15 another state or the United States if the director determines
- that the disclosure is necessary or proper for the enforcement of
- 17 the laws of this or another state of the United States.
- 18 (4) The director may open the proceedings or hearings or
- make public the notices, orders, correspondence, reports, records
- 20 or other information if the director deems that it is in the best
- 21 interest of the public or in the best interest of the insurer,
- 22 its insureds, creditors or the general public.
- 23 (5) This subsection does not apply to hearings, notices,
- 24 correspondence, reports, records or other information obtained
- upon the appointment of a receiver for the insurer by a court of
- 26 competent jurisdiction.
- 27 4. During the period of supervision, the director or his
- 28 designated appointee shall serve as the administrative

- 1 supervisor. The director may provide that the insurer shall not
- 2 do any of the following things during the period of supervision,
- 3 without the prior approval of the director or the appointed
- 4 supervisor:

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- 5 (1) Dispose of, convey or encumber any of its assets or its business in force;
- 7 (2) Withdraw any of its bank accounts;
 - (3) Lend any of its funds;
 - (4) Invest any of its funds;
- 10 (5) Transfer any of its property;
 - (6) Incur any debt, obligation or liability;
- 12 (7) Merge or consolidate with another company;
- 13 (8) Approve new premiums or renew any policies;
- 14 (9) Enter into any new reinsurance contract or treaty;
- 15 (10) Terminate, surrender, forfeit, convert or lapse any 16 insurance policy, certificate or contract, except for nonpayment 17 of premiums due;
 - (11) Write any new or renewal business;
- 19 (12) Release, pay or refund premium deposits, accrued cash 20 or loan values, unearned premiums, or other reserves on any 21 insurance policy, certificate or contract;
- 22 (13) Make any material change in management; or
- 23 (14) Increase salaries and benefits of officers or 24 directors or the preferential payment of bonuses, dividends or 25 other payments deemed preferential.
- 5. Any insurer subject to a supervision order under this section may seek review pursuant to section 536.150, RSMo, of that order within thirty days of the entry of the order of

- supervision. Such a request for a hearing shall not stay the effect of the order.
- 6. During the period of supervision the insurer may contest
 an action taken or proposed to be taken by the administrative
 supervisor specifying the manner in which the action being
 complained of would not result in improving the condition of the
 insurer. An insurer may request review pursuant to section
 536.150, RSMo, of written denial of the insurer's request to
 reconsider pursuant to this subsection.

- 7. If any person has violated any supervision order issued under this section which as to him was still in effect, the director may impose an administrative penalty in an amount not to exceed ten thousand dollars for each violation. Moneys collected pursuant to the imposition of such penalties shall be transferred to the state treasurer and deposited to the general revenue fund.
- 8. The director or administrative supervisor may apply for, and any court of general jurisdiction may grant, such restraining orders, preliminary and permanent injunctions, and other orders as may be deemed necessary and proper to enforce a supervision order.
- 9. In the event that any person, subject to the provisions of sections 375.1150 to 375.1246, including those persons described in subsection 1 of section 375.1156, shall knowingly violate any valid order of the director issued under the provisions of this section and, as a result of such violation, the net worth of the insurer shall be reduced or the insurer shall suffer loss it would not otherwise have suffered, said person shall become personally liable to the insurer for the

- 1 amount of any such reduction or loss. The director or
- 2 administrative supervisor is authorized to bring an action on
- 3 behalf of the insurer in any court of competent jurisdiction to
- 4 recover the amount of reduction or loss together with any costs.
- 5 10. Nothing contained in sections 375.1150 to 375.1246
- 6 shall preclude the director from initiating judicial proceedings
- 7 to place an insurer in conservation, rehabilitation or
- 8 liquidation proceedings or other delinquency proceedings, however
- 9 designated under the laws of this state, regardless of whether
- 10 the director has previously initiated administrative supervision
- 11 proceedings under this section against the insurer.
- 13 the implementation of this section.
- 14 12. Notwithstanding any other provision of law, the
- director may meet with an administrative supervisor appointed
- under this section and with the attorney or other representative
- of the administrative supervisor, without the presence of any
- other person, at the time of any proceeding or during the
- 19 pendency of any proceeding held under authority of this section
- 20 to carry out his duties under this section or for the
- 21 administrative supervisor to carry out his duties under this
- 22 section.
- 23 13. There shall be no liability on the part of, and no
- cause of action of any nature shall arise against, the director
- or the department of insurance or its employees or agents for any
- action taken by them in the performance of their powers and
- 27 duties under this section.
- 28 375.1172. In all proceedings and judicial reviews thereof

under sections 375.1164 to 375.1170, all records of the insurer, 1 2 other documents, and all department [of insurance] files and 3 court records and papers, so far as they pertain to or are a part 4 of the record of the proceedings, shall be and remain open and 5 public records until the termination of such proceedings; except as is necessary to obtain compliance therewith, unless and until 6 7 the court, upon motion of the receiver, and after hearing 8 arguments from the parties, shall determine that preservation of 9 the assets and claims of the insurer require confidentiality as 10 to specific records or documents, and shall enter an order of 11 such findings.

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375.1176. 1. An order to liquidate the business of a domestic insurer shall appoint the director and his successors as liquidator and shall direct the liquidator forthwith to take immediate possession of the assets of the insurer and to administer them subject to the supervision of the court until the liquidator is discharged by the court. The liquidation of any insurer shall be considered to be the business of insurance for purposes of application of any law of this state. The liquidator shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the order of liquidation. The order shall require the liquidator to take immediate possession of and to secure all of the records and property of the insurer wherever it is located, and to take all measures necessary to preserve the integrity of the insurer's records. The filing or recording of the order with the clerk of the court and the recorder of deeds

is located or, in the case of real estate, with the recorder of deeds of the county where the property is located, shall impart the same notice as a deed, bill of sale or other evidence of

of the county in which its principal office or place of business

- 5 title duly filed or recorded with that recorder of deeds would
- 6 have imparted.

- With the approval of the court, the director as liquidator may appoint a special deputy or deputies to act for him under sections 375.1175 to 375.1230. The special deputy shall not be an employee of the department [of insurance]. special deputy shall have all powers of the liquidator granted by sections 375.1175 to 375.1230. The special deputy shall administer and liquidate the insolvent insurer subject to the general supervision of the director and the specific supervision of the court as provided in sections 375.1175 to 375.1230.
 - 3. Upon issuance of the order of liquidation, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members and any other persons interested in its estate shall become fixed and the termination of any period fixed by any statute of limitations provided by law shall be suspended as of the date of entry of the order of liquidation, except as provided in sections 375.1178, 375.1206 and 375.1210. Rights of shareholders provided by any law other than as provided by sections 375.1150 to 375.1246 shall be suspended upon issuance of the order of liquidation.
 - 4. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer,

- except that the assets and the business in the United States shall be the only assets and business included therein.
- 5. At the time of petitioning for an order of liquidation,
 4 or at any time thereafter, the director, after making
 5 determination of an insurer's insolvency, may petition the court
 6 for a judicial declaration of such insolvency. After providing
 7 such notice and hearing as it deems proper, the court may make
 8 the declaration.

- 6. (1) Any order issued under this section shall require periodic financial reports to the court by the liquidator. Financial reports shall include, at a minimum, the assets and liabilities of the insurer and all funds received or disbursed by the liquidator during the current period. Financial reports shall be filed within one year of the liquidation order and at least annually thereafter.
- (2) After an order of liquidation has been entered, the liquidator of such insurer shall file with the director a statement which shall reflect the claims reserves, including losses incurred but not reported, and unearned premium reserves which have been established by the liquidator and which shall also set forth the amounts of such reserves that are allocable to particular reinsurers of the insolvent company. A similar statement shall be filed by each liquidator not less frequently than annually and shall be considered for all intents and purposes as the annual statement which was required to be filed by the insurer with the director prior to the liquidation proceedings. To the extent that any reinsurer of an insurer in liquidation would have been required under any agreement

pertaining to reinsurance to post letters of credit or other security prior to an order of liquidation to cover such reserves reflected upon a statement filed with a regulatory authority, such reinsurer shall be required to post letters of credit or other security to cover such reserves after an insurer has been placed in liquidation. If a reinsurer shall fail to post letters of credit or other security required by a reinsurance agreement or the provisions of this section, the director may issue an order barring such reinsurer from thereafter reinsuring any insurer which is incorporated under the laws of the state of Missouri.

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7. (1) Within five days after the initiation of an appeal of an order of liquidation, the liquidator shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. Such plan shall provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation including the ground of insolvency. In the event the defendant company's financial condition, in the judgment of the liquidator, will not support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties as well as other policyholders and claimants, as the liquidator finds to be fair and equitable considering the relative circumstances of such policyholders and claimants. The court

- shall examine the plan submitted by the liquidator and if it
 finds the plan to be in the best interests of the parties, the
 court shall approve the plan. No action shall lie against the
 liquidator or any of his deputies, agents, clerks, assistants or
 attorneys by any party based on preference in an appeal pendency
 plan approved by the court.
 - (2) The appeal pendency plan shall not supersede or affect the obligations of any insurance guaranty association.

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- Any such plans shall provide for equitable adjustments to be made by the liquidator to any distributions of assets to quaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, such that all quaranty associations equally benefit on a pro rata basis from the assets of the estate. Further, in the event an order of liquidation is set aside upon any appeal, the company shall not be released from delinquency proceedings unless and until all funds advanced by any quaranty association, including reasonable allocated loss adjustment expenses in connection therewith relating to obligations of the company, shall be repaid in full, together with interest at the judgment rate of interest or unless an arrangement for repayment thereof has been made with the consent of all applicable quaranty associations.
 - 8. Any person who shall knowingly destroy, conceal, convert or alter any records or property of an insurer after entry of an order of liquidation, without having received prior written permission of the liquidator or of the court, or who shall

- 1 knowingly neglect or refuse, upon the order or demand of the
- 2 liquidator, to deliver to the liquidator any records or property
- 3 of an insurer in his possession or control, shall be guilty of a
- 4 class C felony.
- 5 375.1184. 1. The liquidator may disaffirm or repudiate any
- 6 contract or lease:
- 7 (1) To which the insurer is a party;
- 8 (2) The performance of which the liquidator, in his sole
- 9 discretion, determines to be burdensome; and
- 10 (3) The disaffirmance or repudiation of which the
- 11 liquidator determines, in his sole discretion, will promote the
- orderly administration of the affairs of the insurer.
- 13 2. The liquidator shall determine whether or not to
- 14 exercise the right of repudiation under this section within a
- reasonable period following the entry of the order of
- liquidation. In the sole discretion of the liquidator, the
- 17 contract shall be repudiated as of either:
- 18 (1) The date of the entry of the order of liquidation; or
- 19 (2) Some other date subsequent to the entry of the order of
- 20 liquidation selected by the liquidator for the disaffirmance or
- 21 repudiation of such contract or agreement.
- 22 3. The liability of the liquidator for the disaffirmance or
- 23 repudiation of any contract pursuant to subsection 1 of this
- section shall be calculated as of the date of repudiation, and
- 25 shall be limited to actual direct compensatory damages. Any such
- damages shall be submitted as a claim to the liquidator pursuant
- 27 to sections 375.1206 to 375.1222. For purposes of this
- 28 subsection, the term "actual direct compensatory damages" does

- 1 not include:
- 2 (1) Punitive or exemplary damages;
- 3 (2) Damages for lost profits or opportunity; or
- 4 (3) Damages for pain and suffering.
- 5 4. An agreement which tends to diminish or defeat the
- 6 interest of the liquidator in any asset acquired by him under
- 7 section 375.1176, whether acquired before or subsequent to the
- 8 entry of the order of liquidation, shall not be valid against the
- 9 liquidator unless such agreement:
- 10 (1) Is in writing;
- 11 (2) Was executed by the insurer and any person claiming an
- 12 adverse interest thereunder, including the obligor,
- 13 contemporaneously with the acquisition of the asset by the
- 14 insurer;
- 15 (3) Was approved by the board of directors of the insurer,
- which approval shall be reflected in the minutes of said board;
- 17 and
- 18 (4) Has been, continuously, from the time of its execution,
- 19 an official record of the insurer maintained and readily
- 20 available to the director or examiners of the department [of
- 21 insurance].
- 22 375.1186. 1. Every person who receives notice in the form
- prescribed in section 375.1185 that an insurer which he
- represents as an agent is the subject of a liquidation order,
- 25 within thirty days of such notice, shall provide to the
- liquidator, in addition to the information he may be required to
- 27 provide pursuant to section 375.1156, the information in the
- agent's records related to any policy issued by the insurer

- 1 through the agent and, if the agent is a general agent, the
- 2 information in the general agent's records related to any policy
- 3 issued by the insurer through any agent under contract to him,
- 4 including the name and address of such subagent. Such
- 5 information shall include information relating to premiums
- 6 collected and held by the agent and all commissions relating to
- 7 such policies, whether earned or unearned. A policy shall be
- 8 deemed issued through an agent if the agent has a property
- 9 interest in the expiration of the policy, or if the agent has had
- in his possession a copy of the declarations of the policy at any
- 11 time during the life of the policy, except where the ownership of
- 12 the expiration of the policy has been transferred to another
- 13 person.
- 2. Any agent failing to provide information to the
- 15 liquidator as required in subsection 1 of this section may be
- subject to payment of an administrative penalty of not more than
- one thousand dollars for each day that the agent refuses to
- 18 provide the information requested and the department [of
- insurance] may suspend any license issued by the department to
- 20 the agent. Any penalty provided by this subsection may be
- 21 imposed after a hearing conducted by the director. Any moneys
- collected by the department [of insurance] pursuant to imposition
- of such administrative penalties shall be paid to the state
- treasurer for deposit to the general revenue fund.
- 25 375.1250. As used in sections 375.1250 to 375.1275 and in
- 26 the Risk-Based Capital (RBC) Instructions, the following terms
- 27 mean:
- 28 (1) "Adjusted RBC report", an RBC report which has been

- 1 adjusted in accordance with subsection 5 of section 375.1252;
- 2 (2) "Corrective order", an order issued by the director
- 3 specifying corrective actions which the director has determined
- 4 are required;
- 5 (3) "Director", the director of the department of
- 6 insurance, financial and professional regulation;
- 7 (4) "Domestic insurer", any insurance company domiciled in
- 8 this state;
- 9 (5) "Foreign insurer", any insurance company which is
- licensed to do business in this state under section 375.791, but
- 11 is not domiciled in this state;
- 12 (6) "Life and health insurer", any insurance company
- licensed under chapter 376, RSMo, or a licensed property and
- 14 casualty insurer writing only accident and health insurance;
- 15 (7) "NAIC", the National Association of Insurance
- 16 Commissioners:
- 17 (8) "Negative trend", with respect to life and health
- insurers, a negative trend over a period of time, as determined
- 19 in accordance with the trend test calculations included in the
- 20 RBC instructions:
- 21 (9) "Property and casualty insurer", any insurance company
- 22 licensed under chapter 379, RSMo, but such term shall not include
- 23 monoline mortgage quaranty insurers, financial quaranty insurers
- 24 and title insurers;
- 25 (10) "RBC instructions", the RBC report, including
- 26 risk-based capital instructions adopted by the NAIC, as such RBC
- instructions may be amended by the NAIC from time to time in
- 28 accordance with the procedures adopted by the NAIC;

- 1 (11) "RBC level", an insurer's company action level RBC, regulatory action level RBC, authorized control level RBC, or
- 3 mandatory control level RBC where:
- 4 (a) "Company action level RBC" means, with respect to any insurer, the product of 2.0 and its authorized control level RBC;
- 6 (b) "Regulatory action level RBC" means the product of 1.5 and its authorized control level RBC;
- 8 (c) "Authorized control level RBC" means the number
 9 determined under the risk-based capital formula in accordance
 10 with the RBC instruction; and
- 11 (d) "Mandatory control level RBC" means the product of .70 12 and the authorized control level RBC;
- 13 (12) "RBC plan", a comprehensive financial plan containing
 14 the elements specified in subsection 2 of section 375.1255. If
 15 the director rejects the RBC plan and it is revised by the
 16 insurer, with or without the director's recommendation, the plan
 17 shall be called the "Revised RBC Plan";
 - (13) "RBC report", the report required in section 375.1252;

An insurer's statutory capital and surplus as

19 (14) "Total adjusted capital", the sum of:

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- determined in accordance with the statutory accounting applicable to the annual financial reports required to be filed under section 376.350, RSMo, for domestic life and health insurers,
- section 379.105, RSMo, for domestic property and casualty
- insurers and section 375.891 for foreign insurers; and
- 26 (b) Such other items, if any, as the RBC instructions may 27 provide.
- 28 375.1269. 1. The provisions of sections 375.1250 to

- 1 375.1275 are supplemental to any other provisions of the laws of
- 2 this state, and shall not preclude or limit any other powers or
- 3 duties of the director under such laws, including but not limited
- 4 to sections 375.1150 to 375.1246.
- 5 2. The director may adopt reasonable rules and regulations
- 6 necessary for the implementation of sections 375.1250 to
- 7 375.1275. [No rule or regulation promulgated under authority of
- 8 this section shall become effective unless it has been
- 9 promulgated pursuant to the provisions of section 536.024, RSMo.]
- 10 Any rule or portion of a rule, as that term is defined in section
- 11 536.010, RSMo, that is created under the authority delegated in
- this section shall become effective only if it complies with and
- is subject to all of the provisions of chapter 536, RSMo, and, if
- 14 applicable, section 536.028, RSMo. This section and chapter 536,
- RSMo, are nonseverable and if any of the powers vested with the
- general assembly pursuant to chapter 536, RSMo, to review, to
- delay the effective date, or to disapprove and annul a rule are
- subsequently held unconstitutional, then the grant of rulemaking
- 19 <u>authority and any rule proposed or adopted after August 28, 2007,</u>
- 20 shall be invalid and void.
- 21 3. The director may exempt from the provisions of sections
- 375.1250 to 375.1275 any domestic property and casualty insurer
- 23 which:
- 24 (1) Writes direct business only in this state;
- 25 (2) Writes direct annual premiums of two million dollars or
- less; and
- 27 (3) Assumes no reinsurance in excess of five percent of
- 28 direct premium written.

4. There shall be no liability on the part of, and no cause of action shall arise against, the director, the department [of insurance] or its employees or agents for any action taken by them in the performance of their powers and duties under sections

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375.1250 to 375.1275.

- 375.1287. 1. A notice of transfer regarding an assumption reinsurance agreement shall be provided to the policyholders of a transferring insurer in the following manner:
 - (1) The transferring insurer shall provide or cause to be provided to each policyholder a notice of transfer by first class mail, addressed to the policyholder's last known address or to the address to which premium notices or other policy documents are sent or, with respect to home service business, by personal delivery with acknowledged receipt. A notice of transfer shall also be sent to the transferring insurer's agents and brokers of record on the affected policies;
 - (2) The notice of transfer shall state or provide:
 - (a) The date on which the transfer and novation of the policyholder's contract of insurance is proposed to take place;
 - (b) The name and addresses and telephone numbers of the transferring insurer and assuming insurer;
 - (c) That the policyholder has the right to either consent to or reject the transfer and novation;
 - (d) The procedures and time limit for consenting to or rejecting the transfer and novation;
 - (e) A summary of any effect that consenting to or rejecting the transfer and novation will have on the policyholder's rights;
 - (f) A statement that the assuming insurer is licensed to

- 1 write the type of business being assumed in the state where the
- 2 policyholder resides, or is otherwise authorized, as provided
- 3 herein, to assume such business;
- 4 (g) The name and address of the person at the transferring
- 5 insurer to whom the policyholder should send its written
- 6 statement of acceptance or rejection of the transfer and
- 7 novation;
- 8 (h) The address and phone number of the state insurance
- 9 department where the policyholder resides so that the
- 10 policyholder may write or call its insurance department for
- 11 further information regarding the financial condition of the
- 12 assuming insurer; and
- 13 (i) The following financial data for both companies:
- 14 a. Ratings for the last five years if available or for such
- lesser period as is available from two nationally recognized
- insurance rating services acceptable to the director including
- 17 the rating service's explanation of the rating's meaning. If
- 18 ratings are unavailable for any year of the five-year period,
- 19 this shall also be disclosed;
- 20 b. A balance sheet as of December thirty-first for the
- 21 previous three years if available or for such lesser period as is
- 22 available and as of the date of the most recent quarterly
- 23 statement;
- c. A copy of the management's discussion and analysis that
- was filed as a supplement to the previous year's annual
- 26 statement; and
- d. An explanation of the reason for the transfer;
- 28 (3) Notice in a form identical or substantially similar to

- 1 the following, or as specified by the director [of insurance] by regulation, shall be deemed to comply with the requirements of 2 3 this subsection: (FIRST, SECOND OR THIRD AND FINAL) 4 5 NOTICE OF TRANSFER 6 THIS NOTICE AFFECTS YOUR CONTRACT RIGHTS. 7 TMPORTANT: 8 PLEASE READ IT CAREFULLY. TRANSFER OF POLICY 9 10 11 The (name of assuming insurance company) has agreed to replace us 12 as your insurer under (insert policy/certificate name and number) 13 effective (insert date). The (assuming insurance company's) principal place of business is (insert address) and certain 14 15 financial information concerning both companies are attached, including: (1) ratings for the last five years if available or 16 for such lesser period as is available from two nationally 17 18 recognized insurance rating services; (2) balance sheets for the previous three years if available or for such lesser period as is 19 20 available and as of a date no later than ninety days prior to the 21 current date; (3) a copy of the management's discussion and 22 analysis that was filed as a supplement to the previous year's 23 annual statement; and (4) an explanation of the reason for the 24 transfer. You may obtain additional information concerning (name 25 of assuming insurance company) from reference materials in your 26 local library or by contacting your state insurance director at 27 (insert address). The (name of assuming insurance company) is
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licensed to write this coverage in your state.

1	Your Rights
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3	You may choose to accept or reject the transfer of your policy to
4	(name of assuming insurance company). If you want your policy
5	transferred, you must notify us in writing immediately by signing
6	and returning the enclosed preaddressed, postage-paid or by
7	writing to us at: (Insert name, address and facsimile number of
8	contact person.) Payment of your premiums to the assuming
9	company will also constitute acceptance of the transaction.
10	However, a method will be provided to allow you to pay the
11	premium while reserving the right to reject the transfer. If you
12	reject the transfer, you may keep your policy with us or exercise
13	any option under your policy. If we do not receive a written
14	rejection from you within thirty months of our first notice of
15	transfer, (insert date of initial mailing), you will, as a matter
16	of law, have consented to the transfer. However, before this
17	consent is final, you will be provided a second notice, twelve
18	months after our first notice, and a third and final notice,
19	twenty-four months after our first notice. After the third and
20	final notice is provided, you will have only six months to reply.
21	If you have paid your premium to (the assuming insurance company)
22	without reserving your right to reject the transfer, you will not
23	receive a subsequent notice.
24	Effect of Transfer
25	
26	If you accept this transfer, (name of assuming insurance company)

will be your insurer. It will have direct responsibility to you
for the payment of all claims, benefits and for all other policy

1	obligations. We will no longer have any	obligations to you. If	
2	you accept this transfer, you should mak	e all premium payments	
3	and claims submissions to (name of assum	ing insurance company)	
4	and direct all questions to (name of ass	uming insurance company).	
5	If you have any further questions about this agreement, you may		
6	contact (name of transferring insurance company) or (name of		
7	assuming insurance company).		
8 9	Sincerely,		
10	(Name of Transferring	(Name of Assuming	
11	Insurance Company	Insurance Company Address	
12	Address T	elephone Number)	
13	Telephone Number)		
14			
15	For your convenience, we have enclosed a preaddressed		
16	postage-paid response card. Please take time now to read the		
17	enclosed notice and complete and return the response card to us.		
18			
19	(Notice Date)		
20	RESPONSE CARD		
21			
22	Yes, I accept the transfer of my policy from (name of		
23	transferring company) to (name of assumi	ng company).	
24			
25	No, I reject the proposed transfe	er of my policy from (name	
26	of transferring company) to (name of ass	uming company) and wish	
27	to retain my policy with (name of transf	erring company). (Date)	
28	(Signature)	Name:	

1	•••••	Street Address:
2		City, State, Zip:
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- (4) The notice to transfer shall include a preaddressed, postage-paid response card which a policyholder may return as its written statement of acceptance or rejection of the transfer and novation;
- (5) The notice of transfer proposed to be used shall be filed as part of the prior approval requirement set forth below in subdivision (1) of subsection 2 of this section.
- 2. (1) Prior approval by the director is required for any transaction where an insurer domiciled in this state assumes or transfers obligations or risks on contracts of insurance under an assumption reinsurance agreement. No insurer licensed in this state shall transfer obligations or risks on contracts of insurance owned by policyholders residing in this state to any insurer that is not licensed in this state. An insurer domiciled in this state shall not assume obligations or risks on contracts of insurance owned by policyholders residing in any other state unless it is licensed in the other state, or the insurance regulatory official of that state has approved such assumption in writing;
- (2) Any licensed foreign insurer that enters into an assumption reinsurance agreement, which transfers the obligations or risks on contracts of insurance owned by policyholders residing in this state, shall file or cause to be filed the assumption certificate with the director [of insurance of this state], a copy of the notice of transfer, and an affidavit that

the transaction is subject to substantially similar requirements in the state of domicile of both the transferring and assuming

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insurer:

sections 375.1280 to 375.1295;

- Any licensed foreign insurer that enters into an 5 assumption reinsurance agreement, which transfers the obligations 6 or risks on contracts of insurance owned by policyholders 7 residing in this state, shall obtain the prior approval of the 8 director [of insurance of this state] and shall be subject to all 9 other requirements of sections 375.1280 to 375.1295 unless the 10 transferring and assuming insurers are subject to assumption 11 reinsurance requirements adopted by statute or regulation in the jurisdiction of their domicile which are substantially similar to 12
 - (4) No insurer required to receive approval of assumption reinsurance transactions under this section shall enter into an assumption reinsurance transaction until:
 - (a) Thirty days after the director has received a request for approval and has not within such period disapproved such transaction; or
 - (b) The director shall have approved the transaction within the thirty-day period;
 - (5) The following factors, along with such other factors as the director deems appropriate under the circumstances, shall be considered by the director in reviewing the request for approval:
 - (a) The financial condition of the transferring and assuming insurer and the effect the transaction will have on the financial condition of each company;
 - (b) The competence, experience and integrity of those

- 1 persons who control the operation of the assuming insurer;
- 2 (c) The plans or proposals the assuming party has with
- 3 respect to the administration of the policies subject to the
- 4 proposed transfer;
- 5 (d) Whether the transfer is fair and reasonable to the
- 6 policyholders of both companies;
- 7 (e) Whether the notice of transfer to be provided by the
- 8 insurer is fair, adequate and not misleading; and
- 9 (f) Whether the transfer lessens competition or restrains
- 10 trade.
- 3. Any officer, director or stockholder of any insurer
- violating or consenting to the violation of any provision of
- 13 subsection 2 of this section is guilty of a class D felony.
- 14 375.1300. When used in sections 375.1300 to 375.1312, the
- 15 following terms mean:
- 16 (1) "Consultant", an individual, partnership or corporation
- 17 who, for a fee, holds himself or itself out to the public as
- 18 engaged in the business of offering any advice, counsel, opinion
- 19 or service with respect to the benefits, advantages or
- 20 disadvantages promised under any policy of insurance that could
- 21 be issued in this state;
- 22 (2) "Director", the director of the department of
- insurance, financial and professional regulation of this state;
- 24 (3) "Genetic information", the results of a genetic test.
- 25 Genetic information shall not include family history, the results
- of routine physical measurements, or the results of chemical,
- 27 blood, urine analysis, or the results of tests for drugs or the
- 28 presence of the human immunodeficiency virus, or from results of

- 1 any other tests commonly accepted in clinical practice at the
- 2 time;
- 3 (4) "Genetic test", a laboratory test of human
- 4 deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) used to
- 5 identify the presence or absence of inherited alterations in the
- 6 DNA or RNA which cause predisposition to disease or illness. The
- 7 term does not include routine physical measurements and
- 8 examinations, routine tests performed as a part of a physical
- 9 examination, chemical, blood or urine analysis, cholesterol
- tests, tests for the presence of the human immunodeficiency
- virus, a test for drugs, or tests commonly accepted in clinical
- 12 practice at the time;
- 13 (5) "Insurer", any person, reciprocal exchange,
- 14 interinsurer, Lloyds insurer, fraternal benefit society, and any
- other legal entity engaged in the business of insurance,
- including agents, brokers, adjusters and third-party
- 17 administrators. "Insurer" also includes health services
- 18 corporations, health maintenance organizations, prepaid limited
- 19 health care service plans, dental, optometry and other similar
- 20 health service plans. For purposes of sections 375.930 to
- 375.948, such entities shall be deemed to be engaged in the
- 22 business of insurance. "Insurer" shall also include all
- companies organized, incorporated or doing business pursuant to
- 24 the provisions of chapters 325, 375, 376, 377, 378, 379, 381 and
- 25 383, RSMo;
- 26 (6) "Person", any natural or artificial entity, including,
- but not limited to, individuals, partnerships, associations,
- 28 trusts or corporations;

1 (7) "Policy", "certificate" or "contract" includes any 2 contract of insurance, indemnity, medical, health or hospital 3 service, suretyship, or annuity issued, proposed for issuance, or 4 intended for issuance by any insurer.

2.7

- 375.1506. 1. Each insurer marketing policies to which sections 375.1500 to 375.1527 are applicable shall notify the director [of the department of insurance] whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on August 28, 1998, the insurer shall identify in writing those forms and whether or not an illustration will be used with them. For policy forms filed after August 28, 1998, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the director [of the department of insurance].
 - 2. If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.
 - 3. If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with sections 375.1500 to 375.1527 is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of

- the coverage on the lives of members of the group or the multiple lives covered.
- 4. Potential enrollees of nonterm group life subject to sections 375.1500 to 375.1527 shall be furnished a quotation with
- 5 the enrollment materials. The quotation shall show potential
- 6 policy values for sample ages and policy years on a quaranteed
- 7 and nonguaranteed basis appropriate to the group and the
- 8 coverage. This quotation shall not be considered an illustration
- 9 for purposes of sections 375.1500 to 375.1527, but all
- information provided shall be consistent with the illustrated
- 11 scale. A basic illustration shall be provided at delivery of the
- certificate to enrollees for nonterm group life who enroll for
- more than the minimum premium necessary to provide pure death
- benefit protection. In addition, the insurer shall make a basic
- illustration available to any nonterm group life enrollee who
- 16 requests it.
- 17 375.1524. 1. The board of directors of each insurer shall
- 18 appoint one or more illustration actuaries.
- 19 2. The illustration actuary shall certify that the
- 20 disciplined current scale used in illustrations is in conformity
- 21 with the actuarial standard of practice for compliance with the
- 22 NAIC model regulation of life insurance illustrations promulgated
- by the actuarial standards board, and that the illustrated scales
- 24 used in insurer-authorized illustrations meet the requirements of
- 25 sections 375.1500 to 375.1527.
- 26 3. The illustration actuary shall:
- 27 (1) Be a member in good standing of the American Academy of
- 28 Actuaries;

- 1 (2) Be familiar with the standard of practice regarding 2 life insurance policy illustrations;
- 3 (3) Not have been found by the director [of the department of insurance], following appropriate notice and hearing to have:
- 5 (a) Violated any provision of, or any obligation imposed 6 by, the insurance law or other law in the course of his or her 7 dealings as an illustration actuary;
 - (b) Been found guilty of fraudulent or dishonest practices;
 - (c) Demonstrated his or her incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or

- (d) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- (4) Not fail to notify the director [of the department of insurance] of any action taken by a commissioner or director of insurance of another state similar to that pursuant to subdivision (3) of this subsection;
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this shall be disclosed in the annual certification. If nonguaranteed elements illustrated for both

- 1 new and in- force policies are not consistent with the
- 2 nonguaranteed elements actually being paid, charged or credited
- 3 to the same or similar forms, this shall be disclosed in the
- 4 annual certification; and

- 5 (6) Disclose in the annual certification the method used to 6 allocate overhead expenses for all illustrations:
 - (a) Fully allocated expenses;
- B (b) Marginal expenses; or
- 9 (c) A generally recognized expense table based on fully
 10 allocated expenses representing a significant portion of
 11 insurance companies and approved by the director [of the
 12 department of insurance].
- 4. (1) The illustration actuary shall file a certification with the board and with the director [of the department of insurance]:
- 16 (a) Annually for all policy forms for which illustrations 17 are used; and
 - (b) Before a new policy form is illustrated.
- 19 (2) If an error in a previous certification is discovered, 20 the illustration actuary shall notify the board of directors of 21 the insurer and the director [of the department of insurance] 22 promptly.
- 5. If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall notify the board of directors of the insurer and the director [of the department of insurance] promptly of his or her inability to certify.
- 28 6. A responsible officer of the insurer, other than the

- 1 illustration actuary, shall certify annually:
- 2 (1) That the illustration formats meet the requirements of
- 3 sections 375.1500 to 375.1527 and that the scales used in
- 4 insurer-authorized illustrations are those scales certified by
- 5 the illustration actuary; and
- 6 (2) That the company has provided its agents with
- 7 information about the expense allocation method used by the
- 8 company in its illustrations and disclosed as required in
- 9 subdivision (6) of subsection 3 of this section.
- 7. The annual certifications shall be provided to the
- director [of the department of insurance] each year by a date
- determined by the insurer.
- 8. If an insurer changes the illustration actuary
- 14 responsible for all or a portion of the company's policy forms,
- the insurer shall notify the director [of the department of
- insurance] of that fact promptly and disclose the reason for the
- 17 change.
- 18 375.1730. Any insurance company that sells liability
- insurance which provides coverage for dram shop liability as
- described in section 537.053, RSMo, shall report all costs
- associated with such coverages to the department [of insurance].
- 22 The rates for such coverage shall be governed pursuant to section
- 23 379.889, RSMo.
- 24 _____ 376.005. 1. As used in this chapter, unless otherwise
- 25 clearly indicated by the context, the following words mean:
- 26 (1) "Department", the department of insurance, financial
- 27 <u>and professional regulation; and</u>
- 28 (2) "Director", the director of the department of

insurance, financial and professional regulation.

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2 376.020. Corporations doing the business mentioned in section 376.010, which are owned and controlled entirely by the 3 stockholders, and in neither the management nor the profits of 5 which the policyholders participate, shall be considered "joint 6 stock companies"; such corporations having no capital stock, and 7 in the management and profits of which the policyholders alone participate shall be considered "mutual companies"; and such 8 9 corporations having a capital stock, but in the management or in 10 the profits of which, or in both, the policyholders or any class 11 or classes of policyholders are or may become entitled to 12 participate, shall be considered "stock and mutual companies"; 13 provided, that any association consisting of not more than one thousand five hundred citizens, residents of the state of 14 15 Missouri, all living within the boundaries of not more than three counties in this state, said counties to be contiguous to each 16 17 other, organized not for profit and solely for the purpose of 18 assessing each of the members thereof upon the death of a member, 19 the entire amount of said assessment, except ten cents paid by 20 each member, to be given to a beneficiary or beneficiaries named by the deceased member in his or her certificate of membership, 21 22 said certificate of membership to be issued by such association, shall not be construed to be a life insurance company under the 23 24 laws of this state, but provided, however, no officer, trustee or other employee of such association shall receive any remuneration 25 for any services rendered, except the secretary of such 26 27 association who shall be permitted to charge each member, for his 28 services and for the cost of collecting the assessment, not more

than ten cents for each assessment levied; and provided further, 1 2 that said association may if necessary assess not more than twenty-five cents per member in any one year to be used only to 3 purchase necessary supplies, pay court costs and attorney fees; and provided further, that whenever the director [of the 5 6 insurance department] suspects or believes that any officer, 7 trustee or other employee of such association is in fact directly or indirectly receiving remuneration, or that the secretary of 9 such association is collecting and receiving more than herein 10 provided for, he may cause an examination of the books, records 11 and other effects of such association, including its officers and 12 employees, to be made in order to ascertain the true condition of 13 affairs and whenever such examination is made, an assessment 14 shall be levied on the members thereof, sufficient to pay the 15 cost of such examination, but no such assessment shall be for 16 more than one dollar per member; provided, that nothing herein 17 shall be construed to apply to any corporation organized under the provisions of sections 377.010 to 377.190, RSMo, or to any 18 19 association having more than one thousand five hundred members. 20 376.050. The persons mentioned in section 376.010 shall be 21 designated as "corporators", and such corporators, desiring to 22 form a company for the purpose of transacting the business 23 mentioned in said section, or any part of the same, shall file in 24 the office of the director [of the insurance department] a declaration signed by each of said corporators, setting forth the 25 26 place of residence of each of them, and their intention to form a 27 corporation for the purpose of transacting the business

aforesaid, which declaration shall comprise a copy of the charter

proposed to be adopted by them; and they shall publish once in each week, or oftener, for at least four weeks, in a newspaper of general circulation, published in the county where such

4 corporation is proposed to be located, a notice of the filing of

5 such declaration, together with a copy of the same.

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376.070. Whenever the corporators have filed the declaration required by section 376.050 and also the proof of publication therein required by the affidavit of the publisher of the newspaper in which the publication was made, his foreman or clerk, with the director [of insurance], the director shall submit the declaration to the attorney general of this state for examination, and if it is found by him to be in accordance with the provisions of sections 376.010 to 376.670 and not inconsistent with the constitution and laws of this state and the United States, he shall so certify and deliver it back to the director. The director shall cause the declaration and affidavit, with the certificate of the attorney general, to be recorded in a book kept for that purpose, and furnish a certified copy of the same to the corporators, and also file a certified copy of the same with the secretary of state, who, upon payment to the director of revenue of the tax required by section 351.065, RSMo, shall issue a certificate of incorporation, upon the receipt of which they become a body politic and corporate, and may proceed to organize in the manner set forth in their charter, and to open books for subscription to the capital stock of the company, and keep the same open until the whole amount specified in the charter is subscribed. No company shall issue policies or transact any business of any kind or nature

whatsoever, except as aforesaid, until it has fully complied with the requirements of sections 376.010 to 376.670.

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376.090. When the corporators have fully complied with the requirements of the preceding sections, and the laws of this state governing the organization of private corporations, and said corporation has deposited with the director [of the insurance department] the amount of capital required to be deposited by section 376.290, and shall have filed with the director a certified copy of the certificate of incorporation issued by the secretary of state, it shall be his duty to furnish the company a certificate of such deposit, and his certificate of authority for it to commence the business proposed in its charter, which, with the certified copies of the aforesaid declaration and certificates, on being filed and recorded in the office of the recorder of the county in which the company is to be located, shall be its authority to commence business and issue policies; and such certified copies of the declaration certificates and certificate of deposit may be used in evidence for or against said company, with the same effect as the originals.

376.130. When the corporators have fully complied with the requirements of the preceding sections, and the laws of this state governing the organization of private corporations, and said corporation has deposited with the director [of the insurance department] the amount of notes, bonds and mortgages, or deeds of trust, required by sections 376.010 to 376.670, and shall have filed with the director a certified copy of the certificate of incorporation issued by the secretary of state, it

- shall be his duty to furnish the company a certificate of such
- 2 deposit, and his certificate of authority for it to commence the
- 3 business proposed in its charter, which, with the certified
- 4 copies of the aforesaid declaration and certificates, on being
- 5 filed and recorded in the office of the recorder of the county in
- 6 which the company is to be located, shall be its authority to
- 7 commence business and issue policies; and such certified copies
- 8 of the declarations, certificates and certificate of deposit may
- 9 be used in evidence, for or against said company, with the same
- 10 effect as the originals.
- 11 376.142. 1. Any domestic stock life insurance corporation,
- incorporated under a general law, may become a mutual life
- insurance corporation, and to that end may carry out a plan for
- 14 the acquisition of shares of its capital stock, provided such
- 15 plan
- 16 (1) Has been adopted by a vote of a majority of the
- 17 directors of such corporation;
- 18 (2) Has been approved by a vote of stockholders
- 19 representing a majority of the capital stock then outstanding at
- a meeting of stockholders called for the purpose;
- 21 (3) Has been approved by a majority of the policyholders
- voting at a meeting of policyholders called for the purpose, each
- of whom is insured in a sum of at least one thousand dollars and
- 24 whose insurance shall then be in force and shall have been in
- force for at least one year prior to such meeting.
- 26 2. As used in this section, "policyholder" means the person
- insured under an individual policy of life insurance, and the
- 28 person to whom any annuity or pure endowment is presently or

prospectively payable by the terms of an individual annuity or 1 2 pure endowment contract, except where the policy or contract declares some other person to be the owner or holder thereof, in 3 which case such owner or policyholder shall be deemed the 5 policyholder, and except in cases of assignment. In the case of 6 any individual policy or contract insuring two or more persons 7 jointly or in case the policy or contract declares two or more persons to be the owner, the persons insured or declared to be 8 9 the owner are considered as one policyholder for the purposes of 10 this section. In case any such policy or contract has been 11 assigned by an assignment absolute on its face to an assignee 12 other than the corporation, and such assignment has been filed at 13 the principal office of the corporation at least thirty days prior to the date of the meeting of the policyholders, then such 14 15 assignee shall be deemed a policyholder. Except as provided in this section, an assignee of a policy or contract shall not be 16 17 deemed a policyholder. The reference in subdivision (3) of 18 subsection 1 to insurance in the amount of one thousand dollars 19 or more is deemed to include any annuity contract, the commuted 20 value of which is one thousand dollars or more on the date of 21 said meeting, and any pure endowment contract for the principal 22 sum of one thousand dollars or more.

3. Notice of the meeting of policyholders shall be given by mailing such notice from the home office of the corporation at least thirty days prior to such meeting in a sealed envelope, postage prepaid, addressed to such policyholders at their last known post-office addresses, provided that personal delivery of such written notice to any policyholder evidenced by written

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receipt therefor may be substituted for mailing the same. meeting shall be otherwise provided for and conducted in such manner as is provided in the mutualization plan, provided that policyholders may vote in person, by proxy, or by mail, and that all votes shall be cast by ballot on a uniform ballot furnished by the corporation. The director [of the department of insurance] shall supervise and direct the method and procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting who may determine all questions concerning the verification of the ballots, the ascertainment of the validity of such ballots, the qualifications of the voters, and the canvass of the vote, and who shall certify to the director and to the corporation the result of such proceedings, which shall be supervised by said inspectors in accordance with such rules and regulations as are prescribed by the director. All necessary expenses incurred by the director shall be paid by the corporation, as certified to by him.

4. Such plan may provide for the acquisition of the shares of the capital stock of the corporation, the price at which it is proposed to acquire the same, and the method of acquisition and mode of payment therefor, whether immediate or deferred. Before such a plan can be carried out, it must be submitted to the director [of the department of insurance] and must be approved by him in writing; provided that every payment for the acquisition of any shares of the capital stock of such corporation, the purchase price of which is not fixed by such plan, shall be subject to the approval of the director, and provided that neither such plan, nor any such payment, shall be approved by the

director unless at the time of such approvals, respectively, the 1 2 corporation, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital 3 stock, and, in the case of any payment not fixed by such plan and subject to separate approval by the director, after deducting 6 also the amount of such payment, shall be possessed of assets 7 sufficient to maintain its deposit made previously with the director, and such assets shall be not less than the entire 8 9 liabilities of the corporation, including the net values of its 10 outstanding contracts computed according to the standard adopted 11 by the corporation under sections 376.010 to 376.670 and 12 including all funds, contingent reserves, and surplus, except for 13 such surplus as has been appropriated or paid under such plan. 376.143. 1. If a domestic stock life insurance corporation 14 15 determines to become a mutual life insurance corporation, it may, in carrying out any plan to that end under section 376.142, 16 17 acquire any shares of its own stock by gift, bequest, or 18 purchase. Until all of such shares are acquired, any shares so 19 acquired, or acquired pursuant to section 376.144, shall be 20 acquired in trust for the corporation as provided in subsection 2, and shall be assigned and transferred on the books of the 21 22 corporation to not less than three nor more than five trustees. 23 Such shares shall be held by them in trust and be voted by such 24 trustees at all corporate meetings at which stockholders have the right to vote, until all of the capital stock of such corporation 25 26 is acquired, at which time the entire capital stock shall be 27 retired and canceled and the corporation shall become, thereupon,

a mutual life insurance corporation without capital stock.

The trustees provided for in subsection 1 shall be appointed and vacancies shall be filled by the director [of the department of insurance]. Such trustees shall be qualified directors of the corporation at the time of such appointment and shall continue as such trustees until the purpose of the trust is accomplished or abandoned, unless they are removed for cause by the director. Said trustees shall file with the director a verified acceptance of their appointment and a declaration that they will faithfully discharge their duties as trustees. trustees shall give and file with the director bonds in such an amount as under the circumstances the director deems proper, with sureties thereon approved by the director. All dividends and other sums received by said trustees on the shares of stock held by them shall be immediately repaid to said corporation. necessary expenses of executing the trust shall be paid by the corporation. All shares held by such trustees are considered as admitted assets of such corporation at their par value.

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- 3. Neither the retirement of the corporation's capital stock nor the amendment of its articles of incorporation shall affect existing suits, rights, or contracts of such corporation. The deposit of securities made by such corporation, pursuant to sections 376.010 to 376.670, shall be retained by the director in trust for the benefit and security of all of the members and policyholders of such corporation.
- 376.144. 1. If a stockholder of any domestic stock life insurance corporation planning to become a mutual life insurance corporation under section 376.142 files with the corporation prior to or at the meeting of the stockholders at which the plan

is submitted to a vote, a written objection to such plan and does not vote in favor thereof, and such stockholder within twenty days after the plan is approved by such meeting makes written demand on the corporation for payment of the fair cash value of his shares as of the day prior to the date on which such plan is approved by the stockholders, excluding from such fair cash value any appreciation or depreciation in consequence of such mutualization, such stockholder shall be entitled to receive, within ninety days after such fair cash value is agreed upon or determined, upon surrender of his certificates representing his shares, such fair cash value thereof. Any stockholder who fails to make such objection or having objected fails to make demand within the twenty-day period shall be conclusively presumed to have consented to the plan and shall be bound by the terms thereof.

2. Any such objection and demand for the payment of the fair cash value of shares shall state the number and kind of shares held by the dissenting stockholder making the demand, and the amount which such stockholder claims is their fair cash value.

- 3. The right of a dissenting stockholder to be paid the fair cash value of his shares shall cease when the corporation, for any reason and in accordance with the provisions set forth in this section, abandons the plan to mutualize the corporation.
- 4. No demand for payment of such fair cash value may be withdrawn by the stockholder making the same unless the corporation, by its board of directors, consents to such withdrawal.

5. Within ten days after the receipt of any such demand the corporation shall inform such stockholder in writing whether it will pay the demanded amount, and, if it refuses to pay such amount, it shall offer in writing to pay another amount as such fair cash value.

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- demand made by the dissenting stockholder, the value of such shares is agreed upon between the dissenting stockholder and the corporation and such value is approved by the director [of the department of insurance], payment therefor shall be made within ninety days after the date of such agreement, upon the surrender of the stockholder's certificates representing such shares. Upon payment of the agreed value the dissenting stockholder ceases to have any interest in such shares and ceases to be a stockholder in the corporation, but the shares previously held by him and upon which he has been paid such fair cash value shall be transferred to and held by the trustees appointed under subsections 2 and 3 of section 376.143 for benefit of the corporation.
- 7. If, within such period of thirty days, the stockholder and the corporation do not agree upon the value of the shares, the corporation, or the dissenting stockholder if he has complied with this section, may, within sixty days after the expiration of the thirty-day period, petition the circuit court of the county in which the principal office of the corporation is located, to determine the fair cash value of the shares mentioned in such demand as of the day before the vote was taken approving such plan.

- 8. If such petition is not filed within the sixty-day
 period, the fair cash value of the shares is conclusively deemed
 to be equal to the amount offered to the dissenting stockholder
 by the corporation if any such offer has been made or, if not,
 then an amount equal to that demanded by the dissenting
 stockholder.
 - 9. The petition shall contain a brief statement of the facts and shall show the vote and action objected to and facts entitling such dissenting stockholder to the relief demanded.

- 10. Upon the filing of such petition, the court, on the motion of the petitioner, shall enter an order fixing a date for hearing, and requiring a notice of the filing and prayer of such petition and of the date for hearing to be given to the respondent or defendant in the manner in which a summons is required to be served or substituted service is required to be made in other cases.
- any adjournment thereof, the court shall determine from the petition and such evidence as is submitted by either party whether the dissenting stockholder is entitled to be paid the fair cash value of any shares, and the number of such shares, and if the court finds and orders that such stockholder is entitled to be paid the fair cash value of any number of shares, the court shall appoint three appraisers to determine the fair cash value of such number of shares as of the day before the vote objected to was taken, excluding from such fair cash value any appreciation or depreciation in consequence of the mutualization or vote of the corporation, and said court shall further instruct

- the appraisers respecting their duties in making such determination.
- 12. The appraisers shall forthwith proceed to determine 3 said fair cash value and said appraisers, or a majority of them, 5 shall make a report or award within ten days, unless the court 6 increases said time, and shall file such report in the office of 7 the clerk of the circuit court, whereupon, on the motion of either party, said report shall be submitted to the court and 8 9 considered on such evidence as the court considers relevant, and 10 if said award is found to be reasonable, and is confirmed and 11 approved by the court, judgment shall be rendered against the 12 corporation for the payment of the amount of the award, with 13 interest at six percent from a date which shall be fixed in such 14 judgment.
- 13. If such appraisers, or a majority of them, fail to make 16 and file an award within ten days, or within such further time as 17 may be fixed by the court, or the award is not confirmed by the 18 court, it shall summarily determine the fair cash value of said 19 number of shares and render judgment therefor.

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- 14. Any judgment shall further provide that simultaneously with its payment the certificates evidencing the shares of stock affected shall be surrendered to the corporation and, upon the failure of the holder thereof to surrender such certificates, the judgment shall stand as a cancellation of such certificates.
- 15. The cost of the proceedings, including reasonable compensation to the appraisers to be fixed by the court, shall be assessed or apportioned as the court considers equitable.
 - 16. Such a proceeding is considered as a special proceeding

- and shall be advanced upon the court's docket, and final orders therein may be reviewed, affirmed, modified or reversed as in other civil actions or proceedings.
 - 17. Two or more dissenting stockholders may join as plaintiffs or be joined as defendants in any proceeding under this section, and two or more such proceedings may be consolidated.

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- 8 18. A stockholder who so objects in writing and demands in 9 writing payment of the fair cash value of any shares shall not be 10 entitled to vote such shares or to exercise any rights respecting 11 such shares or to receive any dividends or distributions thereon, 12 unless the plan of mutualization is abandoned, or, with the 13 consent of the corporation, the objection and demand are withdrawn; provided that if, prior to such abandonment, dividends 14 15 are paid in money to stockholders who are of record on or after 16 the day on which the vote was taken authorizing such 17 mutualization, then an amount of money equal to the dividends 18 otherwise payable upon such dissenting shares shall be paid to 19 the holders of record thereof who would, except for their 20 dissent, be entitled to receive such dividends, and each such 21 payment shall be a credit upon the total amount to be paid for 22 such shares by the corporation. All the holders of such 23 dissenting shares of record at the time of any such abandonment, 24 shall thereupon be restored to the status of a stockholder, and 25 any payments made previously on such shares shall be considered as dividends thereon. 26
 - 19. Any stockholder who has assented to the plan or who has been concluded by the vote of the assenting stockholders, and any

stockholder who has objected and made demand in writing for the fair cash value of his shares subsequent to which an agreement has been reached fixing such fair cash value, but who fails to surrender his certificates for cancellation upon payment of the amount to which he is entitled, may be ordered to do so by a decree of the circuit court for the county in which the principal office of such corporation is located after notice and hearing in an action instituted by the corporation for that purpose, and such decree may provide that, upon the failure of the stockholder to surrender such certificates for cancellation, the decree shall stand in lieu of such surrender and cancellation.

20. At any time before there has been a vote of the policyholders approving a plan of mutualization, the corporation may abandon such plan by the same vote of the directors and of the stockholders as was required for its adoption. Upon such abandonment, the rights of any stockholders to be paid for their stock in accordance with the plan, and the rights of any dissenting stockholders to be paid the fair cash value of their stock, whether or not judgment may have been rendered therefor, shall terminate, and the corporation shall continue to conduct its business as a domestic stock life insurance corporation as though no plan of mutualization had ever been adopted.

376.170. All life insurance companies organized under the provisions of sections 376.010 to 376.670 shall deposit with the director [of the insurance department], in addition to other amounts required by law to be deposited by life insurance companies before such companies are permitted to engage in the business of issuing policies of life insurance and annuity bonds,

- 1 cash or securities of the kind and type in which life insurance
- 2 companies are required to invest their funds under section
- 3 376.300, as same now is or as same may be hereafter amended, in
- 4 an amount sufficient to equal the net value on all policies or
- 5 annuity bonds hereafter issued by such companies, the amount
- 6 thereof to be determined by an evaluation made in accord with the
- 7 provisions of sections 376.010 to 376.670.
- 8 376.210. Whenever the aggregate market value of the
- 9 securities deposited by any company shall exceed the net reserve
- 10 liability of the company on all of its registered policies and
- annuity bonds, the excess may be returned to the company, or,
- whenever the liability of such company on such policies shall
- cease, the director [of the insurance department] shall return
- 14 the securities deposited.
- 15 376.220. Should any company depositing under section
- 16 376.170 become the owner of real estate for its own use and
- 17 accommodations, or become temporarily seized and possessed of
- 18 real estate in satisfaction of debt for which such real estate
- was pledged for security, such company may execute its own note
- 20 for the value of such real estate, payable to the director, as
- 21 trustee, and secure the said notes or bonds by duly recorded
- 22 deeds of trust of said real estate; which notes or bonds thus
- 23 secured may be deposited with said director as proper security,
- under and according to the provisions of sections 376.010 to
- 25 376.670, said value to be subject to the approval of the director
- 26 [of the insurance department].
- 27 376.230. Any company shall have the right at any time to
- change the securities on deposit with the director [of the

- insurance department] by substituting a like amount of the 2 character required in the first instance and to withdraw any
- 3 excess of securities; and so long as such company shall remain
- 4 solvent, and the amount of its deposits as herein required are
- 5 not impaired, it may collect the interest on the securities
- 6 deposited as the same accrues.
- 7 376.240. The securities deposited under the provisions of
- section 376.170 shall be legally transferred to the director [of 8
- 9 the insurance department], and so large an amount thereof as may
- 10 be necessary to equal, at all times, the net value of the
- outstanding registered policies and annuity bonds, less such 11
- 12 liens not exceeding such value as the company may hold against
- them, shall be held by him in trust for the purposes of sections 13
- 376.010 to 376.670, until the obligations of said companies, 14
- 15 under said registered policies and annuity bonds shall, to the
- 16 satisfaction of the said director, be fully liquidated, canceled
- 17 or annulled.

- 18 376.290. No existing company organized under any general or
- 19 special law of this state, and transacting business of the
- 20 character designated in section 376.010, nor any company
- 21 organized under sections 376.010 to 376.670, shall commence,
- 22 continue or carry on business until the company has transferred
- 23 to and deposited with the director [of the department of
- 24 insurance], for the security of its policyholders, the sum of six
- 25 hundred thousand dollars in notes or bonds secured by mortgages
- 26 or deeds of trust of the description mentioned in section
- 27 376.280, or bonds or treasury notes of the United States, or
- bonds of the state of Missouri, or funded bonds of any county or 28

- 1 municipal township of this state, and in all cases not to be
 2 received at a rate above their par value, nor above their current
- 3 market value.
- 4 376.300. 1. All other laws to the contrary
- 5 notwithstanding, the capital, reserve and surplus of all life
- 6 insurance companies of whatever kind and character organized
- 7 pursuant to the laws of this state shall be invested only in the
- 8 following:
- 9 (1) Bonds, notes or other evidences of indebtedness,
- issued, assumed or guaranteed as to principal and interest, by
- 11 the United States, any state, territory or possession of the
- 12 United States, the District of Columbia, or of an administration,
- agency, authority or instrumentality of any of the political
- units enumerated, and of the Dominion of Canada;
- 15 (2) Bonds, notes or other evidences of indebtedness issued,
- assumed or guaranteed as to principal and interest by any foreign
- 17 country or state not mentioned in subdivision (1) insofar as such
- bonds, notes or other evidences of indebtedness may be necessary
- 19 or required in order to do business in such foreign state or
- 20 country;
- 21 (3) Bonds, notes or other evidences of indebtedness issued,
- 22 guaranteed or insured as to principal and interest by a city,
- 23 county, drainage district, levee district, road district, school
- 24 district, tax district, town, township, village or other civil
- administration, agency, authority, instrumentality or subdivision
- of a city, county, state, territory or possession of the United
- 27 States or of the District of Columbia, provided such obligations
- 28 are authorized by law;

1 (4) Loans evidenced by bonds, notes or other evidences of 2 indebtedness guaranteed or insured, but only to the extent 3 guaranteed or insured by the United States, any state, territory 4 or possession of the United States, the District of Columbia, or 5 by any agency, administration, authority or instrumentality of 6 any of the political units enumerated;

- (5) Bonds, notes or other evidences of indebtedness issued, assumed or guaranteed by a corporation organized under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, provided such bonds, notes or other evidences of indebtedness shall meet with the requirements of section 375.532, RSMo, and sections 375.1070 to 375.1075, RSMo;
- which are adequately secured, or other adequately secured instruments evidencing an interest in any equipment leased or sold to a corporation, other than the life insurance company making the investment or its parent or affiliates, which qualifies under subdivision (5) of this subsection for investment in its bonds, notes, or other evidences of indebtedness, or to a common carrier, domiciled within the United States or the Dominion of Canada, with gross revenues exceeding one million dollars in the fiscal year immediately preceding purchase, which provide a right to receive determined rental, purchase, or other fixed obligatory payments for the use or purchase of such equipment and which obligatory payments are adequate to retire the obligations within twenty years from date of issue; or
 - (b) Notes, trust certificates, or other instruments which

are adequately secured. Such notes, trust certificates, or other instruments shall be considered adequately secured for the purposes of this paragraph if a corporation or corporations which qualify under subdivision (5) of this subsection for investment in their bonds, notes, or other evidences of indebtedness, are jointly or severally obliged under a binding lease or agreement to make rental, purchase, use, or other payments for the benefit of the life insurance company making the investment which are adequate to retire the instruments according to their terms within twenty years from date of issue;

- (7) Preferred or guaranteed stocks or shares of any solvent corporation created or existing under the laws of the United States, any state, territory or possession of the United States, or the District of Columbia, if all of the prior obligations including prior preferred stocks, if any, of such corporation, at the date of acquisition, are eligible as investments under any provisions of this section; and if qualified under section 375.532, RSMo, and sections 375.1070 to 375.1075, RSMo;
- (8) Stocks or shares of insured state-chartered building and loan associations, federal savings and loan associations, if such shares are insured by the Federal Savings and Loan Insurance Corporation pursuant to the terms of Title IV of the act of the Congress of the United States, entitled "The National Housing Act" (12 U.S.C.A. Sections 1724 to 1730), as the same presently exists or may subsequently be amended, and federal home loan banks;
- (9) Loans evidenced by notes or other evidences of indebtedness and secured by first mortgage liens on unencumbered

real estate or unencumbered leaseholds having at least 1 2 twenty-five years of unexpired term, such real estate or leaseholds to be located in the United States, any territory or 3 possession of the United States. Such loans shall not exceed 5 eighty percent of the fair market value of the security of the 6 loan for insurance companies. However, insurance companies may 7 make loans in excess of eighty percent of the fair market value of the security for the loan, but not to exceed ninety-five 8 9 percent of the fair market value of the security for the loan, if 10 that portion of the total indebtedness in excess of seventy-five 11 percent of the value of the security for the loan is quaranteed 12 or insured by a mortgage insurance company authorized by the 13 director [of insurance] to do business in this state, and 14 provided the mortgage insurance company is not affiliated with 15 the entity making the loan. In addition, an insurance company 16 may not place more than two percent of its admitted assets in 17 loans in which the amount of the loan exceeds ninety percent of 18 the fair market value of the security for the loan. An entity which is restricted by section 104.440, RSMo, in making 19 20 investments to those authorized life insurance companies may make 21 loans in excess of eighty percent of the fair market value of the 22 security of the loan if that portion of the total indebtedness in 23 excess of eighty percent of the fair market value is insured by a mortgage insurance company authorized by the director [of 24 25 insurance] to do business in this state. Any life insurance 26 company may sell any real estate acquired by it and take back a 27 purchase money mortgage or deed of trust for the whole or any 28 part of the sale price; and such percentage may be exceeded if

- 1 and to the extent such excess is guaranteed or insured by the
- 2 United States, any state, territory or possession of the United
- 3 States, any city within the United States having a population of
- 4 one hundred thousand or more or by an administration, agency,
- 5 authority or instrumentality of any such governmental units; and
- 6 such percentage shall not exceed one hundred percent if such a
- 7 loan is made to a corporation which qualifies pursuant to
- 8 subdivision (5) for investment in its bonds, notes or other
- 9 evidences of indebtedness, or if the borrower assigns to the
- 10 lender a lease or leases on the real estate providing rentals
- payable to the borrower in amounts sufficient to repay such loan
- 12 with interest in the manner specified by the note or notes
- evidencing such loan and executed as lessee or lessees by a
- 14 corporation or corporations, which qualify pursuant to
- 15 subdivision (5) for investment in its or their bonds, notes or
- other evidences of indebtedness. No mortgage loan upon a
- 17 leasehold shall be made or acquired pursuant to this subdivision
- unless the terms of the mortgage loan shall provide for
- 19 amortization payments to be made by the borrower on the principal
- thereof at least once in each year in amounts sufficient to
- 21 completely amortize the loan within four-fifths of the term of
- 22 the leasehold which is unexpired at the time the loan is made,
- 23 but in no event exceeding thirty years. Real estate or a
- leasehold shall not be deemed to be encumbered by reason of the
- 25 existence in relation thereto of:
- 26 (a) Liens inferior to the lien securing the loan made by
- 27 the life insurance company;
- (b) Taxes or assessment liens not delinquent;

1 (c) Instruments creating or reserving mineral, oil or 2 timber rights, rights-of-way, common or joint driveways, 3 easements for sewers, walls or utilities;

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- 4 (d) Building restrictions and other restrictive covenants; 5 or
 - (e) An unassigned lease reserving rents or profits to the owner:
 - indebtedness issued, assumed or guaranteed by an urban redevelopment corporation organized pursuant to the provisions of chapter 353, RSMo, known as the "Urban Redevelopment Corporations Law", or any amendments thereto, or any law enacted in lieu thereof; provided, that one or more such life insurance companies may, with the approval of the director [of the department of insurance], subscribe to and own all of the shares of stock of any such urban redevelopment corporation; and provided further, that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent of the admitted assets of such company;
 - (11) Land situated in this state and located within an area subject to redevelopment within the meaning of the urban redevelopment corporations law, or any amendments thereto, or any law enacted in lieu thereof, which land is acquired for the purposes specified in such urban redevelopment corporations law, and any such life insurance company may erect apartments, tenements or other dwelling houses, not including hotels, but including accommodations for retail stores, shops, offices and other community services reasonably incident to such projects,

- and such company may thereafter own, hold, rent, lease, collect 1 2 or receive income, maintain and manage such land so acquired and the improvements thereon, as real estate necessary and proper for 3 the carrying on of its legitimate business; provided, that any 5 such life insurance company shall have power to own, hold, 6 maintain and manage such land, and all improvements thereon, in 7 accordance with the urban redevelopment corporations law, amendments thereto or any law enacted in lieu thereof, and shall 8 have all the powers, duties, obligations, privileges and 9 10 immunities, including any tax exemption, credits or relief, 11 granted an urban redevelopment corporation, pursuant to the urban 12 redevelopment corporations law, amendments thereto or any law 13 enacted in lieu thereof, the same as if such insurance company 14 were an urban redevelopment corporation organized pursuant to the provisions of that law; provided, that two or more such life 15 insurance companies may, with the approval of the director [of 16 17 the department of insurance], enter into agreements whereby the 18 ownership and management and control of a redevelopment project 19 is participated in by each such company; and provided further 20 that the aggregate investment by any such company pursuant to the terms of this subdivision shall not be in excess of five percent 21 22 of the admitted assets of such company;
 - (12) Investments in property and processes for the development and production of solar or geothermal energy, fossil or synthetic fuels, or gasohol, whether made directly or as a participant in a general partnership, limited partnership or joint venture.

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2. No such life insurance company shall invest in any of

- 1 the foregoing securities in excess of the following percentages
- of the admitted assets of such company, as shown by its last
- 3 annual statement preceding the date of acquisition, as filed with
- 4 the director [of the insurance department of the state of
- 5 Missouri]:
- 6 (1) Ten percent of its admitted assets in the securities
- 7 issued by any one corporation or governmental unit falling
- 8 pursuant to the classification set forth in subdivisions (3),
- 9 (5), (6), (7) and (8) of subsection 1 of this section;
- 10 (2) One percent of its admitted assets or ten percent of
- its capital and surplus, whichever is greater, in any single loan
- on real estate pursuant to subdivision (9) of subsection 1 of
- 13 this section;
- 14 (3) Ten percent of the admitted assets in the total amount
- of securities described in subdivision (7) of subsection 1 of
- this section, and no such life insurance company shall own
- 17 securities described in subdivision (7) of subsection 1 of this
- 18 section of any one corporation which, in the aggregate,
- 19 represents more than five percent of the total of all outstanding
- 20 shares of stock of that corporation;
- 21 (4) One percent of its admitted assets in the bonds, notes
- or other evidences of indebtedness of the Dominion of Canada and
- 23 mentioned in subdivision (1) of subsection 1 of this section;
- 24 provided, however, that in addition thereto any such life
- insurance company which has outstanding insurance contracts on
- lives of persons residing in the Dominion of Canada may invest in
- 27 bonds, notes or other evidences of indebtedness of the Dominion
- of Canada and mentioned in subdivision (1) of subsection 1 of

this section, to an amount not in excess of the total amount of its reserves and other accrued liabilities under such contracts;

- (5) Five percent of its admitted assets in the notes or trust certificates secured by any equipment leased or sold to a corporation falling under the classification set forth in subdivision (5) of subsection 1 of this section or to a common carrier domiciled in the Dominion of Canada and mentioned in subdivision (6) of subsection 1 of this section;
- (6) Three percent of its admitted assets in loans evidenced by notes or other evidences of indebtedness and secured by liens on unencumbered leaseholds having at least twenty-five years of unexpired term and mentioned in subdivision (9) of subsection 1 of this section;
- (7) One percent of its admitted assets, or five percent of that portion of its admitted assets in excess of two hundred fifty million dollars, whichever is greater, in energy-related investments specified in subdivision (12) of subsection 1 of this section.
- 3. The term "corporation", as used in subdivisions (5) and (7) of subsection 1 of this section, shall include private corporations, joint stock associations or business trusts. In applying the earnings tests, provided herein, to any issuing, assuming or guaranteeing corporation, whether or not in legal existence during the whole of the test period, and if such corporation has during the test period acquired the assets of any other corporation or corporations by purchase, merger, consolidation or otherwise, or has been reorganized pursuant to the bankruptcy law, the earnings available for interest and

- dividends of such other predecessor or constituent corporation or the corporation so reorganized shall be considered as the earnings of the issuing, assuming or guaranteeing corporation.
- 4. Nothing contained in this section shall be construed as repealing or affecting the provisions of sections 375.330, 375.340, and 375.355, RSMo.
- 7 376.305. 1. In addition to the investments permitted by section 376.300, the capital, reserve and surplus of all life 8 9 insurance companies of whatever kind and character organized or 10 doing business under sections 376.010 to 376.670, may be invested 11 in the common stock of any solvent corporation, organized under 12 the laws of the United States, any state, territory or possession 13 of the United States, or the District of Columbia, or of the 14 Dominion of Canada, or any province of the Dominion of Canada, 15 provided the corporation's net worth as shown on its balance sheet at the end of the last fiscal year preceding purchase shall 16 17 have been at least ten million dollars, and that such common 18 stocks are registered on a national securities exchange or quoted 19 in established over-the-counter markets, or provided that such 20 corporation is registered and operated as an open-end regulated 21 investment company in accordance with the Investment Company Act 22 of 1940, as amended. Common stocks meeting the preceding 23 qualifications shall be eligible for deposit, as provided under 24 section 376.170.
 - 2. No such life insurance company shall invest in excess of ten percent of its admitted assets or an amount in excess of its combined capital and surplus, whichever is the lesser, as shown by its last annual statement preceding the date of acquisition,

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as filed with the director [of the insurance department of the state of Missouri], in the total amount of such common stocks, nor shall such life insurance company own securities described in subdivision (7) of subsection 1 of section 376.300, and subsection 1 of this section, which, in the aggregate, represent more than five percent of the total of all outstanding shares of stock of the issuing corporation, nor shall any such life insurance company own common stock described in subsection 1 of this section issued by any one corporation which represents more than two percent of the admitted assets of such life insurance company.

- 376.307. 1. Notwithstanding any direct or implied prohibitions in this chapter or chapter 375, RSMo, the capital, reserve and surplus funds of all life insurance companies of whatever kind and character organized or doing business under this chapter or chapter 375, RSMo, may be invested in any investments which do not otherwise qualify under any other provision of this chapter or chapter 375, RSMo, provided, however, the investments authorized by this section are not eligible for deposit with the department of insurance, financial and professional regulation and shall be subject to all the limitations set forth in subsection 2 of this section.
- 2. No such life insurance company shall own such investments in an amount in excess of the following limitations, to be based upon its admitted assets, capital and surplus as shown in its last annual statement filed with the director of the department of insurance, financial and professional regulation of the state of Missouri:

- 1 (1) The aggregate amount of all such investments under this 2 section shall not exceed the lesser of:
 - (a) Eight percent of its admitted assets; or

- 4 (b) The amount of its capital and surplus in excess of nine 5 hundred thousand dollars; and
 - (2) The amount of any one such investment under this section shall not exceed one percent of its admitted assets.
 - 3. If, subsequent to its acquisition hereunder, any such investment shall become specifically authorized or permitted under any other section contained in chapter 375 or 376, RSMo, any such company may thereafter consider such investment as held under such other applicable section and not under this section.
 - 376.311. 1. In addition to the investments permitted by other provisions of the laws, the capital reserve and surplus of all life insurance companies of whatever kind and character, organized or doing business pursuant to this chapter, may be invested in an investment pool meeting the requirements set out below, and any other provision of law relating to investments made by life insurance companies.
 - 2. As used in this section, the following terms mean:
 - (1) "Business entity", a corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund trust, or other similar form of business organization, including such an entity when organized as a not-for-profit entity;
 - (2) "Qualified bank", a national bank, state bank or trust company that at all times is no less than adequately capitalized as determined by the standards adopted by the United States

- banking regulators and that is either regulated by state banking
 laws or is a member of the Federal Reserve System.
- 3. (1) Qualified investment pools shall invest only in
 4 investments which an insurer may acquire pursuant to this chapter
 5 and other provisions of law. The insurer's proportionate
 6 interest in these investments may not exceed the applicable
 7 limits of this section and other provisions of law.

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- (2) An insurer shall not acquire an investment in an investment pool pursuant to this subsection if, after giving effect to the investment, the aggregate amount of investments in all investment pools then held by the insurer would exceed thirty percent of its assets.
- 13 (3) For an investment in an investment pool to be qualified 14 pursuant to this chapter, the investment pool shall not:
 - (a) Acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer;
- 17 (b) Borrow or incur any indebtedness for borrowed money,
 18 except for securities lending and reverse repurchase
 19 transactions;
 - (c) Lend money or other assets to participants in the pool.
- 21 (4) For an investment pool to be qualified pursuant to this 22 chapter, the manager of the investment pool shall:
 - (a) Be organized pursuant to the laws of the United States or a state and designated as the pool manager in a pooling agreement;
- 26 (b) Be the insurer; an affiliated insurer; a business
 27 entity affiliated with the insurer; a qualified bank; a business
 28 entity registered pursuant to the Investment Advisors Act of 1940

- 1 (15 U.S.C. Sec. 80a-1 et seq.) as amended; or, in the case of a
- 2 reciprocal insurer or interinsurance exchange, its
- 3 attorney-in-fact.
- 4 (5) The pool manager, or an agent designated by the pool
- 5 manager, shall compile and maintain detailed accounting records
- 6 setting forth:
- 7 (a) The cash receipts and disbursements reflecting each
- 8 participant's proportionate investment in the investment pool;
- 9 (b) A complete description of all underlying assets of the
- 10 investment pool including amount, interest rate, maturity date
- 11 (if any) and other appropriate designations; and
- 12 (c) Other records which, on a daily basis, allow third
- parties to verify each participant's investments in the
- 14 investment pool.
- 15 (6) The pool manager shall maintain the assets of the
- investment pool in one or more custody accounts, in the name of
- or on behalf of the investment pool, under one or more custody
- agreements with a qualified bank. Each custody agreement shall:
- 19 (a) State and recognize the claims and rights of each
- 20 participant;
- 21 (b) Acknowledge that the underlying assets of the
- 22 investment pool are held solely for the benefit of each
- 23 participant in proportion to the aggregate amount of its
- 24 investments in the investment pool; and
- 25 (c) Contain an agreement that the underlying assets of the
- investment pool shall not be commingled with the general assets
- of the qualified bank or any other person.
- 28 (7) The pooling agreement for each investment pool shall be

- 1 in writing and shall provide that:
- 2 (a) An insurer and its affiliates shall, at all times, hold
- 3 one hundred percent of the interests in the investment pool;
- 4 (b) The underlying assets of the investment pool shall not
- 5 be commingled with the general assets of the pool manager or any
- 6 other person;
- 7 (c) The aggregate amount of each pool participant's
- 8 interest in the investment pool shall be in proportion to:
- 9 a. Each participant's undivided interest in the underlying
- 10 assets of the investment pool; and
- 11 b. The underlying assets of the investment pool held solely
- 12 for the benefit of each participant;
- 13 (d) A participant or, in the event of the participant's
- insolvency, bankruptcy or receivership, its trustee, receiver,
- 15 conservator or other successor-in-interest may withdraw all or
- any portion of its investment from the investment pool under the
- terms of the pooling agreement;
- 18 (e) Withdrawals may be made on demand without penalty or
- 19 other assessment on any business day, but settlement of funds
- 20 shall occur within a reasonable and customary period thereafter,
- 21 provided:

- 22 a. In the case of publicly traded securities, settlement
- 23 shall not exceed five business days; and
- 24 b. In the case of all other securities and investments,
- 25 settlement shall not exceed ten business days.
- 27 Distributions pursuant to this paragraph shall be calculated in
- each case net of all then applicable fees and expenses of the

- 1 investment pool.
- 2 (8) The pooling agreement shall provide that the pool
- 3 manager shall distribute to a participant, at the discretion of
- 4 the pool manager:
- 5 (a) In cash, the then fair market value of the
- 6 participant's pro rata share of each underlying asset of the
- 7 investment pool; or
- 8 (b) In-kind, a pro rata share of each underlying asset; or
- 9 (c) In a combination of cash and in-kind distributions, a
- 10 pro rata share in each underlying asset;
- 11 (9) The pool manager shall make the records of the
- 12 investment pool available for inspection by the director.
- 13 4. The pooling agreement and any other arrangements or
- 14 agreements relating to an investment pool, and any amendments
- thereto, shall be submitted to the department [of insurance] for
- 16 prior approval pursuant to section 382.195, RSMo. Individual
- financial transactions between the pool and its participants in
- 18 the ordinary course of the investment pool's operations shall not
- 19 be subject to the provisions of section 382.195, RSMo.
- 20 Investment activities of pools and transactions between pools and
- 21 participants shall be reported annually in the registration
- 22 statement required by section 382.100, RSMo.
- 376.320. All bonds or other evidences of debt having a
- 24 fixed term and rate held by any life insurance company,
- assessment life association or fraternal beneficiary association
- authorized to do business in this state may, if amply secured and
- 27 not in default as to principal and interest, be valued as
- 28 follows: If purchased at par, at the par value; if purchased

above or below par, on the basis of the purchase price adjusted
so as to bring the value to par at maturity and so as to yield in
the meantime the effective rate of interest at which the purchase
was made; provided, that the purchase price shall in no case be
taken at a higher figure than the actual market value at the time
of purchase; and provided further, that the director [of
insurance] shall have full discretion in determining the method

of calculating values according to the foregoing rule.

376.330. Any company organized under the laws of this state, or doing in this state any business mentioned in section 376.010, may at any time change the securities in which its capital or any part thereof is invested, whether the same are deposited with the director [of the insurance department] or elsewhere, for any other securities; provided, that the amount or value of the securities required by sections 376.010 to 376.670 to be deposited with said director shall in no case be diminished or impaired.

376.350. 1. It shall be the duty of the president or vice president and secretary or actuary, or a majority of the directors, of every life assurance company organized pursuant to sections 376.010 to 376.670 or pursuant to the laws of this state, or any such company incorporated by or organized pursuant to the laws of the United States or any other state, and doing business in this state, annually, on the first day of January, or within sixty days thereafter, to prepare under oath, and deposit in the office of the director [of the insurance department], a statement made up for the year ending the thirty-first day of December next preceding, showing:

- 1 (1) The number of policies issued during the year;
- 2 (2) The amount of assurance effected thereby;

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- 3 (3) The amount of premiums received during the year;
- 4 (4) The amount received for interest, and all other 5 receipts during the year, classifying the items;
 - (5) The amount of losses paid during the year;
- 7 (6) The amount of losses unpaid, giving the reason for such 8 nonpayment;
- 9 (7) The amount of expenses, classifying the items;
- 10 (8) The whole number of policies in force, specifying the description;
- 12 (9) The amount of liabilities or risks thereon, and of all other liabilities;
 - (10) The amount of capital stock and how invested;
- 15 (11) The amount of assets other than capital, specifying
 16 the particular sources from whence they have been derived, and
 17 the manner in which they are invested, and what amount is
 18 invested in real estate, in stocks, promissory notes and other
 19 securities, and what amount is loaned on bonds and mortgages, or
 20 deeds of trust, stocks, policies of the company and other
 21 securities, specifying the kinds and amounts;
 - (12) The amount of dividend declared to stockholders and policyholders, respectively, and how much remains unpaid; and
- 24 (13) A statement of any other facts or information 25 concerning the affairs of said company which may be required by 26 the director.
- 2. Notwithstanding any other provision of law to the contrary, information regarding compensation of any employee or

officer contained within a statement required to be filed pursuant to this section shall not be subject to disclosure to any person other than employees of the department.

- 376.360. 1. All life insurance companies organized under the laws of this state shall ascertain and distribute annually, and not otherwise, beginning not later than the end of the third policy year, the proportion of any surplus accruing upon every participating policy or contract issued on or after January 1, 1946, entitled as herein provided to share in such surplus. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, every such company shall well and truly ascertain the surplus earned by it during the year.
- 2. After setting aside from such surplus such sums as may be required for the payment of authorized dividends upon the capital stock, if any, such sums as may properly be held for account of outstanding deferred dividend policies, if any, and such sums as may be deemed advisable for the accumulation of a surplus in an amount not exceeding five hundred thousand dollars, or ten percent of its policy reserves and policy liabilities, whichever shall be greater, every such company shall thereupon apportion the remainder of such surplus earnings, if any, derived from participating policies or contracts, as the board of directors charged with the management of the company's affairs may determine, to all policies or contracts entitled to share therein during the full dividend year adopted by the company for such purpose beginning not later than the following July first.
- 3. Dividends apportioned as aforesaid in the case of a policy or contract, other than an industrial life insurance

- policy, issued on or after the first day of January, 1946, shall, 1 2 unless otherwise provided in the policy or contract, be payable upon the anniversary of the policy or contract occurring within 3 the dividend year selected by the company, as aforesaid; and in 4 every case after the first policy or contract year such dividend 5 shall be payable upon the sole condition that the premium 6 7 payments of the policy or contract year current upon the first day of the dividend year selected by the company, as aforesaid, 8 9 shall have been completed. Such apportionment in the case of any 10 policy or contract shall not, after the first policy year, be
 - 4. (1) Except as herein provided, the dividend so apportioned in the case of any participating policy issued on or after the first day of January, 1946, shall, at the option of the person entitled to elect such option, be either

made contingent upon the payment of the whole or any part of the

(a) Payable in cash; or

premium for any subsequent year.

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- 18 (b) Applicable to the payment of any premium or premiums
 19 upon said policy; or
 - (c) Permitted to accumulate to the credit of the policy or contract at such rate of interest as may be allowed by the company, and with such interest shall be payable upon the maturity of the policy or shall be withdrawable in cash on any anniversary of the date of issue thereof; or
- 25 (d) If so provided in the policy, applicable to any paid-up addition thereto.
- 27 (2) Unless the insured or owner of the policy notifies the 28 company in writing of his election of one of the foregoing

- options within the time allowed by the policy, which shall not, in any event, be a period of less than thirty-one days after the dividend apportioned thereto is payable, the effective option shall be that stated in the policy.
- In case of any extended term or reduced paid-up 6 insurance, the dividends so apportioned, if any, shall be 7 applicable as provided in the policy with the approval of the 8 director [of the insurance department]. In the case of an 9 individual participating term policy issued on or after the first day of January, 1946, the dividend so apportioned shall, at the 10 11 option of the policyholder, be paid or applied pursuant to paragraph (a) or (b) of subdivision (1) of subsection 4 of this 12 13 section, or, if the policy so provides, pursuant to paragraph (c) 14 of subdivision (1) of subsection 4 of this section. In the case 15 of every individual participating annuity or pure endowment 16 contract the dividend so apportioned shall be applicable, at the 17 election of the holder of such contract, in accordance with the 18 options specified in paragraph (a) or (b) of subdivision (1) of subsection 4 of this section, or, if the contract so provides, 19 paragraph (c) of subdivision (1) of subsection 4 of this section, 20 21 if such option is applicable to the type of contract in question. 22 In the case of every individual participating accident or health 23 insurance policy, the dividend so apportioned shall be applicable 24 in accordance with the option specified in paragraph (a) of subdivision (1) of subsection 4 of this section. In the case of 25 26 any participating group insurance policy or of any participating 27 group annuity contract, the dividend so apportioned shall, at the option of the policyholder or holder of the master contract, be 28

subsection 4 [above] of this section. In the case of

participating industrial life insurance policies, paragraphs (a),

(b), (c) and (d) of subdivision (1) of subsection 4 of this

section shall not be applicable, but the dividends apportioned on

applied pursuant to paragraph (a) or (b) of subdivision (1) of

- such policies shall be distributed annually in such manner as may be determined by the company with the approval of the director [of the insurance department].
 - organized under the laws of this state shall issue, on or after January 1, 1946, any participating policy or contract which does not by its terms give the right to participate in the divisible surplus earnings of such company as provided herein. No mutual life insurance company organized under the laws of this state shall issue, on or after January 1, 1946, any policy or contract, except as herein provided, which does not by its terms give the right to participate in the divisible surplus earnings of such company as provided herein.
 - 7. Both participating and nonparticipating policies or contracts may provide that in addition to any rate of interest guaranteed by the issuing company to be paid on deferred payments of the proceeds thereof, additional interest may be paid thereon at such rate as the company may annually declare; and the inclusion of such provision in any nonparticipating policy shall not be deemed to make the policy participating. With this exception, the inclusion in any policy or contract of any provision to the effect that the owner thereof shall participate in the surplus of the company issuing such policy or contract,

shall be deemed to make such policy or contract a participating
one, except, that nonparticipating policies, which provide that
they may be exchanged for or converted to paid-up participating
policies after the completion of premium payments of a given term
of years, shall not be deemed to be participating policies until
participation begins according to the terms of the policy.

- 8. This section shall not be deemed to require the apportionment or distribution of dividends on any immediate annuity contract, nor on any deferred annuity contract for the period following the period of deferment of annuity payments, in accordance with the provisions of such contract, nor on any policy of accident or health insurance, nor on extended term insurance, or pure endowment or reduced paid-up life or endowment insurance which take effect in the event of default in the payment of a premium on any policy or contract, nor on any paid-up additions purchased by dividends, nor on any contract or agreement of reinsurance.
- shall annually value, or cause to be valued, the reserve liabilities, herein called "reserves", for all outstanding life insurance policies and annuities and pure endowment contracts of every life insurance company doing business in this state, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net level premium method or other, used in the calculation of such reserves. In calculating such reserves, he may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves herein

required of any foreign or alien company, he may accept any 1 2 valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such 3 valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as 6 sufficient and valid for all legal purposes the certificate of 7 valuation of the director when such certificate states the 8 valuation to have been made in a specified manner according to 9 which the aggregate reserves would be at least as large as if 10 they had been computed in the manner prescribed by the law of

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that state or jurisdiction.

2. Reserves for all policies and contracts issued prior to August 28, 1993, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such Reserves for any category of policies, contracts or benefits as established by the director, issued on or after August 28, 1993, may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided therein. Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated

- according to the minimum standard herein provided may, with the
 approval of the director, adopt any lower standard of valuation,
 but not lower than the minimum herein provided; however, for
 purposes of this subsection, the holding of additional reserves
 previously determined by a qualified actuary to be necessary to
 render the opinion required by subsection 4 of section 376.380
 shall not be deemed to be the adoption of a higher standard of
 valuation.
- 9 376.384. 1. All health carriers shall:

- (1) Permit nonparticipating health care providers to file a claim for reimbursement for a health care service provided in this state as defined in section 376.1350 for a period of up to one year from the date of service;
- (2) Permit participating health care providers to file a claim for reimbursement for a health care service provided in this state for a period of up to six months from the date of service, unless the contract between the health carrier and health care provider specifies a different standard;
- (3) Not request a refund or offset against a claim more than twelve months after a health carrier has paid a claim except in cases of fraud or misrepresentation by the health care provider;
- 23 (4) Issue within one working day a confirmation of receipt 24 of an electronically filed claim.
- 2. On or after January 1, 2003, all claims for
 reimbursement for a health care service provided in this shall be
 submitted in an electronic format consistent with federal
 administrative simplification standards adopted pursuant to the

Health Insurance Portability and Accountability Act of 1996. Any claim submitted by a health care provider after January 1, 2003, in a nonelectronic format shall not be subject to the provisions of section 376.383. Any health carrier shall provide readily accessible electronic filing after this date to health care

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providers.

- 7 On or after January 1, 2002, the director [of the 8 department of insurance] shall monitor health carrier compliance with the provisions of this section and section 376.383. 9 10 Examinations, which may be based upon statistical samplings, to 11 determine compliance may be conducted by the department or the 12 director may contract with a qualified private entity. 13 Compliance shall be defined as properly processing and paying 14 ninety-five percent of all claims received in a given calendar 15 year in accordance with the provisions of this section and section 376.383. The director may assess an administrative 16 17 penalty in addition to the penalties outlined in section 376.383 18 of up to twenty-five dollars per claim for the percentage of 19 claims found to be in noncompliance, but not to exceed an annual 20 aggregate penalty of two hundred fifty thousand dollars, for any 21 health carrier deemed to be not in compliance with this section 22 and section 376.383. Any penalty assessed pursuant to this 23 subsection shall be assessed in addition to penalties provided 24 for pursuant to sections 375.942 and 375.1012, RSMo.
 - 4. If the director finds that health carriers are failing to make interest payments to health care professionals authorized by section 376.383, the director is authorized to order such health carriers to remit such interest payments. The director is

also authorized to assess a monetary penalty, payable to the state of Missouri, in a sum not to exceed twenty-five percent of the unpaid interest payment against health carriers.

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- 5. A health carrier may request a waiver of the requirements of this section and section 376.383 if the basis for the request is an act of God or other good cause as determined by the director.
- The director shall develop a method by which health care 8 9 providers may submit complaints to the department identifying 10 violations of this section and section 376.383 by a health 11 The director shall consider such complaints when carrier. 12 determining whether to examine a health carrier's compliance. 13 Prior to filing a complaint with the department, health care 14 providers who believe that a health carrier has not paid a claim 15 in accordance with this section and section 376.383 shall first contact the health carrier to determine the status of the claim 16 17 to ensure that sufficient documentation supporting the claim has 18 been provided and to determine whether the claim is considered to 19 be complete. Complaints to the department regarding the payment 20 of claims by a health carrier should contain information such as:
 - (1) The health care provider's name, address, and daytime phone number;
 - (2) The health carrier's name;
- 24 (3) The dates of service and the dates the claims were 25 filed with the health carrier;
- 26 (4) Relevant correspondence between the health care
 27 provider and the health carrier, including requests from the
 28 health carrier for additional information; and

- 1 (5) Additional information which the health care provider 2 believes would be of assistance in the department's review.
- On or after January 1, 2003, all claims submitted electronically for reimbursement for a health care service provided in this state shall be submitted in a uniform format utilizing standard medical code sets. The uniform format and the standard medical code sets shall be promulgated by the department [of insurance] through rules consistent with but no more stringent than the federal administrative simplification standards adopted pursuant to the Health Insurance Portability and Accountability Act of 1996.

- 8. The department shall have authority to promulgate rules for the implementation of section 376.383 and this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and if applicable, sections 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date or to disapprove and annul a rule subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.
- 376.390. The reserve liability for group insurance written by any life insurance company doing business in this state shall be computed upon such tables and basis as may be approved by the director [of the insurance department].

- 376.397. 1. A group policy delivered or issued for delivery in this state which insures employees or members for hospital, surgical or major medical insurance on an expense incurred or service basis, other than for specific diseases or for accidental injuries only, shall provide that an employee or member whose insurance under the group policy has been terminated shall be entitled to have a converted policy issued to him by the insurer under whose group policy he was insured, without evidence of insurability, subject to the following terms and conditions:
 - (1) A converted policy need not be made available to an employee or member if termination of his insurance under the group policy occurred:

- (a) Because he failed to make timely payment of any required contribution; or
- (b) For any other reason, and he had not been continuously covered under the group policy, and for similar benefits under any group policy which it replaced, during the entire three months' period ending with such termination; or
- (c) Because the group policy terminated or an employer's participation terminated, and the insurance is replaced by similar coverage under another group policy within thirty-one days of the date of termination;
- (2) Written application and the first premium payment for the converted policy shall be made to the insurer not later than thirty-one days after such termination;
- (3) The premium for the converted policy shall be determined in accordance with the insurer's table of premium rates applicable to the age and class of risk of each person to

be covered under that policy and to the type and amount of
insurance provided;

- (4) The converted policy shall cover the employee or member and his dependents who were covered by the group policy on the date of termination of insurance. At the option of the insurer, a separate converted policy may be issued to cover any dependent;
- (5) The insurer shall not be required to issue a converted policy covering any person if such person is or could be covered by Medicare. Furthermore, the insurer shall not be required to issue a converted policy covering any person if:
- (a) Such person is or could be covered for similar benefits by another individual policy; such person is or could be covered for similar benefits under any arrangement of coverage for individuals in a group, whether insured or uninsured; or similar benefits are provided for or available to such person, by reason of any state or federal law; and
- (b) The benefits under sources of the kind referred to in paragraph (a) [above] of this subdivision for such person, or benefits provided or available under sources of the kind referred to in paragraph (a) [above] of this subdivision for such person, together with the converted policy's benefits would result in overinsurance according to the insurer's standards for overinsurance;
- (6) A converted policy may provide that the insurer may at any time request information of any person covered thereunder as to whether he is covered for the similar benefits described in paragraph (a) of subdivision (5) [above] of this subsection or is or could be covered for the similar benefits described in

paragraph (a) of subdivision (5) [above] of this subsection. The converted policy may provide that as of any premium due date the insurer may refuse to renew the policy or the coverage of any

insured person for the following reasons only:

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- 5 (a) Either those similar benefits for which such person is 6 or could be covered, together with the converted policy's 7 benefits, would result in overinsurance according to the 8 insurer's standards for overinsurance, or the policyholder of the 9 converted policy fails to provide the requested information;
 - (b) Fraud or material misrepresentation in applying for any benefits under the converted policy;
 - (c) Eligibility of the insured person for coverage under Medicare or under any other state or federal law providing for benefits similar to those provided by the converted policy;
 - (d) Other reasons approved by the director [of the
 department of insurance];
 - (7) An insurer shall not be required to issue a converted policy providing benefits in excess of the hospital, surgical or major medical insurance under the group policy from which conversion is made;
 - (8) The converted policy shall not exclude, as a preexisting condition, any condition covered by the group policy; provided, however, that the converted policy may provide for a reduction of its hospital, surgical or medical benefits by the amount of any such benefits payable under the group policy after the individual's insurance terminates thereunder. The converted policy may also provide that during the first policy year the benefits payable under the converted policy, together with the

- benefits payable under the group policy, shall not exceed those
 that would have been payable had the individual's insurance under
 the group policy remained in force and effect;
 - (9) Subject to the provisions and conditions of sections 376.395 to 376.404, if the group insurance policy from which conversion is made insures the employee or member for basic hospital or surgical expense insurance, the employee or member shall be entitled to obtain a converted policy providing, at his option, coverage on an expense incurred basis under any of the following plans:
 - (a) Plan A, which shall include:

- a. Hospital room and board daily expense benefits in a maximum dollar amount approximating the average semiprivate rate charged in the largest major metropolitan area of this state, for a maximum duration of seventy days;
- b. Miscellaneous hospital expense benefits up to a maximum amount of ten times the hospital room and board daily expense benefits; and
- c. Surgical expense benefits according to a surgical procedures schedule consistent with those customarily offered by the insurer under group or individual health insurance policies and providing a maximum benefit of eight hundred dollars;
- (b) Plan B, which shall be the same as plan A, except that the maximum hospital room and board daily expense benefit is seventy-five percent of the corresponding maximum under subparagraph a of plan A, and the surgical schedule maximum is six hundred dollars;
 - (c) Plan C, which shall be the same as plan A, except that

- 1 the maximum hospital room and board daily expense benefit is
- 2 fifty percent of the corresponding maximum under subparagraph a
- 3 of plan A, and the surgical schedule maximum is four hundred
- 4 dollars. The maximum dollar amount for plan A's maximum hospital
- 5 room and board daily expense benefit shall be determined by the
- 6 director [of the department of insurance] and may be redetermined
- 7 by him from time to time as to converted policies issued
- 8 subsequent to such redetermination. Such redetermination shall
- 9 not be made more often than once every three years. Such plan A
- 10 maximum, and the corresponding maximums in plans B and C, shall
- 11 be rounded to the nearest ten dollar multiple; provided that,
- 12 rounding may be to the next higher or lower multiple of ten
- dollars if otherwise exactly midway between two multiples;
- 14 (10) Subject to the provisions and conditions of sections
- 15 376.395 to 376.404, if the group policy from which conversion is
- 16 made insures the employee or member for major medical expense
- insurance, the employee or member shall be entitled to obtain a
- 18 converted policy providing catastrophic or major medical coverage
- under a plan meeting the following requirements:
- 20 (a) A maximum benefit at least equal to, at the option of
- 21 the insurer, either:
- 22 a. A maximum payment per covered person for all covered
- 23 medical expenses incurred during that person's lifetime, equal to
- 24 the smaller of the maximum benefit provided under the group
- 25 policy or two hundred fifty thousand dollars;
- b. A maximum payment for each unrelated injury or sickness,
- 27 equal to the smaller of the maximum benefit provided under the
- 28 group policy or two hundred fifty thousand dollars;

(b) Payment of benefits at the rate of eighty percent of covered medical expenses which are in excess of the deductible, until twenty percent of such expenses in a benefit period reaches one thousand dollars, after which benefits will be paid at the rate of one hundred percent during the remainder of such benefit period. Payment of benefits for outpatient treatment of mental illness, if provided in the converted policy, may be at a lesser rate, but not less than fifty percent;

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- 9 (c) A deductible for each benefit period which, at the 10 option of the insurer, shall be the sum of the benefits 11 deductible plus one hundred dollars, or the corresponding 12 deductible in the group policy. The term "benefits deductible", 13 as used herein, means the value of any benefits provided on an 14 expense incurred basis which are provided with respect to covered 15 medical expenses by any other group or individual hospital, surgical or medical insurance policy or medical practice or other 16 17 prepayment plan, or any other plan or program, whether insured or 18 uninsured, or by reason of any state or federal law and if, 19 pursuant to subdivision (11) herein, the converted policy 20 provides both basic hospital or surgical coverage and major medical coverage, the value of such basic benefits. If the 21 22 maximum benefit is determined under subparagraph b of paragraph 23 (a) of this subdivision, the insurer may require that the 24 deductible be satisfied during a period of not less than three 25 months if the deductible is one hundred dollars or less, and not less than six months if the deductible exceeds one hundred 26 27 dollars;
 - (d) The benefit period shall be each calendar year when the

- maximum benefit is determined under subparagraph a of paragraph

 (a) of this subdivision or twenty-four months when the maximum

 benefit is determined under subparagraph b of paragraph (a) of
- benefit is determined under subparagraph b of paragraph (a) of
 this subdivision;
- The term "covered medical expenses", as used in this (e) 6 subdivision, shall include at least, in the case of hospital room 7 and board charges, the lesser of the dollar amount set out in plan A under subdivision (9) and the average semiprivate room and 8 board rate for the hospital in which the individual is confined, 9 10 and at least twice such amount for charges in an intensive care 11 unit. Any surgical procedures schedule shall be consistent with 12 those customarily offered by the insurer under group or 13 individual health insurance policies and must provide at least a

one thousand two hundred dollar maximum benefit;

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(11) At the option of the insurer, benefit plans set forth in subdivisions (9) and (10) of this section may be provided under one policy or, in lieu of the benefit plans set forth in subdivisions (9) and (10) of this section, the insurer may provide a policy for comprehensive medical expense benefits without first dollar coverage. Such policy shall conform to the requirements of subdivision (10) of this section; provided, however, that an insurer electing to provide such a policy shall make available a low deductible option, not to exceed one hundred dollars, a high deductible option between five hundred dollars and one thousand dollars, and a third deductible option midway between the high and low deductible options. Alternatively, such

a policy may provide for deductible options equal to the greater

of the benefits deductible and the amount specified in the

- 1 preceding sentence.
- 2 2. (1) The insurer may, at its option, offer alternative
- 3 plans for converted policies from group policies in addition to
- 4 those required by sections 376.395 to 376.404. Furthermore, if
- 5 any insurer customarily offers individual policies on a service
- 6 basis, that insurer may, in lieu of converted policies on an
- 7 expense incurred basis, make available converted policies on a
- 8 service basis which, in the opinion of the director [of the
- 9 department of insurance], satisfy the intent of sections 376.395
- 10 to 376.404.
- 11 (2) Nothing in sections 376.395 to 376.404 shall preclude a
- 12 health service corporation from limiting its conversion offerings
- to one of the plans offered by the insurer that is consistent
- 14 with group policies customarily offered by the health service
- 15 corporation. The employee or member under the group insurance
- policy from which conversion is made shall be entitled to obtain
- one such converted policy.
- 18 3. Notification of the conversion privilege shall be
- included in each certificate of coverage.
- 4. All converted policies shall become effective on the day
- 21 immediately following the date of termination of insurance under
- 22 a group policy.
- 376.405. 1. No insurance company licensed to transact
- 24 business in this state shall deliver or issue for delivery in
- 25 this state any policy of group accident or group health
- insurance, or group accident and health insurance, including
- 27 insurance against hospital, medical or surgical expenses,
- covering a group in this state, unless such policy form shall

- have been approved by the director [of the department of insurance of the state of Missouri].
- The director [of insurance] shall have authority to make such reasonable rules and regulations concerning the filing and submission of such policy forms as are necessary, proper or advisable. Such rules and regulations shall provide, among other things, that if a policy form is disapproved, the reasons therefor shall be stated in writing; that a hearing shall be granted upon such disapproval, if so requested; and that the failure of the director of insurance to take action approving or disapproving a submitted policy form within a stipulated time, not to exceed sixty days from the date of filing, shall be deemed an approval thereof until such time as the director [of insurance] shall notify the submitting company, in writing, of his disapproval thereof.
 - 3. The director [of insurance] shall approve only those policy forms which are in compliance with the insurance laws of this state and which contain such words, phraseology, conditions and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured. The disapproval of any policy form shall be based upon the requirements of the laws of this state or of any regulation lawfully promulgated thereunder.

4. The director [of insurance] may, by order or bulletin, exempt from the approval requirements of this section for so long as he deems proper any insurance policy, document, or form or type thereof, as specified in such order or bulletin, to which, in his opinion, this section may not practicably be applied, or

the approval of which is, in his opinion, not desirable or necessary for the protection of the public.

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- 376.410. Except as provided in subdivision (6) of this section, all companies organized under the laws of this state, and engaged in writing policies of accident or health insurance, or combination policies of accident and health insurance, and all other companies transacting such kinds of business in this state, shall maintain reserves thereon in accordance with the following requirements:
- (1) On all such policies actually written there shall be maintained an unearned gross premium reserve which reserve may be computed on a pro rata basis or such reserve may be computed at not less than fifty percent of the gross premiums in force;
- (2) On all such policies written on a noncancellable plan and under the terms of which the company is obligated to renew or continue for a stated period, or to a stated age or for life, there shall be maintained active life reserves and reserves for losses in amounts not less than such minimum standards which the director [of insurance] shall determine and prescribe after giving proper consideration to the terms and conditions of the policies involved;
- (3) On all such policies other than those written on a noncancellable plan there shall be maintained reserves for losses in amounts not less than the minimum standards which the director [of insurance] shall determine and prescribe after giving proper consideration to the terms and conditions of the policies involved;
 - (4) In the calculation of reserves required to be

maintained under this section, proper credit shall be allowed for reinsurance in other companies licensed to do business in this state:

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- (5) In addition to the minimum reserves mentioned above the director [of insurance] may also require such companies to maintain reserves for extraordinary losses in amounts not less than such minimum standards which the director [of insurance] shall determine and prescribe after giving proper consideration to the terms and conditions of the policies involved;
 - (6) This section shall not be applicable to total and permanent disability benefits, or to accidental death benefits, contained in or supplementary to life insurance policies or other contracts and for which benefits the standard of valuation is prescribed by section 376.380.
 - 376.423. 1. Beginning January 1, 1993, any consultant retained by any insurance company, health services corporation and any self-insured group arrangement to the extent not preempted by federal law, to review claims, under any policy of accident and sickness insurance or membership contract, denied in whole or in part for services rendered by a chiropractor shall:
 - (1) Be licensed and practicing as a chiropractor in the state of Missouri, and, if the claim is made from a metropolitan statistical area in Missouri as that term is defined by the United States Bureau of the Census, then he shall be practicing as a chiropractor in any such metropolitan statistical area in Missouri; or be licensed and practicing as a chiropractor in the state in which the claim is reviewed;
 - (2) Obtain a certificate from the board of chiropractic

examiners, which shall indicate that the licensee has complied with the provisions of this section and has met the minimum standards contained in this section. The application for a

certificate shall be on a form provided by the board;

- 5 (3) Provide to the board of chiropractic examiners, in 6 addition to the other information required to be provided on the 7 application, certification that the licensee has either:
 - (a) Successfully completed at least one hundred hours of postgraduate training in insurance claims consulting, which training was presented by a college of chiropractic having status with the council on chiropractic education; or
 - (b) Successfully completed at least one hundred hours training in insurance claims consulting in the course of study approved by the board of chiropractic examiners; and
 - (4) Have received at least one-half of his earned income from the clinical practice of chiropractic. The term "clinical practice of chiropractic" shall not include the review of claims regulated by this section nor any of the paperwork which is or becomes part of the review nor any of the income from examining a person whose claim is being reviewed.
 - 2. The compensation of such consultant shall not be based on a percentage of the amount by which a claim is reduced for payment.
 - 3. Upon receipt of a complaint from the insured or the chiropractor alleging an adverse chiropractic review determination, the director [of the department of insurance] shall investigate to determine whether the insurance company or health services corporation has engaged in an unfair claims

- 1 settlement practice under the provisions of subdivision (10) of
- 2 section 375.936, RSMo, or a violation of this section. The
- 3 [department of insurance] <u>director</u> shall promulgate rules to
- 4 enforce the provisions of this subsection.
- 5 4. Any licensee who shall advertise or announce to the
- 6 public in any communication or solicitation that he engages in or
- 7 provides insurance claims consulting in any aspect without having
- 8 first complied with this section shall be deemed to have engaged
- 9 in false, misleading or deceptive advertising.
- 10 5. It shall be unlawful for any person who is licensed
- 11 under the provisions of chapter 331, RSMo, to accept employment
- 12 as a consultant to review health care claims for services
- 13 rendered by any chiropractor unless he meets the qualifications
- 14 and conditions of subsection 1 of this section. The provisions
- of this subsection shall be enforced by the board of chiropractic
- 16 examiners, which administers the provisions of chapter 331, RSMo.
- 17 Violations of this section shall constitute grounds for
- 18 disciplinary action pursuant to section 331.060, RSMo.
- 19 6. The board of chiropractic examiners may by rule
- 20 establish and enforce the conditions under which it will issue
- 21 certificates of compliance.
- 7. The board of chiropractic examiners is authorized,
- pursuant to section 331.070, RSMo, to set fees to cover the cost
- 24 and expense of administering this section.
- 25 376.426. No policy of group health insurance shall be
- 26 delivered in this state unless it contains in substance the
- 27 following provisions, or provisions which in the opinion of the
- director [of insurance] are more favorable to the persons insured

or at least as favorable to the persons insured and more favorable to the policyholder; except that: Provisions in subdivisions (5), (7), (12), (15), and (16) of this section shall not apply to policies insuring debtors; standard provisions required for individual health insurance policies shall not apply to group health insurance policies; and if any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the director, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy:

- (1) A provision that the policyholder is entitled to a grace period of thirty-one days for the payment of any premium due except the first, during which grace period the policy shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such grace period;
- (2) A provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue, and that no statement made by any person covered under the policy relating to insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after

such insurance has been in force prior to the contest for a

period of two years during such person's lifetime nor unless it

is contained in a written instrument signed by the person making

such statement; except that, no such provision shall preclude the

assertion at any time of defenses based upon the person's

ineligibility for coverage under the policy or upon other

provisions in the policy;

- (3) A provision that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties and that no statement made by any person insured shall be used in any contest unless a copy of the instrument containing the statement is or has been furnished to such person or, in the event of the death or incapacity of the insured person, to the individual's beneficiary or personal representative;
- (4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of the individual's coverage;
- (5) A provision specifying the additional exclusions or limitations, if any, applicable under the policy with respect to a disease or physical condition of a person, not otherwise excluded from the person's coverage by name or specific description effective on the date of the person's loss, which existed prior to the effective date of the person's coverage under the policy. Any such exclusion or limitation may only

apply to a disease or physical condition for which medical advice or treatment was received by the person during the twelve months prior to the effective date of the person's coverage. In no event shall such exclusion or limitation apply to loss incurred or disability commencing after the earlier of:

- (a) The end of a continuous period of twelve months commencing on or after the effective date of the person's coverage during all of which the person has received no medical advice or treatment in connection with such disease or physical condition; or
- (b) The end of the two-year period commencing on the effective date of the person's coverage;
- (6) If the premiums or benefits vary by age, there shall be a provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event the age of the covered person has been misstated, such provision to contain a clear statement of the method of adjustment to be used;
- (7) A provision that the insurer shall issue to the policyholder, for delivery to each person insured, a certificate setting forth a statement as to the insurance protection to which that person is entitled, to whom the insurance benefits are payable, and a statement as to any family member's or dependent's coverage;
- (8) A provision that written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy. Failure to give notice within such time shall not invalidate nor reduce any claim if it shall be shown not to have been reasonably possible to give

- such notice and that notice was given as soon as was reasonably possible;
- (9) A provision that the insurer shall furnish to the person making claim, or to the policyholder for delivery to such person, such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen days after the insurer receives notice of any claim under the policy, the person making such claim shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, character, and extent of the loss for which claim is made;

(10) A provision that in the case of claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of claim for any other loss, written proof of such loss must be furnished to the insurer within ninety days after the date of such loss. Failure to furnish such proof within such time shall not invalidate nor reduce any claim if it was not reasonably possible to furnish such proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity of the claimant, later than one year from the time proof is otherwise required;

other than benefits for loss of time shall be payable not more than thirty days after receipt of proof and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time shall be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period shall be paid as soon as possible after receipt of such proof;

- (12) A provision that benefits for accidental loss of life of a person insured shall be payable to the beneficiary designated by the person insured or, if the policy contains conditions pertaining to family status, the beneficiary may be the family member specified by the policy terms. In either case, payment of these benefits is subject to the provisions of the policy in the event no such designated or specified beneficiary is living at the death of the person insured. All other benefits of the policy shall be payable to the person insured. The policy may also provide that if any benefit is payable to the estate of a person, or to a person who is a minor or otherwise not competent to give a valid release, the insurer may pay such benefit, up to an amount not exceeding two thousand dollars, to any relative by blood or connection by marriage of such person who is deemed by the insurer to be equitably entitled thereto;
- (13) A provision that the insurer shall have the right and opportunity, at the insurer's own expense, to examine the person of the individual for whom claim is made when and so often as it may reasonably require during the pendency of the claim under the

policy and also the right and opportunity, at the insurer's own expense, to make an autopsy in case of death where it is not prohibited by law;

- (14) A provision that no action at law or in equity shall be brought to recover on the policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of the policy and that no such action shall be brought at all unless brought within three years from the expiration of the time within which proof of loss is required by the policy;
- (15) A provision specifying the conditions under which the policy may be terminated. Such provision shall state that except for nonpayment of the required premium or the failure to meet continued underwriting standards, the insurer may not terminate the policy prior to the first anniversary date of the effective date of the policy as specified therein, and a notice of any intention to terminate the policy by the insurer must be given to the policyholder at least thirty-one days prior to the effective date of the termination. Any termination by the insurer shall be without prejudice to any expenses originating prior to the effective date of termination. An expense will be considered incurred on the date the medical care or supply is received;
- (16) A provision stating that if a policy provides that coverage of a dependent child terminates upon attainment of the limiting age for dependent children specified in the policy, such policy, so long as it remains in force, shall be deemed to provide that attainment of such limiting age does not operate to terminate the hospital and medical coverage of such child while

- 1 the child is and continues to be both incapable of
- 2 self-sustaining employment by reason of mental or physical
- 3 handicap and chiefly dependent upon the policyholder for support
- 4 and maintenance. Proof of such incapacity and dependency must be
- 5 furnished to the insurer by the policyholder at least thirty-one
- 6 days before the child's attainment of the limiting age. The
- 7 insurer may require at reasonable intervals during the two years
- 8 following the child's attainment of the limiting age subsequent
- 9 proof of the child's incapacity and dependency. After such
- 10 two-year period, the insurer may require subsequent proof not
- 11 more than once each year. This subdivision shall apply only to
- 12 policies delivered or issued for delivery in this state on or
- after one hundred twenty days after September 28, 1985;
- 14 (17) In the case of a policy insuring debtors, a provision
- that the insurer shall furnish to the policyholder for delivery
- to each debtor insured under the policy a certificate of
- insurance describing the coverage and specifying that the
- benefits payable shall first be applied to reduce or extinguish
- 19 the indebtedness.
- 20 376.442. The [department of insurance] director is
- 21 authorized to promulgate rules and regulations necessary to the
- 22 administration or enforcement of the provisions of sections
- 23 376.431 to 376.442, pursuant to section 376.982 and chapter 536,
- 24 RSMo.
- 25 376.480. Whenever any life insurance company incorporated
- under the laws of this state assumes the risks, in whole or in
- 27 part, of any life insurance company incorporated under the laws
- of any other state or the Dominion of Canada or any province

thereof a deposit of any part of its capital stock, surplus, 1 2 legal reserve or other funds on the policies so assumed, the director [of the insurance department] is hereby authorized, in 3 his discretion, to receive from such official such deposit 4 5 pertaining to the policies so assumed or the capital stock, surplus, legal reserve or other funds assigned by such foreign 6 7 company to such domestic company, and during the time that any 8 such official of any other state or the Dominion of Canada or any 9 province thereof retains or holds possession and custody of such 10 deposit after their assignment to such domestic company, such 11 director may treat such deposits so held by the officials of such 12 other state or the Dominion of Canada or any province thereof the 13 same as if they had been received by and were in the custody of 14 such director, and may, in his discretion, register the policies 15 so assumed and may or may not, during such time, require such 16 domestic company to make or maintain with such insurance 17 department any additional deposit on account thereof; provided, 18 that when any of the capital stock, surplus, legal reserve or 19 other funds of any such foreign company is legally invested in 20 securities not authorized by the laws of this state, such 21 securities shall be sold and disposed of within five years as the 22 director may direct, and such domestic company shall not hold 23 such securities or carry same as part of its capital stock, 24 surplus, legal reserve or other funds for a longer period unless it shall procure a certificate from such director that its 25 26 interests will suffer materially by the forced sale thereof. 27 376.510. Any life insurance company or association which

may violate any of the provisions of section 376.500 or which may

permit any of its agents or representatives in this state to violate said provisions, shall have its certificate of authority, or license to transact business in Missouri, revoked by the [state] director [of insurance], and shall be, for a period of five years, barred from the further transaction of business in this state; and any agent, solicitor or representative in this state of any such insurance company or association, who shall violate any of the provisions of section 376.500, shall be deemed quilty of a misdemeanor, and on conviction thereof, in any court of competent jurisdiction in this state, shall be fined not less than fifty nor more than five hundred dollars for each such offense, or imprisoned in the county or city jail, for not less than thirty days nor more than six months, or by both such fine and imprisonment.

376.600. Any life insurance company which may violate any of the provisions of section 376.590, or which may permit any of its agents or representatives in this state to violate said provisions, shall have its certificate of authority or license to transact business in Missouri revoked by the [state] director [of insurance], and shall be for a period of five years barred from the further transaction of business in this state; and any agent, solicitor or representative in this state of any such insurance company who shall violate any of the provisions of said section shall be deemed guilty of a misdemeanor, and, on conviction thereof, in any court of competent jurisdiction in this state, shall be fined not less than fifty nor more than five hundred dollars for each such offense or imprisoned in the county or city jail for not less than ten days nor more than six months, or by

- 1 both such fine and imprisonment.
- 2 376.670. 1. In the case of policies issued on or after the
- 3 operative date of this section, as defined in subsection 14, no
- 4 policy of life insurance, except as stated in subsection 13,
- 5 shall be delivered or issued for delivery in this state unless it
- 6 shall contain in substance the following provisions, or
- 7 corresponding provisions which in the opinion of the director [of
- 8 the department of insurance] are at least as favorable to the
- 9 defaulting or surrendering policyholder as are the minimum
- 10 requirements specified in this section and are essentially in
- 11 compliance with subsection 12a of this section:
- 12 (1) That, in the event of default in any premium payment,
- 13 the company will grant, upon proper request not later than sixty
- days after the due date of the premium in default, a paid-up
- nonforfeiture benefit on a plan stipulated in the policy,
- 16 effective as of such due date, of such amount as may be herein
- 17 specified. In lieu of such stipulated paid-up nonforfeiture
- benefit, the company may substitute, upon proper request not
- 19 later than sixty days after the due date of the premium in
- 20 default, an actuarially equivalent alternative paid-up
- 21 nonforfeiture benefit which provides a greater amount or longer
- 22 period of death benefits or, if applicable, a greater amount or
- 23 earlier payment of endowment benefits;
- 24 (2) That, upon surrender of the policy within sixty days
- 25 after the due date of any premium payment in default after
- 26 premiums have been paid for at least three full years in the case
- 27 of ordinary insurance or five full years in the case of
- industrial insurance, the company will pay, in lieu of any

paid-up nonforfeiture benefit, a cash surrender value of such amount as may be herein specified;

- (3) That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty days after the due date of the premium in default;
- (4) That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the company will pay, upon surrender of the policy within thirty days after any policy anniversary, a cash surrender value of such amount as may be herein specified;
- (5) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty policy years or

- during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the company on the policy;
- A statement that the cash surrender values and the 6 paid-up nonforfeiture benefits available under the policy are not 7 less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is 8 9 delivered; an explanation of the manner in which the cash 10 surrender values and the paid-up nonforfeiture benefits are 11 altered by the existence of any paid-up additions credited to the 12 policy or any indebtedness to the company on the policy; if a 13 detailed statement of the method of computation of the values and 14 benefits shown in the policy is not stated therein, a statement 15 that such method of computation has been filed with the insurance supervisory official of the state in which the policy is 16 17 delivered; and a statement of the method to be used in 18 calculating the cash surrender value and paid-up nonforfeiture 19 benefit available under the policy on any policy anniversary 20 beyond the last anniversary for which such values and benefits 21 are consecutively shown in the policy.
 - 2. Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

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- 3. The company shall reserve the right to defer the payment of any cash surrender value for a period of six months after demand therefor with surrender of the policy.
 - 4. (1) Any cash surrender value available under the policy

in the event of default in a premium payment due on any policy anniversary, whether or not required by subsection 1, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy if there had been no default, including any existing paid-up additions, over the sum of the then present value of the adjusted premiums as defined in subsections 6, 7, 8, 8a, 9, 10, 10a, and 10b corresponding to premiums which would have fallen due on and after such anniversary, and the amount of any indebtedness to the company on the policy.

- (2) For any policy issued on or after the operative date of subsection 10b of this section which provides supplemental life insurance or annuity benefits at the option of the insured for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value referred to in subdivision (1) of this subsection shall be an amount not less than the sum of the cash surrender value for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value for a policy which provides only the benefits otherwise provided by such rider or supplemental policy provision.
- (3) For any family policy issued on or after the operative date of subsection 10b of this section which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one, the cash surrender value referred to in subdivision (1) of this subsection shall be an amount not less than the sum of the cash

surrender value for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

- (4) Any cash surrender value available within thirty days after any policy anniversary under any policy paid up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by subsection 1, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for the policy, including any existing paid-up additions, decreased by any indebtedness to the company on the policy.
- 5. Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of such anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been required by this section in the absence of the condition that premiums shall have been paid for at least a specified period.
- 6. This subsection and subsections 7, 8, 8a, and 9 of this section shall not apply to policies issued on or after the operative date of subsection 10b of this section. Except as provided in subsection 8a, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of

- 1 impairments or special hazards, that the present value, at the
- 2 date of issue of the policy, of all such adjusted premiums shall
- 3 be equal to the sum of:

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- 4 (1) The then present value of the future guaranteed 5 benefits provided for by the policy;
 - (2) Two percent of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as herein defined, if the amount of insurance varies with duration of the policy;
- 10 (3) Forty percent of the adjusted premium for the first policy year;
- 12 (4) Twenty-five percent of either the adjusted premiums for 13 the first policy year or the adjusted premium for a whole life 14 policy of the same uniform or equivalent uniform amount with 15 uniform premiums for the whole of life issued at the same age for 16 the same amount of insurance, whichever is less.
 - 7. Provided, however, that in applying the percentages specified in subdivisions (3) and (4) of subsection 6, no adjusted premium shall be deemed to exceed four percent of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of subsections 6, 7, 8, 8a and 9 shall be the date as of which the rated age of the insured is determined.
 - 8. In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of subsections 6, 7, 8, 8a and 9 shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment

benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

- 8a. The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in subsections 6, 7 and 8 except that, for the purposes of subdivisions (2), (3) and (4) of subsection 6, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in (b) shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in (a).
 - 9. Except as otherwise provided in subsections 10 and 10a, all adjusted premiums and present values referred to in this section shall, for all policies of ordinary insurance, be calculated on the basis of the Commissioners 1941 Standard

Ordinary Mortality Table, provided that for any category of ordinary insurance issued on and after the effective date of this amendment on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent of the rates of mortality according to such applicable table; provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the director.

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10. This subsection shall not apply to ordinary policies issued on or after the operative date of subsection 10b. In the case of ordinary policies issued on or after the operative date provided in this subsection, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits,

provided that such rate of interest shall not exceed three and 1 2 one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued 3 on or after September 28, 1975, and prior to September 28, 1979, 5 and a rate of interest not exceeding five and one-half percent 6 per annum may be used for policies issued on or after September 7 28, 1979, and provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present 8 values may be calculated according to an age not more than six 9 10 years younger than the actual age of the insured; provided, 11 however, that in calculating the present value of any paid-up 12 term insurance with accompanying pure endowment, if any, offered 13 as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term 14 15 Insurance Table; provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted 16 17 premiums and present values may be based on such other table of 18 mortality as may be specified by the company and approved by the 19 director. After the date when this subsection becomes effective, 20 any company may file with the director a written notice of its election to comply with the provisions of this subsection after a 21 22 specified date before January 1, 1966. After the filing of such 23 notice, then upon such specified date, which shall be the 24 operative date of this subsection for such company, this subsection shall become operative with respect to the ordinary 25 26 policies thereafter issued by such company. If a company makes 27 no such election, the operative date of this subsection for such 28 company shall be January 1, 1966.

10a. This subsection shall not apply to industrial policies issued on or after the operative date of subsection 10b. case of industrial policies issued on or after the operative date of this subsection as defined herein, all adjusted premiums and present values referred to in this section shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits, provided that such rate of interest shall not exceed three and one-half percent per annum, except that a rate of interest not exceeding four percent per annum may be used for policies issued on or after September 28, 1975, and prior to September 28, 1979, and a rate of interest not exceeding five and one-half percent per annum may be used for policies issued on or after September 28, 1979; provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table; provided, further, that for insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the director. After the date when this subsection becomes effective, any company may file with the director a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1968. After the filing of such notice, then upon such specified date, which shall be the operative date of this

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- 1 subsection for such company, this subsection shall become
- 2 operative with respect to the industrial policies thereafter
- 3 issued by such company. If a company makes no such election, the
- 4 operative date of this subsection for such company shall be
- 5 January 1, 1968.
- 6 10b. (1) This subsection shall apply to all policies
- 7 issued on or after the operative date of this subsection as
- 8 defined herein. Except as provided in subdivision (7) of this
- 9 subsection, the adjusted premiums for any policy shall be
- 10 calculated on an annual basis and shall be such uniform
- 11 percentage of the respective premiums specified in the policy for
- each policy year, excluding amounts payable as extra premiums to
- 13 cover impairments or special hazards and also excluding any
- 14 uniform annual contract charge or policy fee specified in the
- 15 policy in a statement of the method to be used in calculating the
- 16 cash surrender values and paid-up nonforfeiture benefits, that
- 17 the present value, at the date of issue of the policy, of all
- adjusted premiums shall be equal to the sum of:
- 19 (a) The then present value of the future guaranteed
- 20 benefits provided for by the policy;
- 21 (b) One percent of either the amount of insurance, if the
- 22 insurance be uniform in amount, or the average amount of
- insurance at the beginning of each of the first ten policy years;
- 24 and
- 25 (c) One hundred twenty-five percent of the nonforfeiture
- 26 net level premium as hereinafter defined.
- In applying the percentage specified in paragraph (c) above, no
- 28 nonforfeiture net level premium shall be deemed to exceed four

percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years. The date of issue of a policy for the purpose of this subsection shall be the date as of which the rated age of the insured is determined.

- (2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- (3) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- (4) Except as otherwise provided in subdivision (7) of this subsection, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments

- and special hazards, and also excluding any uniform annual 1 2 contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash 3 surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined 5 benefits or premiums, of all such future adjusted premiums shall 6 7 be equal to the excess of (A) the sum of the then present value of the then future guaranteed benefits provided for by the policy 8 9 and the additional expense allowance, if any, over (B) the then 10 cash surrender value, if any, or present value of any paid-up 11 nonforfeiture benefit under the policy.
 - (5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
 - (a) One percent of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
- 22 (b) One hundred twenty-five percent of the increase, if 23 positive, in the nonforfeiture net level premium.
- 24 (6) The recalculated nonforfeiture net level premium shall 25 be equal to the result obtained by dividing (a) by (b) where:
 - (a) Equals the sum of:

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a. The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one per annum

- payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and
- b. The present value of the increase in future guaranteed benefits provided for by the policy; and

- (b) Equals the present value of an annuity of one per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
- (7) Notwithstanding any other provisions of this subsection to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that in each policy year such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- (8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1980 Standard Ordinary Mortality Table or, at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors. All adjusted premiums and present values referred to in this section shall for all policies of industrial insurance be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table. All adjusted premiums and present values referred to in this section

- shall for all policies issued in a particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this subsection for policies issued in that calendar year.
 - (9) Except as provided in subdivision (8) of this subsection:

- (a) At the option of the company, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subsection, for policies issued in the immediately preceding calendar year;
- (b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by subsection 1 of this section, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any;
- (c) A company may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;
- (d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1980 Extended Term Insurance Table for policies of ordinary insurance and not more than the Commissioners 1961 Industrial Extended Term Insurance

Table for policies of industrial insurance;

- 2 (e) For insurance issued on a substandard basis, the
 3 calculation of any such adjusted premiums and present values may
 4 be based on appropriate modifications of the tables listed in
 5 subdivision (d) of this subsection;
 - (f) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the director for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table;
 - (g) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the director for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1961 Standard Industrial Mortality Table or for the Commissioners 1961 Industrial Extended Term Insurance Table;
 - (10) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section 376.380 rounded to the nearer one-quarter of one percent;
 - (11) Notwithstanding any other provision of law to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table

used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form;

- (12) After the effective date of this subsection, any company may file with the director a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1989, which shall be the operative date of this subsection for such company. If a company makes no such election, the operative date of this subsection for such company shall be January 1, 1989.
- 10c. In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in subsections 1 to 10b of this section, then:
- (1) The director must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by subsections 1 to 10b of this section;
- (2) The director must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;
- (3) The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this section, as determined by regulations promulgated by the director.

- Any cash surrender value and any paid-up nonforfeiture 1 2 benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy 3 anniversary, shall be calculated with allowance for the lapse of 5 time and the payment of fractional premiums beyond the last 6 preceding policy anniversary. All values referred to in 7 subsections 4, 5, 6, 7, 8, 8a, 9, 10, 10a and 10b of this section may be calculated upon the assumption that any death benefit is 8 9 payable at the end of the policy year of death. The net value of 10 any paid-up additions, other than paid-up term additions, shall 11 be not less than the amounts used to provide such additions.
- 12. Notwithstanding the provisions of subsection 4 <u>of this</u>
 13 <u>section</u>, additional benefits payable:
- 14 (1) In the event of death or dismemberment by accident or accidental means;
 - (2) In the event of total and permanent disability;
- 17 (3) As reversionary annuity or deferred reversionary annuity benefits;

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- 19 (4) As term insurance benefits provided by a rider or 20 supplemental policy provision to which, if issued as a separate 21 policy, this section would not apply;
 - (5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child; and
 - (6) As other policy benefits additional to life insurance

and endowment benefits, and premiums for all such additional benefits; shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

- 12a. (1)This subsection, in addition to all other applicable subsections of this section, shall apply to all policies issued on or after January 1, 1986. Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years, from the sum of the greater of zero and the basic cash value hereinafter specified and the present value of any existing paid-up additions less the amount of any indebtedness to the company under the policy.
 - value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the company, if there had been no default, less the then present value of the nonforfeiture factors, as defined in subdivision (3) of this subsection, corresponding to premiums which would have fallen due on and after such anniversary. The effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in

- subsection 4 of this section or in subsections 6, 7, 8, 8a and 9 of this section, whichever is applicable, shall be the same as are the effects specified in subsection 4 of this section or in subsections 6, 7, 8, 8a and 9 of this section, whichever is
- 5 applicable on the cash surrender values defined in that

subsection.

- 7 (3) The nonforfeiture factor for each policy year shall be
 8 an amount equal to a percentage of the adjusted premium for the
 9 policy year, as defined in subsections 6, 7, 8, 8a and 9 of this
 10 section or in subsection 10b of this section, whichever is
 11 applicable. Except as is required by subdivision (4) of this
 12 subsection, such percentage:
 - (a) Must be the same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary or the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent of either the amount of insurance, if the insurance be uniform in amount, or the average amount of insurance at the beginning of each of the first ten policy years; and
 - (b) Must be such that no percentage after the later of the two policy anniversaries specified in paragraph (a) of this subdivision may apply to fewer than five consecutive policy years.
- No basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in subsections 6, 7, 8, 8a and 9 of this section or in subsection

- 1 10b of this section, whichever is applicable, were substituted
- 2 for the nonforfeiture factors in the calculation of the basic
- 3 cash value.
- 4 (4) All adjusted premiums and present values referred to in
- 5 this subsection shall for a particular policy be calculated on
- 6 the same mortality and interest bases as are used in
- 7 demonstrating the policy's compliance with the other subsections
- 8 of this section. The cash surrender values referred to in this
- 9 subsection shall include any endowment benefits provided for by
- 10 the policy.
- 11 (5) Any cash surrender value available other than in the
- 12 event of default in a premium payment due on a policy
- anniversary, and the amount of any paid-up nonforfeiture benefit
- 14 available under the policy in the event of default in a premium
- 15 payment shall be determined in manners consistent with the
- manners specified for determining the analogous minimum amounts
- in subsections 3, 4, 5, 10b and 11 of this section. The amounts
- of any cash surrender values and of any paid-up nonforfeiture
- 19 benefits granted in connection with additional benefits such as
- 20 those listed as subdivisions (1) to (6) in subsection 12 of this
- 21 section shall conform with the principles of this subsection.
- 22 13. (1) This section shall not apply to any of the
- 23 following:

- (a) Reinsurance;
- 25 (b) Group insurance;
- 26 (c) Pure endowments;
- 27 (d) Annuities or reversionary annuity contracts;
- 28 (e) Term policies of uniform amounts, which provide no

guaranteed nonforfeiture or endowment benefits, or renewals
thereof of twenty years or less expiring before age seventy-one,
for which uniform premiums are payable during the entire term of

the policy;

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Term policies of decreasing amounts, which provide no (f) 6 quaranteed nonforfeiture or endowment benefits, on which each 7 adjusted premium calculated as specified in subsections 6, 7, 8, 8a, 9, 10, 10a, and 10b of this section is less than the adjusted 8 9 premium so calculated on a term policy of uniform amount, or 10 renewal thereof, which provides no quaranteed nonforfeiture or 11 endowment benefits, issued at the same age and for the same 12 initial amount of insurance, and for a term of twenty years or 13 less expiring before age seventy-one, for which uniform premiums

are payable during the entire term of the policy;

- endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in subsections 4 to 10b of this section, exceeds two and one-half percent of the amount of insurance at the beginning of the same policy year;
- (h) Policies which shall be delivered outside this state through an agent or other representative of the company issuing the policies.
- (2) For purposes of determining the applicability of this section, the expiration date for a joint term life insurance policy shall be the age at expiry of the oldest life.
 - 14. After the effective date of this section, any company

- may file with the director a written notice of its election to
 comply with the provisions of this section after a specified date
 before January 1, 1948. After the filing of such notice, then
 upon such specified date, which shall be the operative date for
 such company, this section shall become operative with respect to
 the policies thereafter issued by such company. If a company
 makes no such election, the operative date of this section for
 such company shall be January 1, 1948.
- 376.672. The director [of the department of insurance] 9 10 shall establish by regulation the terms and conditions of policy loan interest rate provisions for all policies issued or 11 12 delivered by a life insurance company in this state after August 13 13, 1982. Such regulations shall include provisions for an adjustable maximum interest rate based on the monthly average of 14 15 the Moody's Corporate Bond Yield Average--Monthly Average 16 Corporates, as published by Moody's Investors Service, Inc., the 17 frequency at which the rate is to be determined and appropriate 18 notifications to policyholders. No other provision of law shall apply to policy loan interest rates unless made specifically 19 applicable to such rates. This section shall also apply to loan 20 21 interest rate provisions for certificates issued or delivered by 22 fraternal benefit societies in this state, and for purposes of this section the word "policy" includes such certificates. 23
 - 376.675. 1. No policy of life insurance or contract of annuity shall be delivered or issued for delivery to any person in this state unless the policy or contract shall have been filed with and approved by the director [of insurance].

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2. The director [of insurance] shall have authority to make

- 1 reasonable rules and regulations concerning the procedure for the
- 2 filing and submission of policy or contract forms as are
- 3 necessary, proper or advisable. The director shall approve or
- 4 disapprove a policy or contract form within forty-five days after
- 5 the filing and submission thereof. The failure of the director
- 6 [of insurance] to take action approving or disapproving a
- 7 submitted policy or contract form within the stipulated time
- 8 shall be deemed an approval thereof until such time as the
- 9 director [of insurance] shall notify the submitting company of
- 10 his disapproval thereof.
- 11 3. The director [of insurance] shall approve only those
- 12 forms which are in compliance with the insurance laws of this
- 13 state and which contain such words, phraseology, conditions and
- 14 provisions [with] which are specific, certain and unambiguous and
- 15 reasonably adequate to meet needed requirements for the
- 16 protection of those insured. If any policy or contract form is
- 17 disapproved, the reasons therefor shall be based upon the
- 18 requirements of the laws of this state or of any regulation
- 19 lawfully promulgated thereunder, and shall be stated in writing
- and a notification thereof shall be sent to the submitting
- 21 company. The director shall accord a hearing upon a disapproval,
- 22 if so requested. The disapproval of any policy or contract form
- 23 by the director shall be subject to judicial review as provided
- in chapter 536, RSMo.
- 4. The director [of insurance] may, by order or bulletin,
- 26 exempt from the approval requirements of this section for so long
- as he deems proper any insurance policy, document, or form or
- type thereof, as specified in such order or bulletin, to which,

- 1 in his opinion, this section may not practicably be applied, or
- 2 the approval of which is, in his opinion, not desirable or
- 3 necessary for the protection of the public.
- 4 376.679. Any domestic life insurer or reinsurer may also
- 5 reinsure, by itself, or together with other insurance companies,
- 6 subject to any limitations, approval or rules promulgated by the
- 7 director [of the department of insurance], any risk arising from,
- 8 related to, or incident to the manufacture, ownership or
- 9 operation of aircraft.
- 10 376.693. Group life insurance offered to a resident of this
- 11 state under a group life insurance policy issued to a group other
- than one described in section 376.691 shall be subject to the
- 13 following requirements:
- 14 (1) No such group life insurance policy shall be delivered
- in this state unless the director [of the department of
- 16 insurance] finds that:
- 17 (a) The issuance of such group policy is not contrary to
- 18 the best interest of the public;
- 19 (b) The issuance of the group policy would be actuarially
- 20 sound;
- 21 (c) The issuance of the group policy would result in
- economies of acquisition or administration; and
- 23 (d) The benefits are reasonable in relation to the premiums
- 24 charged;
- 25 (2) No such group life insurance coverage may be offered in
- this state by an insurer under a policy issued in another state
- 27 unless this state, or another state having requirements
- 28 substantially similar to those contained in subdivision (1) of

- this section, has made a determination that such requirements have been met:
- 3 (3) The premium for the policy shall be paid either from 4 the policyholder's funds or from funds contributed by the covered 5 persons, or from both;
- 6 (4) An insurer may exclude or limit coverage on any person 7 as to whom evidence of individual insurability is not 8 satisfactory to the insurer.
- 9 376.697. No policy of group life insurance shall be 10 delivered in this state unless it contains in substance the 11 following provisions, or similar provisions which, in the opinion 12 of the director [of the department of insurance], are more 13 favorable to the persons insured or are at least as favorable to the persons insured and more favorable to the policyholder; 14 15 provided, however, that the provisions in subdivisions (6) to 16 (11) of this section shall not apply to policies insuring the lives of debtors, that the standard provisions required for 17 18 individual life insurance policies shall not apply to group life insurance policies, and that if the group life insurance policy 19 20 is on a plan of insurance other than the term plan, it shall 21 contain a nonforfeiture provision which, in the opinion of the 22 director [of the department of insurance], is equitable to the 23 insured persons and to the policyholder. Nothing contained 24 herein shall be construed to require that group life insurance 25 policies contain the same nonforfeiture provisions as are 26 required for individual life insurance policies:
 - (1) A provision stating that the policyholder is entitled to a grace period of thirty-one days for the payment of any

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premium due except the first, during which grace period the death benefit coverage shall continue in force, unless the policyholder shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the policy. The policy may provide that the policyholder shall be liable to the insurer for the payment of a pro rata premium for the time the policy was in force during such a grace period;

- shall not be contested except for nonpayment of premiums and fraudulent misstatements made by the applicant in the application for such policy after the policy has been in force for two years from its date of issue, and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after such insurance has been in force during such person's lifetime for a period of two years prior to the contest unless it is contained in a written instrument signed by such person. Nothing in this subdivision shall preclude the assertion at any time of defenses based upon provisions in the policy which relate to eligibility for coverage;
- (3) A provision stating that a copy of the application, if any, of the policyholder shall be attached to the policy when issued, that all statements made by the policyholder or by the persons insured shall be deemed representations and not warranties, and that no statement made by any person insured shall be used in any contest unless a copy of the instrument

containing the statement is or has been furnished to such person or, in the event of death or incapacity of the insured person, to his beneficiary or personal representative;

- (4) A provision setting forth the conditions, if any, under which the insurer reserves the right to require a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as a condition to part or all of his coverage;
- (5) A provision specifying an equitable adjustment of premiums or of benefits, or both, to be made in the event that the age of a person insured has been misstated, which provision shall contain a clear statement of the method of adjustment to be made;
- of the death of the person insured shall be payable to the beneficiary designated by the person insured; except, that where the policy contains conditions pertaining to family status, if there is no designated beneficiary, the beneficiary as to all or any part of the benefit sum may, subject to the provisions of the policy, be the family member specified under the policy who is living at the death of the person insured. The rights of such family member shall be subject to any right reserved by the insurer in the policy and set forth in the certificate to pay, at its option, a part of such sum, not exceeding two thousand dollars, to any person appearing to the insurer to be equitably entitled thereto by reason of having incurred funeral or other expenses incident to the last illness or death of the person insured;

(7) A provision stating that the insurer will issue to the policyholder for delivery to each person insured a certificate specifying the insurance protection to which he is entitled, to whom the insurance benefits are payable, any dependent's coverage included in such certificate, and the rights and conditions set forth in subdivisions (8), (9), (10), and (11), of this section;

- (8) A provision stating that if the insurance, or any portion of it, on a person covered under the policy, or on any dependent of such person, ceases because of termination of employment or of membership in any class eligible for coverage under the policy, such person shall be entitled to have issued to him by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits; provided, that application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination; and, provided further, that:
- (a) The individual policy shall, at the option of such person, be on any one of the forms then customarily issued by the insurer at the age and for the amount applied for, except that the group policy may exclude the option to elect term insurance;
- (b) The individual policy shall be in an amount which does not exceed the life insurance which ceases because of such termination, less the amount of any life insurance for which such person becomes eligible under the same or any other group policy within thirty-one days after such termination; provided, that any amount of insurance which shall have matured on or before the date of such termination as an endowment payable to the person

insured, whether in one sum, in installments, or in the form of an annuity, shall not, for the purposes of this paragraph, be included in the amount which is considered to cease because of such termination; and

- (c) The premium on the individual policy shall be at the insurer's then customary rate applicable to the form and amount of the individual policy, to the class of risk to which such person then belongs, and to the individual age attained on the effective date of the individual policy;

 Subject to the same conditions set forth in paragraphs (a), (b), and (c) of this subdivision the conversion privilege shall be available to a surviving dependent, if any, at the death of the employee or member, with respect to the coverage under the group policy which terminates by reason of such death; and to the dependent of the employee or member upon termination of coverage of the dependent, while the employee or member remains under the group policy, by reason of the dependent ceasing to be a qualified family member under the group policy;
- (9) A provision stating that if the group policy terminates or is amended so as to terminate the insurance of any class of insured persons, every person insured thereunder at the date of such termination whose insurance terminates, including the insured dependent of a covered person, and who has been so insured for at least five years prior to such termination date shall be entitled to have issued by the insurer an individual policy of life insurance, subject to the same conditions and limitations as are provided under subdivision (8) of this section; except, that the group policy may provide that the

amount of such individual policy shall not exceed the amount of the person's life insurance protection ceasing because of the termination or amendment of the group policy, less the amount of any life insurance for which he is or becomes eligible under a group policy issued or reinstated by the same or another insurer within thirty-one days after such termination, or ten thousand dollars, whichever is smaller;

- (10) A provision specifying that if a person insured under the group policy, or the insured dependent of a covered person, dies during the period within which the individual would have been entitled to have an individual policy issued in accordance with subdivision (8) or (9) of this section and before such an individual policy shall have become effective, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made:
- (11) Where active employment is a condition of insurance, a provision stating that an insured may continue coverage during the insured's total disability by timely payment to the policyholder of that portion, if any, of the premium that would have been required from the insured had total disability not incurred. The continuation shall be on a premium paying basis for a period of six months from the date on which the total disability started, but shall not extend beyond the approval by the insurer of continuation of the coverage under any disability provision which the group insurance policy may contain or the

- discontinuance of the group insurance policy, whichever occurs
- 2 earlier;
- 3 (12) In the case of a policy insuring the lives of debtors,
- 4 a provision stating that the insurer will furnish to the
- 5 policyholder for delivery to each debtor insured under the policy
- 6 a certificate of insurance describing the coverage and specifying
- 7 that the death benefit shall first be applied to reduce or
- 8 extinguish the indebtedness.
- 9 376.704. For the purposes of sections 376.700 to 376.714,
- 10 the following definitions shall apply:
- 11 (1) "Buyer's guide", a document which contains, and is
- 12 limited to, the language contained in section 376.714 or language
- approved by the director [of the department of insurance];
- 14 (2) "Cash dividend", the current illustrated dividend which
- can be applied toward payment of the gross premium;
- 16 (3) "Equivalent level annual dividend", a calculation made
- by applying the following steps:
- 18 (a) Accumulate the annual cash dividends at five percent
- interest, or other interest rate approved by the director [of the
- department of insurance], compounded annually to the end of the
- 21 tenth and twentieth policy years;
- 22 (b) Divide each accumulation of (a) by an interest factor
- that converts it into one equivalent level annual amount that, if
- paid at the beginning of each year, would accrue to the values in
- 25 (a) over the respective periods stipulated in (a). If the period
- is ten years, the factor is 13.207 and if the period is twenty
- years, the factor is 34.719;
- 28 (c) Divide the results of (b) by the number of thousands of

- the equivalent level death benefit to arrive at the equivalent level annual dividend;
- 3 (4) "Equivalent level death benefit", an amount calculated 4 as follows:

- (a) Accumulate the guaranteed amount payable upon death, regardless of the cause of death, at the beginning of each policy year for ten and twenty years at five percent interest, or other interest rate approved by the director [of the department of insurance], compounded annually to the end of the tenth and twentieth policy years respectively;
- (b) Divide each accumulation of (a) by an interest factor that converts it into one equivalent level annual amount that, if paid at the beginning of each year, would accrue to the value in (a) over the respective periods stipulated in (a). If the period is ten years, the factor is 13.207 and if the period is twenty years, the factor is 34.719.
- (5) "Generic name", a short title which is descriptive of the premium and benefit patterns of a policy or a rider;
 - (6) "Life insurance cost indexes":
- 20 (a) "Life insurance surrender cost index", a calculation
 21 made by applying the following steps:
 - a. Determine the guaranteed cash surrender value, if any, available at the end of the tenth and twentieth policy years;
 - b. For participating policies, add the terminal dividend payable upon surrender, if any, to the accumulation of the annual cash dividends at five percent interest, or other interest rate approved by the director [of the department of insurance], compounded annually to the end of the period selected and add

- 1 this sum to the amount determined in step a;
- c. Divide the result of step b. (step a. for
- 3 guaranteed-cost policies) by an interest factor that converts it
- 4 into an equivalent level annual amount that, if paid at the
- 5 beginning of each year, would accrue to the value in step b.
- 6 (step a. for guaranteed-cost policies) over the respective
- 7 periods stipulated in step a. If the period is ten years, the
- 8 factor is 13.207 and if the period is twenty years, the factor is
- 9 34.719;
- d. Determine the equivalent level premium by accumulating
- each annual premium payable for the basic policy or rider at five
- 12 percent interest, or other interest rate approved by the director
- 13 [of the department of insurance], compounded annually to the end
- of the period stipulated in step a. and dividing the result by
- 15 the respective factors stated in step c. (This amount is the
- annual premium payable for a level premium plan.);
- e. Subtract the result of step c. from step d.;
- 18 f. Divide the result of step e. by the number of thousands
- of the equivalent level death benefit to arrive at the life
- 20 insurance surrender cost index;
- 21 (b) "Life insurance net payment cost index", a calculation
- 22 made in the same manner as the comparable life insurance cost
- index except that the cash surrender value and any terminal
- 24 dividend are set at zero;
- 25 (7) "Policy summary", for the purposes of sections 376.700
- to 376.714, policy summary means a written statement describing
- 27 the elements of the policy including but not limited to:
- 28 (a) A prominently placed title as follows: STATEMENT OF

- 1 POLICY COST AND BENEFIT INFORMATION;
- 2 (b) The name and address of the insurance agent, or, if no
- 3 agent is involved, a statement of the procedure to be followed in
- 4 order to receive responses to inquiries regarding the policy
- 5 summary;
- 6 (c) The full name and home office or administrative office
- 7 address of the company in which the life insurance policy is to
- 8 be or has been written;
- 9 (d) The generic name of the basic policy and each rider;
- 10 (e) The following amounts, where applicable, for the first
- 11 five policy years and representative policy years thereafter
- 12 sufficient to clearly illustrate the premium and benefit
- patterns, including, but not necessarily limited to, the years
- 14 for which life insurance cost indexes are displayed and at least
- one age from sixty through sixty-five or maturity whichever is
- 16 earlier:
- 17 a. The annual premium for the basic policy;
- b. The annual premium for each optional rider;
- 19 c. Guaranteed amount payable upon death, at the beginning
- of the policy year regardless of the cause of death other than
- 21 suicide, or other specifically enumerated exclusions, which is
- 22 provided by the basic policy and each optional rider, with
- 23 benefits provided under the basic policy and each rider shown
- 24 separately;
- d. Total quaranteed cash surrender values at the end of the
- 26 year with values shown separately for the basic policy and each
- 27 rider:
- e. Cash dividends payable at the end of the year with

values shown separately for the basic policy and each rider

(Dividends need not be displayed beyond the twentieth policy

year.);

- f. Guaranteed endowment amounts payable under the policy which are not included under guaranteed cash surrender values above;
 - (f) The effective policy loan annual percentage interest rate, if the policy contains this provision, specifying whether this rate is applied in advance or in arrears. If the policy loan interest rate is variable, the policy summary includes the maximum annual percentage rate;
 - but in no case beyond the premium paying period. Separate indexes are displayed for the basic policy and for each optional term life insurance rider. Such indexes need not be included for optional riders which are limited to benefits such as accidental death benefits, disability waiver of premium, preliminary term life insurance coverage of less than twelve months and guaranteed insurability benefits nor for basic policies or optional riders covering more than one life;
 - (h) The equivalent level annual dividend, in the case of participating policies and participating optional term life insurance riders, under the same circumstances and for the same durations at which life insurance cost indexes are displayed;
 - (i) A policy summary which includes dividends shall also include a statement that dividends are based on the company's current dividend scale and are not guaranteed, in addition to a statement in close proximity to the equivalent level annual

dividend as follows: An explanation of the intended use of the equivalent level annual dividend is included in the life insurance buyer's guide;

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- (j) A statement in close proximity to the life insurance cost indexes as follows: An explanation of the intended use of these indexes is provided in the life insurance buyer's guide;
- (k) The date on which the policy summary is prepared. The policy summary must consist of a separate document. All information required to be disclosed must be set out in such a manner as to not minimize or render any portion thereof obscure. Any amounts which remain level for two or more years of the policy may be represented by a single number if it is clearly indicated what amounts are applicable for each policy year. Amounts in item (e) of this section shall be listed in total, not on a per thousand nor per unit basis. If more than one insured is covered under one policy or rider, guaranteed death benefits
- shall be displayed separately for each insured or for each class of insureds if death benefits do not differ within the class.

 Zero amounts shall be displayed as zero and shall not be
- 20 displayed as a blank space.
- 21 376.718. As used in sections 376.715 to 376.758, the comparing terms shall mean:
- 23 (1) "Account", any of the four accounts created under section 376.720;
- 25 (2) "Annuity or annuity contract", any annuity contract or 26 group annuity certificate which is issued to and owned by an 27 individual. This definition of "annuity or annuity contract" 28 does not include any form of unallocated annuity contract;

- 1 (3) "Association", the Missouri life and health insurance 2 quaranty association created under section 376.720;
- 3 (4) "Contractual obligation", any obligation under a policy 4 or contract or certificate under a group policy or contract, or 5 portion thereof for which coverage is provided under the 6 provisions of section 376.717;
 - (5) "Covered policy", any policy or contract within the scope of sections 376.715 to 376.758 under the provisions of section 376.717;

- (6) "Director", the director of the department of insurance, financial and professional regulation of this state;
 - (7) "Impaired insurer", a member insurer which, after August 13, 1988, is not an insolvent insurer, and is deemed by the director to be potentially unable to fulfill its contractual obligations, or is placed under an order of rehabilitation or conservation by a court of competent jurisdiction;
 - (8) "Insolvent insurer", a member insurer which, after August 13, 1988, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency;
 - (9) "Member insurer", any insurer or health services corporation licensed or which holds a certificate of authority to transact in this state any kind of insurance for which coverage is provided under section 376.717, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed or voluntarily withdrawn, but does not include:
 - (a) A health maintenance organization;
 - (b) A fraternal benefit society;

- 1 (c) A mandatory state pooling plan;
- 2 (d) A mutual assessment company or any entity that operates
- 3 on an assessment basis;

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- (e) An insurance exchange; or
- 5 (f) Any entity similar to any of the entities listed in 6 paragraphs (a) to (e) of this subdivision;
- 7 (10) "Moody's Corporate Bond Yield Average", the monthly 8 average corporates as published by Moody's Investors Service, 9 Inc., or any successor thereto;
- 10 (11) "Person", any individual, corporation, partnership,
 11 association or voluntary organization;
 - contracts, less premiums, considerations and deposits returned thereon, and less dividends and experience credits thereon. The term does not include any amounts received for any policies or contracts or for the portions of any policies or contracts for which coverage is not provided under subsection 3 of section 376.717, except that assessable premium shall not be reduced on account of subdivision (3) of subsection 3 of section 376.717 relating to interest limitations and subdivision (2) of subsection 4 of section 376.717 relating to limitations with respect to any one life and any one contract holder;
 - (13) "Resident", any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person shall be its principal place of business;

1 (14) "Supplemental contract", any agreement entered into 2 for the distribution of policy or contract proceeds;

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- or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity guaranteed to an individual by an insurer under such contract or certificate.
- 376.756. 1. Within one hundred eighty days of August 13, 1988, the association shall prepare a summary document describing the general purposes and current limitations of the act and complying with subsection 2 of this section. This document should be submitted to the director for approval. Sixty days after receiving such approval, no insurer may deliver a policy or contract described in subsection 2 of section 376.717 to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract except if subsection 3 of this section applies. The document should also be available upon request by a policyholder. The distribution, delivery, or contents or interpretation of this document shall not mean that either the policy or the contract or the holder thereof would be covered in the event of the impairment or insolvency of a member insurer. The description document shall be revised by the association as amendments to the act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in sections 376.715 to 376.758.
- 2. The document prepared under subsection 1 of this section shall contain a clear and conspicuous disclaimer on its face.

- The director shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:
- 3 (1) State the name and address of the life and health
 4 insurance guaranty association and [insurance] the department of
 5 insurance, financial and professional regulation;

- (2) Prominently warn the policy or contract holder that the Missouri life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations, exclusions and conditioned on continued residence in the state;
- (3) State that the insurer and its agents are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation or inducement to purchase any form of insurance;
- (4) Emphasize that the policy or contract holder should not rely on coverage under the Missouri life and health insurance guaranty association when selecting an insurer;
 - (5) Provide other information as directed by the director.
- 3. No insurer or agent may deliver a policy or contract described in subsection 2 of section 376.717 and excluded under subsection 3 of section 376.717 from coverage under the provisions of sections 376.715 to 376.758 unless the insurer or agent, prior to or at the time of delivery, gives the policy or contract holder a separate written notice which clearly and conspicuously discloses that the policy or contract is not covered by the Missouri life and health insurance guaranty association. The director shall by rule specify the form and content of the notice.

376.773. 1. The word "insurer" as used in sections 376.770 to 376.800 shall mean any insurance company issuing or writing any policy of accident and sickness insurance which is subject to the provisions of sections 376.770 to 376.800.

- 2. The term "policy of accident and sickness insurance" as used in sections 376.770 to 376.800 includes any policy or contract of insurance against loss resulting from sickness or from bodily injury or death by accident, or both, issued or written by any insurance company authorized under the laws of the state of Missouri to transact such insurance in this state or issued by any insurance company to a resident of the state of Missouri.
- 3. The term "director [of insurance]" as used in sections
 376.770 to 376.800 shall mean the director of the department of
 insurance, financial and professional regulation.
- 376.775. 1. No policy of accident and sickness insurance shall be delivered or issued for delivery to any person in this state unless:
- 19 (1) The entire money and other considerations therefor are 20 expressed therein; and
 - (2) The time at which the insurance takes effect and terminates is expressed therein, except that if the policy is delivered subject to the condition that it shall take effect when the first premium is accepted by the insurer, the time at which the insurance takes effect and terminates may be expressed in the insurer's executed premium receipt which shall by reference be made a part of the policy; and
 - (3) It purports to insure only one person, except that a

policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed to be the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed nineteen years and any other person dependent upon the

policyholder; and

- (4) The style, arrangement and overall appearance of the policy give no undue prominence to any portion of the text, and unless every printed portion of the text of the policy and of any endorsements or attached papers is plainly printed in lightfaced type of a style in general use, the size of which shall be uniform and not less than ten-point with a lowercase unspaced alphabet length not less than one hundred and twenty-point (the "text" shall include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions); and
 - (5) The exceptions and reductions of indemnity are set forth in the policy and, except those which are set forth in section 376.777, are printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "EXCEPTIONS", or "EXCEPTIONS AND REDUCTIONS", provided that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of such exception or reduction shall be included with the benefit provision to which it applies; and
 - (6) Each such form, including riders and endorsements, shall be identified by a form number in the lower left-hand

- corner of the first page thereof; and
- 2 (7) It contains no provision purporting to make any portion
- 3 of the charter, rules, constitution, or bylaws of the insurer a
- 4 part of the policy unless such portion is set forth in full in
- 5 the policy, except in the case of the incorporation of, or
- 6 reference to, a statement of rates or classification of risks, or
- 7 short-rate table filed with the director [of insurance].
- 8 2. If any policy is issued by an insurer domiciled in this
- 9 state for delivery to a person residing in another state, and if
- 10 the official having responsibility for the administration of the
- insurance laws of such other state shall have advised the
- director [of insurance] that any such policy is not subject to
- approval or disapproval by such official, the director [of
- insurance] may by ruling require that such policy meet the
- 15 standards set forth in subsection 1 of this section and in
- 16 section 376.777.

- 17 376.777. 1. Required provisions. Except as provided in
- subsection 3 of this section each such policy delivered or issued
- 19 for delivery to any person in this state shall contain the
- 20 provisions specified in this subsection in the words in which the
- same appear in this section; provided, however, that the insurer
- 22 may, at its option, substitute for one or more of such provisions
- 23 corresponding provisions of different wording approved by the
- 24 director [of insurance] which are in each instance not less
- 25 favorable in any respect to the insured or the beneficiary. Such
- 26 provisions shall be preceded individually by the caption
- appearing in this subsection or, at the option of the insurer, by
- 28 such appropriate individual or group captions or subcaptions as

- 1 the director [of insurance] may approve.
- 2 (1) A provision as follows:
- 3 "ENTIRE CONTRACT; CHANGES:
- 4 This policy, including the endorsements and the attached papers,
- 5 if any, constitutes the entire contract of insurance. No change
- 6 in this policy shall be valid until approved by an executive
- 7 officer of the insurer and unless such approval be endorsed
- 8 hereon or attached hereto. No agent has authority to change this
- 9 policy or to waive any of its provisions".
- 10 (When under the provisions of subdivision (2) of subsection
- 11 1 of section 376.775 the effective and termination dates are
- 12 stated in the premium receipt, the insurer shall insert in the
- first sentence of the foregoing policy provision immediately
- 14 following the comma after the word "any", the following words:
- "and the insurer's official premium receipt when executed").
- 16 (2) A provision as follows:
- 17 "TIME LIMIT ON CERTAIN DEFENSES:
- 18 (a) After two years from the date of issue of this policy
- 19 no misstatements, except fraudulent misstatements, made by the
- applicant in the application for such policy shall be used to
- void the policy or to deny a claim for loss incurred or
- 22 disability (as defined in the policy) commencing after the
- 23 expiration of such two-year period".
- 24 (The foregoing policy provision shall not be so construed as
- 25 to affect any legal requirements for avoidance of a policy or
- denial of a claim during such initial two-year period, nor to
- 27 limit the application of subdivisions (1), (2), (3), (4) and (5)
- of subsection 2 of this section in the event of misstatement with

- 1 respect to age or occupation or other insurance.)
- 2 (A policy which the insured has the right to continue in
- 3 force subject to its terms by the timely payment of premium (1)
- 4 until at least age fifty or, (2) in the case of a policy issued
- 5 after age forty-four, for at least five years from its date of
- 6 issue, may contain in lieu of the foregoing the following
- 7 provision (from which the clause in parentheses may be omitted at
- 8 the insurer's option) under the caption "UNCONTESTABLE":
- 9 "After this policy has been in force for a period of three years
- during the lifetime of the insured (excluding any period during
- which the insured is disabled), it shall become uncontestable as
- 12 to the statements contained in the application).
- 13 (b) No claim for loss incurred or disability (as defined in
- 14 the policy) commencing after two years from the date of issue of
- 15 this policy shall be reduced or denied on the ground that a
- disease or physical condition not excluded from coverage by name
- 17 or specific description effective on the date of loss had existed
- prior to the effective date of coverage of this policy."
- 19 (3) A provision as follows: "GRACE PERIOD: A grace period
- of . . (insert a number not less than "7" for weekly premium
- 21 policies, "10" for monthly premium policies and "31" for all
- 22 other policies) days will be granted for the payment of each
- 23 premium falling due after the first premium, during which grace
- 24 period the policy shall continue in force."
- 25 (A policy which contains a cancellation provision may add,
- at the end of the above provision, subject to the right of the
- 27 insurer to cancel in accordance with the cancellation provision
- 28 hereof. A policy in which the insurer reserves the right to

refuse any renewal shall have, at the beginning of the above provision, "Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted").

(4) A provision as follows:

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"REINSTATEMENT:

If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer, or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium

accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement".

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from its date of issue.)

(5) A provision as follows:

"NOTICE OF CLAIM:

Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insured at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer".

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision: "Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance

of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given").

(6) A provision as follows:

11 "CLAIM FORMS:

The insurer upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made".

(7) A provision as follows:

"PROOFS OF LOSS:

Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to

furnish such proof within the time required shall not invalidate
nor reduce any claim if it was not reasonably possible to give
proof within such time, provided such proof is furnished as soon
as reasonably possible and in no event, except in the absence of
legal capacity, later than one year from the time proof is
otherwise required".

(8) A provision as follows:

"TIME OF PAYMENT OF CLAIMS:

Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof".

(9) A provision as follows:

19 "PAYMENT OF CLAIMS:

Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured".

(The following provisions, or either of them, may be 1 2 included with the foregoing provision at the option of the 3 insurer: "If any indemnity of this policy shall be payable to the estate 5 of the insured, or to an insured or beneficiary who is a minor or 6 otherwise not competent to give a valid release, the insurer may 7 pay such indemnity, up to an amount not exceeding \$..... (insert an amount which shall not exceed one thousand dollars), to any 8 9 relative by blood or connection by marriage of the insured or 10 beneficiary who is deemed by the insurer to be equitably entitled 11 thereto. Any payment made by the insurer in good faith pursuant 12 to this provision shall fully discharge the insurer to the extent 13 of such payment. Subject to any written direction of the insured 14 in the application or otherwise all or a portion of any 15 indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's 16 17 option and unless the insured requests otherwise in writing not 18 later than the time of filing proofs of such loss, be paid 19 directly to the hospital or person rendering such services; but 20 it is not required that the service be rendered by a particular hospital or person"). 21

(10) A provision as follows:

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"PHYSICAL EXAMINATIONS AND AUTOPSY:

The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law".

(11) A provision as follows:

2 "LEGAL ACTIONS:

No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished".

(12) A provision as follows:

"CHANGE OF BENEFICIARY:

Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to change of beneficiary or beneficiaries, or to any other changes in this policy".

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option).

2. Other provisions. Except as provided in subsection 3 of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the director [of insurance] which is not less favorable in any respect to the insured or the beneficiary. Any such provision

contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the director [of insurance] may approve.

(1) A provision as follows:

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"CHANGE OF OCCUPATION:

If the insured [be] is injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then

- 1 the classification of occupational risk and the premium rates
- 2 shall be those last made effective by the insurer in such state
- 3 prior to the occurrence of the loss or prior to the date of proof
- 4 of change in occupation".

- (2) A provision as follows:
- 6 "MISSTATEMENT OF AGE:
- 7 If the age of the insured has been misstated, all amounts
- 8 payable under this policy shall be such as the premium paid would
- 9 have purchased at the correct age".
- 10 (3) A provision as follows:
- 11 "OTHER INSURANCE IN THIS INSURER:
- 12 If an accident or sickness or accident and sickness policy
- or policies previously issued by the insurer to the insured be in
- force concurrently herewith, making the aggregate indemnity for
- 15 (insert type of coverage or coverages) in excess of
- \$..... (insert maximum limit of indemnity or indemnities) the
- excess insurance shall be void and all premiums paid for such
- 18 excess shall be returned to the insured or to his estate, or in
- 19 lieu thereof.
- 20 Insurance effective at any one time on the insured under a like
- 21 policy or policies in this insurer is limited to the one such
- 22 policy elected by the insured, his beneficiary or his estate, as
- 23 the case may be, and the insurer will return all premiums paid
- for all other such policies".
- 25 (4) A provision as follows:
- 26 "INSURANCE WITH OTHER INSURERS:
- 27 If there be other valid coverage, not with this insurer,
- 28 providing benefits for the same loss on a provision of service

basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the "like amount" of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage".

(If the foregoing policy provision is included in a policy which also contains the next following policy provision there shall be added to the caption of the foregoing provision the phrase--"EXPENSE INCURRED BENEFITS". The insurer may, at its option, include in this provision a definition of "other valid coverage", approved as to form by the director [of insurance], which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the director [of insurance]. In the absence of such definition such term shall

not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employees benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workers' compensation or employer's liability statute whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage").

(5) A provision as follows:

"INSURANCE WITH OTHER INSURERS:

If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined".

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the caption of the foregoing provision the

phrase--"OTHER BENEFITS". The insurer may, at its option, 1 2 include in this provision a definition of "other valid coverage", approved as to form by the director [of insurance] which 3 definition shall be limited in subject matter to coverage 4 5 provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the 6 7 United States or any province of Canada, and to any other 8 coverage the inclusion of which may be approved by the director 9 [of insurance]. In the absence of such definition such term 10 shall not include group insurance, or benefits provided by union 11 welfare plans or by employer or employee benefit organizations. 12 For the purpose of applying the foregoing policy provision with 13 respect to any insured, any amount of benefit provided for such 14 insured pursuant to any compulsory benefit statute (including any 15 workers' compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases 16 17 be deemed to be "other valid coverage", of which the insurer has 18 had notice. In applying the foregoing policy provision no third 19 party liability coverage shall be included as "other valid 20 coverage").

(6) A provision as follows:

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"RELATION OF EARNINGS TO INSURANCE:

If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which

claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time".

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age fifty or, (2) in the case of a policy issued after age forty-four, for at least five years from this date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage", approved as to form by the director [of insurance], which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the director of insurance or any combination of such coverages. In the absence of such

- 1 definition such term shall not include any coverage provided for
- 2 such insured pursuant to any compulsory benefit statute
- 3 (including any workers' compensation or employer's liability
- 4 statute), or benefits provided by union welfare plans or by
- 5 employer or employee benefit organizations).
 - (7) A provision as follows:

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7 "UNPAID PREMIUM:

Upon the payment of a claim under this policy, any premium then due and unpaid or covered by any note or written order may be deducted therefrom".

- (8) A provision as follows:
- 12 "CANCELLATION:

13 The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as 14 15 shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and 16 17 after the policy has been continued beyond its original term the 18 insured may cancel this policy at any time by written notice 19 delivered or mailed to the insurer, effective upon receipt or on 20 such later date as may be specified in such notice. In the event 21 of cancellation, the insurer will return promptly the unearned 22 portion of any premium paid. If the insured cancels, the earned 23 premium shall be computed by the use of the short-rate table last 24 filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. 25 26 If the insurer cancels, the earned premium shall be computed pro 27 Cancellation shall be without prejudice to any claim rata. 28 originating prior to the effective date of cancellation".

(9) A provision as follows:

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2 "CONFORMITY WITH STATE STATUTES:

Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes".

(10) A provision as follows:

8 "ILLEGAL OCCUPATION:

The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation".

(11) A provision as follows:

"INTOXICANTS AND NARCOTICS:

The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician".

- 3. Inapplicable or inconsistent provisions. If any provision of this section is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy the insurer, with the approval of the director [of insurance], shall omit from such policy an inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of the provision, in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.
 - 4. Order of certain policy provisions. The provisions

- which are the subject of subsections 1 and 2 of this section, or any corresponding provisions which are used in lieu thereof in accordance with such subsections, shall be printed in the consecutive order of the provisions in such subsections or, at the option of the insurer, any such provision may appear as a unit in any part of the policy, with other provisions to which it may be logically related, provided the resulting policy shall not be in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued.
 - 5. Third party ownership. The word "insured" as used in sections 376.770 to 376.800, shall not be construed as preventing a person other than the insured with a proper insurable interest from making application for and owning a policy covering the insured or from being entitled under such a policy to any indemnities, benefits and rights provided therein.
 - 6. Requirements of other jurisdictions.
 - (1) Any policy of a foreign or alien insurer, when delivered or issued for delivery to any person in this state, may contain any provision which is not less favorable to the insured or the beneficiary than the provisions of sections 376.770 to 376.800 and which is prescribed or required by the law of the state under which the insurer is organized.
 - (2) Any policy of a domestic insurer may, when issued for delivery in any other state or country, contain any provision permitted or required by the laws of such other state or country.
 - 7. Approval of policies.

(1) No policy subject to sections 376.770 to 376.800 shall

be delivered or issued for delivery to any person in this state unless such policy, including any rider, endorsement or other provisions, supplementary thereto, shall have been approved by the director [of insurance].

- make such reasonable rules and regulations concerning the filing and submission of policies as are necessary, proper or advisable. Such rules and regulations shall provide, among other things, that if a policy form is disapproved, the reasons therefor shall be stated in writing; that a hearing shall be granted upon such disapproval, if so requested; and that the failure of the director [of insurance] to take action approving or disapproving a submitted policy form within a stipulated time, not to exceed sixty days from the date of filing, shall be deemed an approval thereof until such time as the director [of insurance] shall notify the submitting company, in writing, of his disapproval thereof.
 - (3) The director [of insurance] shall approve only those policies which are in compliance with the insurance laws of this state and which contain such words, phraseology, conditions and provisions which are specific, certain and unambiguous and reasonably adequate to meet needed requirements for the protection of those insured. The disapproval of any policy form shall be based upon the requirements of the laws of this state or of any regulation lawfully promulgated thereunder.
 - (4) The director [of insurance] may, by order or bulletin, exempt from the approval requirements of this section for so long as he deems proper any insurance policy, document, or form or

- type thereof, as specified in such order or bulletin, to which, in his opinion, this section may not practicably be applied, or the approval of which is, in his opinion, not desirable or
- 4 necessary for the protection of the public.

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- 376.779. 1. All health plans or policies that are 6 individually underwritten or provide for such coverage for 7 specific individuals and the members of their families, which provide for hospital treatment, shall provide coverage, while 8 9 confined in a hospital or in a residential or nonresidential 10 facility certified by the department of mental health, for 11 treatment of alcoholism on the same basis as coverage for any 12 other illness, except that coverage may be limited to thirty days 13 in any policy or contract benefit period. All Missouri 14 individual contracts issued on or after January 1, 2005, shall be 15 subject to this section. Coverage required by this section shall be included in the policy or contract and payment provided as for 16 17 other coverage in the same policy or contract notwithstanding any 18 construction or relationship of interdependent contracts or plans 19 affecting coverage and payment of reimbursement prerequisites 20 under the policy or contract.
 - 2. Insurers, corporations or groups providing coverage may approve for payment or reimbursement vendors and programs providing services or treatment required by this section. Any vendor or person offering services or treatment subject to the provisions of this section and seeking approval for payment or reimbursement shall submit to the department of mental health a detailed description of the services or treatment program to be offered. The department of mental health shall make copies of

- such descriptions available to insurers, corporations or groups 1 2 providing coverage under the provisions of this section. 3 insurer, corporation or group providing coverage shall notify the vendor or person offering service or treatment as to its 5 acceptance or rejection for payment or reimbursement; provided, 6 however, payment or reimbursement shall be made for any service 7 or treatment program certified by the department of mental 8 health. Any notice of rejection shall contain a detailed 9 statement of the reasons for rejection and the steps and 10 procedures necessary for acceptance. Amended descriptions of 11 services or treatment programs to be offered may be filed with 12 the department of mental health. Any vendor or person rejected 13 for approval of payment or reimbursement may modify their 14 description and treatment program and submit copies of the 15 amended description to the department of mental health and to the insurer, corporation or group which rejected the original 16 17 description.
 - 3. The department of mental health may issue rules necessary to carry out the provisions of this section. [No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.] Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the

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- 1 general assembly pursuant to chapter 536, RSMo, to review, to
- 2 <u>delay the effective date, or to disapprove and annul a rule are</u>
- 3 <u>subsequently held unconstitutional</u>, then the grant of rulemaking
- 4 authority and any rule proposed or adopted after August 28, 2007,
- 5 shall be invalid and void.

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- 4. All substance abuse treatment programs in Missouri receiving funding from the Missouri department of mental health must be certified by the department.
- 5. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical policy of six months or less duration, or any other supplemental policy as determined by the director [of the department of
- 376.811. 1. Every insurance company and health services
 corporation doing business in this state shall offer in all
 health insurance policies benefits or coverage for chemical
 dependency meeting the following minimum standards:
 - (1) Coverage for outpatient treatment through a nonresidential treatment program, or through partial— or full-day program services, of not less than twenty-six days per policy benefit period;
- 25 (2) Coverage for residential treatment program of not less 26 than twenty-one days per policy benefit period;
- 27 (3) Coverage for medical or social setting detoxification 28 of not less than six days per policy benefit period;

- 1 (4) The coverages set forth in this subsection may be
 2 subject to a separate lifetime frequency cap of not less than ten
 3 episodes of treatment, except that such separate lifetime
 4 frequency cap shall not apply to medical detoxification in a
 5 life-threatening situation as determined by the treating
 6 physician and subsequently documented within forty-eight hours of
 7 treatment to the reasonable satisfaction of the insurance company
 8 or health services corporation; and
 - (5) The coverages set forth in this subsection:

- 10 (a) Shall be subject to the same coinsurance, co-payment 11 and deductible factors as apply to physical illness;
- 12 (b) May be administered pursuant to a managed care program
 13 established by the insurance company or health services
 14 corporation; and
 - (c) May deliver covered services through a system of contractual arrangements with one or more providers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri.
 - 2. In addition to the coverages set forth in subsection 1 of this section, every insurance company, health services corporation and health maintenance organization doing business in this state shall offer in all health insurance policies, benefits or coverages for recognized mental illness, excluding chemical dependency, meeting the following minimum standards:
 - (1) Coverage for outpatient treatment, including treatment through partial— or full-day program services, for mental health

services for a recognized mental illness rendered by a licensed professional to the same extent as any other illness;

- (2) Coverage for residential treatment programs for the therapeutic care and treatment of a recognized mental illness when prescribed by a licensed professional and rendered in a psychiatric residential treatment center licensed by the department of mental health or accredited by the Joint Commission on Accreditation of Hospitals to the same extent as any other illness;
- (3) Coverage for inpatient hospital treatment for a recognized mental illness to the same extent as for any other illness, not to exceed ninety days per year;
 - (4) The coverages set forth in this subsection shall be subject to the same coinsurance, co-payment, deductible, annual maximum and lifetime maximum factors as apply to physical illness; and
 - (5) The coverages set forth in this subsection may be administered pursuant to a managed care program established by the insurance company, health services corporation or health maintenance organization, and covered services may be delivered through a system of contractual arrangements with one or more providers, community mental health centers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri.
 - 3. The offer required by sections 376.810 to 376.814 may be accepted or rejected by the group or individual policyholder or

- 1 contract holder and, if accepted, shall fully and completely
- 2 satisfy and substitute for the coverage under section 376.779.
- 3 Nothing in sections 376.810 to 376.814 shall prohibit an
- 4 insurance company, health services corporation or health
- 5 maintenance organization from including all or part of the
- 6 coverages set forth in sections 376.810 to 376.814 as standard
- 7 coverage in their policies or contracts issued in this state.
- 8 4. Every insurance company, health services corporation and
- 9 health maintenance organization doing business in this state
- shall offer in all health insurance policies mental health
- benefits or coverage as part of the policy or as a supplement to
- 12 the policy. Such mental health benefits or coverage shall
- include at least two sessions per year to a licensed
- 14 psychiatrist, licensed psychologist, licensed professional
- 15 counselor, or licensed clinical social worker acting within the
- scope of such license and under the following minimum standards:
- 17 (1) Coverage and benefits in this subsection shall be for
- 18 the purpose of diagnosis or assessment, but not dependent upon
- 19 findings; and
- 20 (2) Coverage and benefits in this subsection shall not be
- 21 subject to any conditions of preapproval, and shall be deemed
- 22 reimbursable as long as the provisions of this subsection are
- 23 satisfied; and

- 24 (3) Coverage and benefits in this subsection shall be
- subject to the same coinsurance, co-payment and deductible
- 26 factors as apply to regular office visits under coverages and
- 27 benefits for physical illness.
 - 5. If the group or individual policyholder or contract

- 1 holder rejects the offer required by this section, then the
- 2 coverage shall be governed by the mental health and chemical
- 3 dependency insurance act as provided in sections 376.825 to
- 4 376.836.
- 5 6. This section shall not apply to a supplemental insurance
- 6 policy, including a life care contract, accident-only policy,
- 7 specified disease policy, hospital policy providing a fixed daily
- 8 benefit only, Medicare supplement policy, long-term care policy,
- 9 hospitalization-surgical care policy, short-term major medical
- 10 policy of six months or less duration, or any other supplemental
- policy as determined by the director [of the department of
- insurance].
- 13 376.826. For the purposes of sections 376.825 to 376.836
- 14 the following terms shall mean:
- 15 (1) "Director", the director of the department of
- insurance, financial and professional regulation;
- 17 (2) "Health insurance policy" or "policy", all health
- insurance policies or contracts that are individually
- 19 underwritten or provide such coverage for specific individuals
- and members of their families, which provide for hospital
- 21 treatments. The term shall also include any individually
- 22 underwritten coverage issued by a health maintenance
- 23 organization. The provisions of sections 376.825 to 376.836
- shall not apply to policies which provide coverage for a
- 25 specified disease only, other than for mental illness or chemical
- dependency;
- 27 (3) "Insurer", an entity licensed by the [department of
- insurance] <u>director</u> to offer a health insurance policy;

- 1 (4) "Mental illness", the following disorders contained in
- 2 the International Classification of Diseases (ICD-9-CM):
- 3 (a) Schizophrenic disorders and paranoid states (295 and
- 4 297, except 297.3);
- 5 (b) Major depression, bipolar disorder, and other affective
- 6 psychoses (296);
- 7 (c) Obsessive compulsive disorder, post-traumatic stress
- 8 disorder and other major anxiety disorders (300.0, 300.21,
- 9 300.22, 300.23, 300.3 and 309.81);
- 10 (d) Early childhood psychoses, and other disorders first
- diagnosed in childhood or adolescence (299.8, 312.8, 313.81 and
- 12 314);
- 13 (e) Alcohol and drug abuse (291, 292, 303, 304, and 305,
- 14 except 305.1); and
- 15 (f) Anorexia nervosa, bulimia and other severe eating
- 16 disorders (307.1, 307.51, 307.52 and 307.53);
- 17 (g) Senile organic psychotic conditions (290);
- 18 (5) "Rate", "term", or "condition", any lifetime limits,
- 19 annual payment limits, episodic limits, inpatient or outpatient
- 20 service limits, and out-of-pocket limits. This definition does
- 21 not include deductibles, co-payments, or coinsurance prior to
- reaching any maximum out-of-pocket limit. Any out-of-pocket
- limit under a policy shall be comprehensive for coverage of
- 24 mental illness and physical conditions.
- 25 376.836. 1. The provisions of sections 376.825 to 376.836
- apply to applications for coverage made on or after January 1,
- 27 2005, and to health insurance policies issued or renewed on or
- 28 after such date to residents of this state. Multiyear group

- 1 policies need not comply until the expiration of their current
- 2 multiyear term unless the policyholder elects to comply before
- 3 that time.
- 4 2. This section shall not apply to a supplemental insurance
- 5 policy, including a life care contract, accident-only policy,
- 6 specified disease policy, hospital policy providing a fixed daily
- 7 benefit only, Medicare supplement policy, long-term care policy,
- 8 hospitalization-surgical care policy, short-term major medical
- 9 policy of six months or less duration, or any other supplemental
- 10 policy as determined by the director [of the department of
- insurance].
- 3. The provisions of sections 376.825 to 376.836 shall
- expire on January 1, 2011.
- 376.854. As used in sections 376.850 to 376.890, the
- 15 following terms mean:
- 16 (1) "Applicant":
- 17 (a) In the case of an individual Medicare supplement
- 18 policy, the person who seeks to contract for insurance benefits;
- 19 and
- 20 (b) In the case of a group Medicare supplement policy, the
- 21 proposed certificate holder;
- 22 (2) "Certificate", any certificate delivered or issued for
- 23 delivery in this state under a group Medicare supplement policy;
- 24 (3) "Certificate form", the form on which the certificate
- is delivered or issued for delivery by the issuer;
- 26 (4) "Director", the director of the department of
- 27 insurance, financial and professional regulation;
- 28 (5) "Issuer" includes insurance companies, fraternal

- 1 benefit societies, health care service plans, health maintenance
- 2 organizations, and any other entity delivering or issuing for
- 3 delivery in this state Medicare supplement policies or
- 4 certificates;
- 5 (6) "Medicare", the Health Insurance for the Aged Act,
- 6 Title XVIII of the Social Security Amendments of 1965, as then
- 7 constituted or later amended;
- 8 (7) "Medicare supplement policy", a group or individual
- 9 policy of insurance or a subscriber contract, other than a policy
- issued pursuant to a contract under section 1876 of the federal
- 11 Social Security Act, 42 U.S.C. section 1395, et seq., or an
- issued policy under a demonstration project specified in 42
- U.S.C. section 1395ss(g)(1), which is advertised, marketed or
- designed primarily as a supplement to reimbursements under
- 15 Medicare for the hospital, medical or surgical expenses of
- 16 persons eligible for Medicare;
- 17 (8) "Policy form", the form on which the policy is
- delivered or issued for delivery by the issuer.
- 19 376.960. As used in sections 376.960 to 376.989, the
- 20 following terms mean:
- 21 (1) "Benefit plan", the coverages to be offered by the pool
- 22 to eligible persons pursuant to the provisions of section
- 23 376.986;
- 24 (2) "Board", the board of directors of the pool;
- 25 (3) "Director", the director of the [Missouri] department
- of insurance, financial and professional regulation;
- 27 (4) "Department", the [Missouri] department of insurance,
- 28 financial and professional regulation;

- "Health insurance", any hospital and medical expense incurred policy, nonprofit health care service for benefits other than through an insurer, nonprofit health care service plan contract, health maintenance organization subscriber contract, preferred provider arrangement or contract, or any other similar contract or agreement for the provisions of health care benefits. The term "health insurance" does not include short-term, accident, fixed indemnity, limited benefit or credit insurance, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance;
 - (6) "Health maintenance organization", any person which undertakes to provide or arrange for basic and supplemental health care services to enrollees on a prepaid basis, or which meets the requirements of section 1301 of the United States Public Health Service Act;

(7) "Hospital", a place devoted primarily to the maintenance and operation of facilities for the diagnosis, treatment or care for not less than twenty-four hours in any week of three or more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal physical condition; or a place devoted primarily to provide medical or nursing care for three or more nonrelated individuals for not less than twenty-four hours in any week. The term "hospital" does not include convalescent, nursing, shelter or boarding homes, as

- defined in chapter 198, RSMo;
- 2 (8) "Insurance arrangement", any plan, program, contract or
- 3 other arrangement under which one or more employers, unions or
- 4 other organizations provide to their employees or members, either
- 5 directly or indirectly through a trust or third party
- 6 administration, health care services or benefits other than
- 7 through an insurer;
- 8 (9) "Insured", any individual resident of this state who is
- 9 eligible to receive benefits from any insurer or insurance
- 10 arrangement, as defined in this section;
- 11 (10) "Insurer", any insurance company authorized to
- 12 transact health insurance business in this state, any nonprofit
- 13 health care service plan act, or any health maintenance
- 14 organization;
- 15 "Medicare", coverage under both part A and part B of
- 16 Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq.,
- 17 as amended;
- 18 (12) "Member", all insurers and insurance arrangements
- 19 participating in the pool;
- 20 (13) "Physician", physicians and surgeons licensed under
- 21 chapter 334, RSMo, or by state board of healing arts in the state
- 22 of Missouri;
- 23 (14) "Plan of operation", the plan of operation of the
- 24 pool, including articles, bylaws and operating rules, adopted by
- 25 the board pursuant to the provisions of sections 376.961, 376.962
- 26 and 376.964;
- 27 (15) "Pool", the state health insurance pool created in
- 28 sections 376.961, 376.962 and 376.964.

376.964. The board of directors and administering insurers of the pool shall have the general powers and authority granted under the laws of this state to insurance companies licensed to transact health insurance as defined in section 376.960, and, in addition thereto, the specific authority to:

- (1) Enter into contracts as are necessary or proper to carry out the provisions and purposes of sections 376.960 to 376.989, including the authority, with the approval of the director [of insurance], to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;
- (2) Sue or be sued, including taking any legal actions necessary or proper for recovery of any assessments for, on behalf of, or against pool members;
- (3) Take such legal actions as necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;
- (4) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, agents' referral fees, claim reserve formulas and any other actuarial function appropriate to the operation of the pool. Rates shall not be unreasonable in relation to the coverage provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial and underwriting practices;

- 1 (5) Assess members of the pool in accordance with the
 2 provisions of this section, and to make advance interim
 3 assessments as may be reasonable and necessary for the
 4 organizational and interim operating expenses. Any such interim
 5 assessments are to be credited as offsets against any regular
 6 assessments due following the close of the fiscal year;
 - (6) Issue policies of insurance in accordance with the requirements of sections 376.960 to 376.989;

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- (7) Appoint, from among members, appropriate legal, actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy or other contract design, and any other function within the authority of the pool;
- (8) Establish rules, conditions and procedures for reinsuring risks of pool members desiring to issue pool plan coverages in their own name. Such reinsurance facility shall not subject the pool to any of the capital or surplus requirements, if any, otherwise applicable to reinsurers;
- (9) Negotiate rates of reimbursement with health care providers on behalf of the association and its members.
- 376.1002. 1. It is unlawful for any multiple employer self-insured health plan to transact business in this state without a certificate of authority issued by the director [of the department of insurance]. Any of the acts described in subsection 2 of section 375.786, RSMo, effected by mail or otherwise, by or on behalf of a multiple employer self-insured health plan, constitutes the transaction of business in this state.
 - 2. Any multiple employer self-insured health plan which

- 1 transacts business in this state without the certificate of
- 2 authority required by sections 376.1000 to 376.1045 is considered
- 3 to be an unauthorized insurer within the meaning of section
- 4 375.786, RSMo, and all remedies and penalties prescribed in
- 5 section 375.786, RSMo, shall be fully applicable.
- 6 3. Sections 376.1000 to 376.1045 do not apply to:
- 7 (1) Any plan or arrangement established or maintained by
- 8 municipalities, counties, or other political subdivisions of the
- 9 state pursuant to sections 537.620 to 537.650, RSMo;
- 10 (2) Any multiple employer self-insured health plan which is
- 11 not subject to the application of state insurance laws under the
- 12 provisions of the Employee Retirement Income Security Act of
- 13 1974, 29 U.S.C. 1001, et seq.; or
- 14 (3) Any person or entity found by operation of the
- provisions of section 374.194, RSMo, not to be subject to the
- jurisdiction of the [department of insurance] director.
- 4. A multiple employer self-insured health plan which was
- in existence prior to August 28, 1993, and which is associated
- with or organized or sponsored by a homogenous association exempt
- from taxation under 26 U.S.C. 501(c)(6) and controlled by a board
- of directors a majority of whom are members of the association,
- is exempt from the requirements of sections 376.1000 to 376.1045
- and the insurance laws of this state. To prove exemption from
- 24 taxation under 26 U.S.C. 501(c)(6), the association shall provide
- 25 to the director a certificate issued by the United States
- 26 Internal Revenue Service demonstrating the association's tax
- exempt status.
- 28 376.1005. 1. Application for a certificate of authority

shall be made on forms prescribed by the director [of the department of insurance]. No multiple employer self-insured health plan may hold or obtain a certificate of authority unless it had not less than two hundred fifty covered employees during the preceding calendar quarter.

- 2. Not later than March first of each year, every multiple employer self-insured health plan shall pay to the director a license fee equal to two percent of the Missouri claims paid by the plan during the immediately preceding calendar year. All the funds collected by the director shall be deposited in the [Missouri department of] insurance dedicated fund.
- 3. Within forty-five days from the date coverage commences, the plan shall issue to each covered employee a policy, contract, certificate, summary plan description or other evidence of the benefits and coverages provided. This evidence of the benefits and coverages provided shall contain in boldfaced print in a conspicuous location, the following statement: "The benefits and coverages described herein are provided through a trust fund established and funded by a group of employers. The benefits and coverages are not fully insured by an insurer licensed to do business in the state of Missouri and are therefore not protected by the Missouri Life and Health Guaranty Association".
- 376.1012. Funds collected from the participating employers under multiple employer self-insured health plans shall be held in trust subject to the following requirements:
- (1) A board of trustees elected by participating employers shall serve as fund managers on behalf of participants. Trustees shall be plan participants. No participating employer may be

- represented by more than one trustee. No trustee may represent more than one employer. A minimum of three and a maximum of seven trustees may be elected. Trustees may not receive remuneration but they may be reimbursed for actual and reasonable expenses incurred in connection with duties as trustee. trustee may not be an agent, or broker for or an owner, officer or employee of any third-party administrator, insurance agency or insurer utilized by the plan. The trustees shall have the authority to approve applications of association members for participation in the arrangement and to contract with a licensed third-party administrator to administer the day-to-day affairs of the plan;
 - (2) Each trustee shall be bonded in an amount of not less than one hundred fifty thousand dollars by a licensed insurer;

- restrictions which are applicable to insurers pursuant to sections 376.300 to 376.310; provided, however, that no foreign plan shall be exempt under section 376.310 from the investment laws of this state unless such plan is subject to laws in its state of domicile which are substantially similar to sections 376.1032 to 376.1045. All investments shall be managed by a bank or other investment entity licensed to operate in Missouri;
- (4) Trustees, on behalf of the plan, shall file an annual report with the director [of the department of insurance] by March first showing the condition and affairs of the plan as of the preceding thirty-first day of December. The report shall be made on forms prescribed by the director. The report shall summarize the financial condition of the fund, itemize

- 1 collections from participating employers, detail all fund
- 2 expenditures and provide any additional information which the
- 3 director requires. More frequent reports may be required at the
- 4 discretion of the director.
- 5 376.1020. Each multiple employer self-insured health plan
- 6 shall have and maintain its principal place of business in this
- 7 state or shall appoint the director of the department of
- 8 insurance, financial and professional regulation as its agent for
- 9 service of process, and shall thereby make available to the
- department complete records of its assets, transactions, and
- 11 affairs with such methods and systems as are customary for, or
- 12 suitable to, the kind or kinds of business transacted. The
- director or his representative shall inspect these records at
- least every three years. The information from these records
- 15 shall be furnished to the director or his representatives on
- demand and the original books or records shall be open to
- 17 examination by the director or his representatives when demanded.
- Examinations shall be conducted pursuant to sections 374.160,
- 19 374.162, 374.190, 374.202 to 374.207 and 374.220, RSMo.
- 20 376.1075. As used in sections 376.1075 to 376.1095, the
- 21 following terms mean:
- (1) "Administrator", "third-party administrator" or "TPA",
- 23 a person who directly or indirectly solicits or effects coverage
- of, underwrites, collects charges or premiums from, or adjusts or
- 25 settles claims on residents of this state, or residents of
- another state from offices in this state, in connection with life
- or health insurance coverage, annuities, or workers' compensation
- 28 except any of the following:

- 1 (a) An employer on behalf of its employees or the employees 2 of one or more subsidiary or affiliated corporations of such 3 employer;
 - (b) A union on behalf of its members;

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- 5 (c) An insurance company which is either licensed in this 6 state pursuant to the requirements of this chapter or chapter 7 379, RSMo;
 - (d) An insurer authorized to do insurance business in another state pursuant to similar laws, with respect to a policy lawfully issued and delivered in a state other than this state, when engaged in transacting the business of insurance as defined by this chapter and chapter 379, RSMo;
 - (e) A health service corporation, health maintenance organization or prepaid dental plan operating pursuant to the requirements of chapter 354, RSMo, when engaged in its duties of providing health care or dental services and indemnifying its members;
 - (f) A life or health agent or broker licensed in this state, whose activities are limited exclusively to the sale of insurance;
 - (g) A creditor on behalf of its debtors with respect to insurance covering a debt between the creditor and its debtors;
 - (h) A trust, its trustees, agents and employees acting thereunder, established in conformity with 29 U.S.C. 186;
- 25 (i) A trust exempt from taxation under Section 501(a) of 26 the Internal Revenue Code, its trustees, and employees acting 27 thereunder:
- 28 (j) A custodian, its agents and employees acting pursuant

- 1 to a custodian account which meets the requirements of Section
- 2 401(f) of the Internal Revenue Code;

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- 3 (k) A bank, credit union or other financial institution 4 which is subject to supervision or examination by federal or 5 state banking authorities;
 - (1) A credit card issuing company which advances for and collects premiums or charges from its credit card holders who have authorized it to do so, provided such company does not adjust or settle claims;
 - (m) A person who adjusts or settles claims in the normal course of his or her practice or employment as an attorney at law, and who does not collect charges or premiums in connection with life or health insurance coverage or annuities;
- 14 (n) An adjuster whose activities are limited to adjustment 15 of claims and who is either licensed by this state or working on 16 behalf of a licensed workers' compensation insurer;
 - (o) A person licensed as an insurance agent in this state, whose activities are limited exclusively to the activities of a managing general agent;
- 20 (2) "Affiliate" or "affiliated", any entity or person who
 21 directly or indirectly through one or more intermediaries,
 22 controls or is controlled by, or is under common control with, a
 23 specified entity or person;
 - (3) "Control", as defined in chapter 382, RSMo;
- 25 (4) "Director", the director of the department of insurance, financial and professional regulation;
- 27 (5) "Insurance" or "insurance coverage", any coverage offered or provided by an insurer;

- "Insurer", any person undertaking to provide life or health insurance coverage, annuities or workers' compensation coverage in this state. For the purposes of sections 376.1075 to 376.1095, insurer includes a licensed insurance company, a prepaid hospital or medical care plan, a health maintenance organization, a multiple employer self-insured health plan, a self-insured multiple employer welfare arrangement, or any other person providing a plan of insurance subject to state insurance regulation. Insurer does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted pursuant to the Employee Retirement Income Security Act. of 1974:
 - (7) "Underwrites" or "underwriting" means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, the overall planning and coordinating of an insurance program, and the ability to procure bonds and excess insurance.

- 376.1092. 1. No person shall act as, or offer to act as, or hold himself out to be an administrator in this state without a valid certificate of authority as an administrator issued by the director.
- 2. Applicants to be an administrator shall make an application to the director upon a form to be furnished by the director. The application shall include or be accompanied by the following information and documents:
 - (1) All basic organizational documents of the

- administrator, including, but not limited to, any articles of 2 incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement 3
- and other applicable documents and all amendments to such
- 5 documents;

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- 6 (2) The bylaws, rules, regulations or similar documents 7 regulating the internal affairs of the administrator;
- The names, addresses, official positions and 8 9 professional qualifications of the individuals who are 10 responsible for the conduct of affairs of the administrator, 11 including all members of the board of directors, board of 12 trustees, executive committee or other governing board or 13 committee; the principal officers in the case of a corporation or 14 the partners or members in the case of a partnership or 15 association; shareholders holding directly or indirectly ten percent or more of the voting securities of the administrator; 16 17 and any other person who exercises control or influence over the 18 affairs of the administrator;
 - Annual financial statements or reports for the two most recent years which prove that the applicant is solvent and such information as the director may require in order to review the current financial condition of the applicant;
 - A statement describing the business plan including information on staffing levels and activities proposed in this state and nationwide. The plan shall provide details setting forth the administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims processing, record keeping and underwriting;

- (6) If the applicant will be managing the solicitation of new or renewal business, proof that it employs or has contracted with an agent licensed by this state for solicitation and taking of applications. Any applicant which intends to directly solicit insurance contracts or to otherwise act as an insurance agent must provide proof that it has a license as an insurance agent or agency, or as an insurance agent and agency, as applicable, in this state;
 - (7) An application fee of one thousand dollars;

- 10 (8) Such other pertinent information as may be required by the director.
 - 3. The applicant shall make available for inspection by the director copies of all contracts with insurers or other persons using the services of the administrator.
 - 4. The director may refuse to issue a certificate of authority if the director determines that the administrator or any individual responsible for the conduct of affairs of the administrator as described in subdivision (3) of subsection 2 of this section is not competent, trustworthy, financially responsible or of good personal and business reputation, has had an insurance or an administrator license denied or revoked for cause by any state or been subject to any form of criminal, civil or administrative action by any federal or state court or agency resulting in some form of discipline or sanction.
 - 5. Such certificate shall be renewable annually on the first day of July of each calendar year following the calendar year in which the certificate of registration was originally issued, upon application by the administrator and upon payment of

- 1 the renewal fee of two hundred fifty dollars, provided that the
- 2 director [of the department of insurance] is satisfied that none
- 3 of the facts specified in sections 376.1075 to 376.1095 as
- 4 grounds for revoking a certificate of registration exist, and any
- 5 bond required by sections 376.1075 to 376.1095 is in force.
- 6 Failure to hold such a certificate shall subject the
- 7 administrator to an administrative penalty of not more than fifty
- 8 thousand dollars.
- 9 6. An administrator shall immediately notify the director
- of any material change in its ownership, control, or other fact
- or circumstance affecting its qualification for a certificate of
- 12 authority in this state.
- 7. Every administrator, except as hereinafter provided,
- shall file with the director a surety bond in the amount and form
- as prescribed by the director. Such bond shall be obtained from
- an insurance company licensed or approved to do business in the
- 17 state of Missouri. Any affiliate or subsidiary of an insurance
- 18 company licensed in this state shall not be required to file such
- a bond so long as the director is satisfied with the financial
- 20 condition of such insurance company.
- 21 376.1100. 1. Sections 376.1100 to 376.1130 may be known
- 22 and cited as the "Long-term Care Insurance Act".
- 23 2. As used in sections 376.1100 to 376.1130, unless the
- 24 context requires otherwise, the following terms mean:
- 25 (1) "Applicant":
- 26 (a) In the case of an individual long-term care insurance
- 27 policy, the person who seeks to contract for benefits; and
- 28 (b) In the case of a group long-term care insurance policy,

1 the proposed certificate holder;

this state and issued to:

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- 2 (2) "Certificate", any certificate issued under a group
- 3 long-term care insurance policy, which policy has been delivered
- 4 or issued for delivery in this state;
 - (3) "Director", the director of the department of insurance, financial and professional regulation of this state;
- 7 (4) "Group long-term care insurance", a long-term care 8 insurance policy which is delivered or issued for delivery in
 - (a) One or more employers or labor organizations, or to a trust or to the trustees of a fund established by one or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof or for members or former members or a combination thereof, of the labor organization; or
 - (b) Any professional, trade or occupational association for its members or former or retired members, or combination thereof, if such association;
 - a. Is composed of individuals all of whom are or were actively engaged in the same profession, trade or occupation; and
- 21 b. Has been maintained in good faith for purposes other 22 than obtaining insurance; or
 - (c) An association or a trust or the trustee of a fund established, created or maintained for the benefit of members of one or more associations. Prior to advertising, marketing or offering such policy within this state, the association or associations, or the insurer of the association or associations, shall file evidence with the director that the association or

- 1 associations have at the outset a minimum of one hundred persons
- 2 and have been organized and maintained in good faith for purposes
- 3 other than that of obtaining insurance; have been in active
- 4 existence for at least one year; and have a constitution and
- 5 bylaws which provide that:
- 6 a. The association or associations hold regular meetings
- 7 not less than annually to further purposes of the members;
- b. Except for credit unions, the association or
- 9 associations collect dues or solicit contributions from members;
- 10 and

- 11 c. The members have voting privileges and representation on
- 12 the governing board and committees.
- 14 Thirty days after such filing the association or associations
- shall be deemed to satisfy such organizational requirements,
- unless the director makes a finding that the association or
- 17 associations do not satisfy those organizational requirements;
- 18 (d) A group other than as described in paragraph (a), (b)
- 19 or (c) of subdivision (4) of this subsection, subject to a
- 20 finding by the director that:
- 21 a. The issuance of the group policy is not contrary to the
- 22 best interest of the public;
- b. The issuance of the group policy would result in
- economies of acquisition or administration; and
- 25 c. The benefits are reasonable in relation to the premiums
- 26 charged;
- 27 (5) "Long-term care insurance", any insurance policy or
- rider advertised, marketed, offered or designed to provide

coverage for not less than twelve consecutive months for each 1 2 covered person on an expense-incurred, indemnity, prepaid or other basis; for one or more necessary or medically necessary 3 diagnostic, preventive, therapeutic, rehabilitative, maintenance 5 of personal care services, provided in a setting other than an 6 acute care unit of a hospital. Such term includes group and 7 individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. 8 Such term also includes a policy or rider which provides for 9 10 payment of benefits based upon cognitive impairment or the loss 11 of functional capacity. Long- term care insurance also includes 12 qualified long-term care insurance contracts. Long-term care 13 insurance may be issued by insurers; fraternal benefit societies; 14 health services corporations; prepaid health plans; health 15 maintenance organizations, or any similar organization to the extent they are otherwise authorized to issue life or health 16 17 insurance. Long-term care insurance shall not include any 18 insurance policy which is offered primarily to provide basic 19 Medicare supplement coverage, basic hospital expense coverage, 20 basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability 21 22 income or related asset protection coverage, accident only 23 coverage, specified disease or specified accident coverage, or 24 limited benefit health coverage. With respect or regard to life insurance, long-term care insurance does not include life 25 26 insurance policies that accelerate the death benefit specifically 27 for one or more of the qualifying events of terminal illness, 28 medical conditions requiring extraordinary medical intervention,

option of a lump sum payment for those benefits and neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Notwithstanding any other

or permanent institutional confinement, and that provide the

- 5 provision of sections 376.1100 to 376.1130 to the contrary, any
- 6 product advertised, marketed, or offered as long-term care
- 7 insurance shall be subject to the provisions of sections 376.1100
- 8 to 376.1130;

- (6) "Policy", any policy, subscriber agreement, rider or endorsement delivered or issued for delivery in this state by an insurer; fraternal benefit society; health services corporation; prepaid health plan, health maintenance organization, or any similar organization;
 - "federally tax- qualified long-term care insurance contract", the portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract that satisfies the requirements of Section 7702B(b) and (e) of the Internal Revenue Code of 1986, as amended. "Qualified long-term care insurance contract" also includes an individual or group insurance contract that meets the requirements of Section 7702B(b) of the Internal Revenue Code of 1986, as amended, as follows:
 - (a) The only insurance protection provided under the contract is coverage of qualified long-term care services. A contract shall not fail to satisfy the requirements of this paragraph by reason of payments being made on a per diem or other periodic basis without regard to the expenses incurred during the

- 1 period to which the payments relate;
- 2 (b) The contract does not pay or reimburse expenses
- 3 incurred for services or items to the extent that the expenses
- 4 are reimbursable under Title XVIII of the Social Security Act, as
- 5 amended, or would be so reimbursable but for the application of a
- 6 deductible or coinsurance amount. The requirements of this
- 7 paragraph do not apply to expenses that are reimbursable under
- 8 Title XVIII of the Social Security Act only as a secondary payor.
- 9 A contract shall not fail to satisfy the requirements of this
- paragraph by reason of payments being made on a per diem or other
- 11 periodic basis without regard to the expenses incurred during the
- 12 period to which the payments relate;
- 13 (c) The contract is guaranteed renewable within the meaning
- of Section 7702B(b)(1)(C) of the Internal Revenue Code of 1986,
- 15 as amended;
- 16 (d) The contract does not provide for a cash surrender
- 17 value or other money that can be paid, assigned, pledged as
- 18 collateral for a loan, or borrowed except as provided in
- 19 paragraph (e) of this subdivision;
- 20 (e) All refunds of premiums and all policyholder dividends
- 21 or similar amounts under the contract are to be applied as a
- 22 reduction in future premiums or to increase future benefits;
- except that a refund on the event of death of the insured or a
- 24 complete surrender or cancellation of the contract shall not
- 25 exceed the aggregate premiums paid under the contract; and
- 26 (f) The contract meets the consumer protection provisions
- set forth in Section 7702B(g) of the Internal Revenue Code of
- 28 1986, as amended.

376.1199. 1. Each health carrier or health benefit plan
that offers or issues health benefit plans providing
obstetrical/gynecological benefits and pharmaceutical coverage,
which are delivered, issued for delivery, continued or renewed in
this state on or after January 1, 2002, shall:

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- (1) Notwithstanding the provisions of subsection 4 of section 354.618, RSMo, provide enrollees with direct access to the services of a participating obstetrician, participating gynecologist or participating obstetrician/gynecologist of her choice within the provider network for covered services. services covered by this subdivision shall be limited to those services defined by the published recommendations of the accreditation council for graduate medical education for training an obstetrician, gynecologist or obstetrician/gynecologist, including but not limited to diagnosis, treatment and referral for such services. A health carrier shall not impose additional co-payments, coinsurance or deductibles upon any enrollee who seeks or receives health care services pursuant to this subdivision, unless similar additional co-payments, coinsurance or deductibles are imposed for other types of health care services received within the provider network. Nothing in this subsection shall be construed to require a health carrier to perform, induce, pay for, reimburse, guarantee, arrange, provide any resources for or refer a patient for an abortion, as defined in section 188.015, RSMo, other than a spontaneous abortion or to prevent the death of the female upon whom the abortion is performed, or to supersede or conflict with section 376.805; and
 - (2) Notify enrollees annually of cancer screenings covered

by the enrollees' health benefit plan and the current American

Cancer Society guidelines for all cancer screenings or notify

enrollees at intervals consistent with current American Cancer

Society guidelines of cancer screenings which are covered by the

enrollees' health benefit plans. The notice shall be delivered

by mail unless the enrollee and health carrier have agreed on

another method of notification; and

- (3) Include coverage for services related to diagnosis, treatment and appropriate management of osteoporosis when such services are provided by a person licensed to practice medicine and surgery in this state, for individuals with a condition or medical history for which bone mass measurement is medically indicated for such individual. In determining whether testing or treatment is medically appropriate, due consideration shall be given to peer-reviewed medical literature. A policy, provision, contract, plan or agreement may apply to such services the same deductibles, coinsurance and other limitations as apply to other covered services; and
- (4) If the health benefit plan also provides coverage for pharmaceutical benefits, provide coverage for contraceptives either at no charge or at the same level of deductible, coinsurance or co-payment as any other covered drug. No such deductible, coinsurance or co-payment shall be greater than any drug on the health benefit plan's formulary. As used in this section, "contraceptive" shall include all prescription drugs and devices approved by the federal Food and Drug Administration for use as a contraceptive, but shall exclude all drugs and devices that are intended to induce an abortion, as defined in section

- 1 188.015, RSMo, which shall be subject to section 376.805.
- 2 Nothing in this subdivision shall be construed to exclude
- 3 coverage for prescription contraceptive drugs or devices ordered
- 4 by a health care provider with prescriptive authority for reasons
- 5 other than contraceptive or abortion purposes.

- 2. For the purposes of this section, "health carrier" and "health benefit plan" shall have the same meaning as defined in section 376.1350.
 - 3. The provisions of this section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, short-term major medical policies of six months or less duration, or any other supplemental policy as determined by the director [of the department of insurance].
 - 4. Notwithstanding the provisions of subdivision (4) of subsection 1 of this section to the contrary:
 - (1) Any health carrier may issue to any person or entity purchasing a health benefit plan, a health benefit plan that excludes coverage for contraceptives if the use or provision of such contraceptives is contrary to the moral, ethical or religious beliefs or tenets of such person or entity;
 - (2) Upon request of an enrollee who is a member of a group health benefit plan and who states that the use or provision of contraceptives is contrary to his or her moral, ethical or religious beliefs, any health carrier shall issue to or on behalf of such enrollee a policy form that excludes coverage for contraceptives. Any administrative costs to a group health

- benefit plan associated with such exclusion of coverage not
 offset by the decreased costs of providing coverage shall be
 borne by the group policyholder or group plan holder;
 - (3) Any health carrier which is owned, operated or controlled in substantial part by an entity that is operated pursuant to moral, ethical or religious tenets that are contrary to the use or provision of contraceptives shall be exempt from the provisions of subdivision (4) of subsection 1 of this section.

- For purposes of this subsection, if new premiums are charged for a contract, plan or policy, it shall be determined to be a new contract, plan or policy.
- 5. Except for a health carrier that is exempted from
 providing coverage for contraceptives pursuant to this section, a
 health carrier shall allow enrollees in a health benefit plan
 that excludes coverage for contraceptives pursuant to subsection
 4 of this section to purchase a health benefit plan that includes
 coverage for contraceptives.
 - 6. Any health benefit plan issued pursuant to subsection 1 of this section shall provide clear and conspicuous written notice on the enrollment form or any accompanying materials to the enrollment form and the group health benefit plan contract:
 - (1) Whether coverage for contraceptives is or is not included;
 - (2) That an enrollee who is a member of a group health benefit plan with coverage for contraceptives has the right to exclude coverage for contraceptives if such coverage is contrary

- to his or her moral, ethical or religious beliefs; and
- 2 (3) That an enrollee who is a member of a group health
- 3 benefit plan without coverage for contraceptives has the right to
- 4 purchase coverage for contraceptives.
- 5 7. Health carriers shall not disclose to the person or
- 6 entity who purchased the health benefit plan the names of
- 7 enrollees who exclude coverage for contraceptives in the health
- 8 benefit plan or who purchase a health benefit plan that includes
- 9 coverage for contraceptives. Health carriers and the person or
- 10 entity who purchased the health benefit plan shall not
- discriminate against an enrollee because the enrollee excluded
- 12 coverage for contraceptives in the health benefit plan or
- 13 purchased a health benefit plan that includes coverage for
- 14 contraceptives.

- 15 8. The [departments] department of health and senior
- 16 services and the department of insurance, financial and
- 17 professional regulation may promulgate rules necessary to
- 18 implement the provisions of this section. No rule or portion of
- 19 a rule promulgated pursuant to this section shall become
- effective unless it has been promulgated pursuant to chapter 536,
- 21 RSMo. Any rule or portion of a rule, as that term is defined in
- 22 section 536.010, RSMo, that is created under the authority
- 23 delegated in this section shall become effective only if it
- complies with and is subject to all of the provisions of chapter
- 536, RSMo, and, if applicable, section 536.028, RSMo. This
- section and chapter 536, RSMo, are nonseverable and if any of the
- powers vested with the general assembly pursuant to chapter 536,
- 28 RSMo, to review, to delay the effective date or to disapprove and

annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2001, shall be invalid and void.

376.1219. 1. Each policy issued by an entity offering individual and group health insurance which provides coverage on an expense-incurred basis, individual and group health service or indemnity type contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance organization, all self-insured group health arrangements to the extent not preempted by federal law, and all health care plans provided by managed health care delivery entities of any type or description, that are delivered, issued for delivery, continued or renewed in this state on or after September 1, 1997, shall provide coverage for formula and low protein modified food products recommended by a physician for the treatment of a patient with phenylketonuria or any inherited disease of amino and organic acids who is covered under the policy, contract, or plan and who is less than six years of age.

- 2. For purposes of this section, "low protein modified food products" means foods that are specifically formulated to have less than one gram of protein per serving and are intended to be used under the direction of a physician for the dietary treatment of any inherited metabolic disease. Low protein modified food products do not include foods that are naturally low in protein.
- 3. The coverage required by this section may be subject to the same deductible for similar health care services provided by the policy, contract, or plan as well as a reasonable coinsurance or co-payment on the part of the insured, which shall not be

greater than fifty percent of the cost of the formula and food products, and may be subject to an annual benefit maximum of not less than five thousand dollars per covered child. Nothing in this section shall prohibit a carrier from using individual case management or from contracting with vendors of the formula and food products.

- 4. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, or any other supplemental policy as determined by the director [of the department of insurance].
- 376.1220. 1. Each policy issued by an entity offering individual and group health insurance which provides coverage on an expense-incurred basis, individual or group health service, or indemnity contracts issued by a nonprofit corporation, individual and group service contracts issued by a health maintenance organization, all self-insured group health arrangements to the extent not preempted by federal law, and all health care plans provided by managed health care delivery entities of any type or description that are delivered, issued for delivery, continued or renewed in this state shall provide coverage for newborn hearing screening, necessary rescreening, audiological assessment and follow-up, and initial amplification.
- 2. The health care service required by this section shall not be subject to any greater deductible or co-payment than other similar health care services provided by the policy, contract or plan.

3. This section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, short-term major medical policies of six months or less duration, or any other supplemental policy as determined by the director [of the department of insurance].

- 4. Coverage for newborn hearing screening and any necessary rescreening and audiological assessment shall be provided to newborns eligible for medical assistance pursuant to section 208.151, RSMo, and the children's health program pursuant to sections 208.631 to 208.660, RSMo, with payment for the newborn hearing screening required in section 191.925, RSMo, and any necessary rescreening, audiological assessment and follow-up, and amplification as described in section 191.928, RSMo.
- 376.1253. 1. Each physician attending any patient with a newly diagnosed cancer shall inform the patient that the patient has the right to a referral for a second opinion by an appropriate board-certified specialist prior to any treatment. If no specialist in that specific cancer diagnosis area is in the provider network, a referral shall be made to a nonnetwork specialist in accordance with this section.
- 2. Each health carrier or health benefit plan, as defined in section 376.1350, that offers or issues health benefit plans which are delivered, issued for delivery, continued or renewed in this state on or after January 1, 2003, shall provide coverage for a second opinion rendered by a specialist in that specific cancer diagnosis area when a patient with a newly diagnosed

cancer is referred to such specialist by his or her attending

physician. Such coverage shall be subject to the same deductible

and coinsurance conditions applied to other specialist referrals

and all other terms and conditions applicable to other benefits,

including the prior authorization and/or referral authorization

requirements as specified in the applicable health insurance

policy.

- 3. The provisions of this section shall not apply to a supplemental insurance policy, including a life care contract, accident-only policy, specified disease policy, hospital policy providing a fixed daily benefit only, Medicare supplement policy, long-term care policy, short-term major medical policies of six months' or less duration, or any other supplemental policy as determined by the director [of the department of insurance].
- that offers or issues health benefit plans which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2003, shall include coverage for their members for the cost for human leukocyte antigen testing, also referred to as histocompatibility locus antigen testing, for A, B, and DR antigens for utilization in bone marrow transplantation. The testing must be performed in a facility which is accredited by the American Association of Blood Banks or its successors, and is licensed under the Clinical Laboratory Improvement Act, 42 U.S.C. Section 263a, as amended, and is accredited by the American Association of Blood Banks or its successors, the College of
- Histocompatibility and Immunogenetics (ASHI) or any other

American Pathologists, the American Society for

- 1 national accrediting body with requirements that are
- 2 substantially equivalent to or more stringent than those of the
- 3 College of American Pathologists. At the time of testing, the
- 4 person being tested must complete and sign an informed consent
- 5 form which also authorizes the results of the test to be used for
- 6 participation in the National Marrow Donor Program. The health
- 7 benefit plan may limit each enrollee to one such testing per
- 8 lifetime to be reimbursed at a cost of no greater than
- 9 seventy-five dollars by the health carrier or health benefit
- 10 plan.
- 11 2. For the purposes of this section, "health carrier" and
- 12 "health benefit plan" shall have the same meaning as defined in
- 13 section 376.1350.
- 14 3. The health care service required by this section shall
- not be subject to any greater deductible or co-payment than other
- similar health care services provided by the health benefit plan.
- 17 4. The provisions of this section shall not apply to a
- 18 supplemental insurance policy, including a life care contract,
- 19 accident-only policy, specified disease policy, hospital policy
- 20 providing a fixed daily benefit only, Medicare supplement policy,
- 21 long-term care policy, short-term major medical policies of six
- 22 months' or less duration, or any other supplemental policy as
- 23 determined by the director [of the department of insurance].
- 24 376.1305. 1. A mutual life insurance company proposing to
- 25 reorganize pursuant to sections 376.1300 to 376.1322 shall form a
- 26 mutual life insurance holding company, which may hereafter be
- 27 referred to as a mutual holding company, and shall file an
- application with the director [of the department of insurance]

- 1 which shall contain such insurer's plan of reorganization. The
- 2 director shall review the application, and may retain such
- 3 consultants as may be reasonably necessary, at the expense of the
- 4 applicant; conduct an adequate review to assure that
- 5 policyholders' interests are protected and may conduct a public
- 6 hearing. The director shall approve the formation of the mutual
- 7 holding company and the plan of reorganization if the director
- 8 finds that the plan is fair and equitable to the policyholders.
- 9 The director may condition such approval on adoption of
- 10 modifications to the plan if the director finds such
- 11 modifications are necessary for the protection of the
- 12 policyholders' interests.
- 13 2. No mutual life insurance company may reorganize pursuant
- to sections 376.1300 to 376.1322 unless the reorganization plan
- is approved by a majority of the policyholders voting in person
- or by proxy at a special meeting called for that purpose. Any
- 17 group of at least one hundred policyholders having a right to
- vote at such special meeting shall be entitled at their own
- 19 expense to have the secretary of the company mail informational
- 20 materials to all policyholders provided that such materials and
- 21 the cost thereof are presented to the secretary at least
- forty-five days before the special meeting.
- 23 376.1315. Notwithstanding any provision of this chapter to
- 24 the contrary, a mutual holding company organized pursuant to
- section 376.1300 shall be incorporated pursuant to this chapter.
- The articles of incorporation and any amendments to such articles
- of the mutual holding company shall be subject to approval of the
- 28 director [of the department of insurance] and the attorney

- general in the same manner as those of a mutual life insurance company.
- 376.1322. 1. A mutual holding company is subject to the 3 supervision of the director [of the department of insurance] in 5 the same manner as an insurer subject to the provisions of this chapter and shall automatically be a party to any proceeding 6 7 pursuant to the Missouri insurers supervision, rehabilitation and 8 liquidation act, sections 375.1150 to 375.1246, RSMo, involving a 9 life insurance company which, as a result of a reorganization pursuant to section 376.1300, is a subsidiary of the mutual 10 11 holding company or a stock holding company created pursuant to 12 section 376.1307. In any proceeding pursuant to sections 375.1150 to 375.1246, RSMo, involving the reorganized life 13 14 insurance company, the assets of the mutual holding company are deemed to be assets of the estate of the reorganized life 15 16 insurance company for purposes of satisfying the claims of the 17 reorganized life insurance company's policyholders. A mutual 18 holding company shall not dissolve or liquidate without the
- 22 2. Sections 375.201 to 375.226, RSMo, shall apply to a
 23 demutualization of a mutual holding company the same as if such
 24 holding company was a mutual life insurance company. This
 25 section does not apply to those companies organized under chapter
 26 354, RSMo, or chapter 355, RSMo, and does apply only to
 27 for-profit mutual life insurance companies.

approval of the director [of the department of insurance] or as

ordered by the court pursuant to sections 375.1150 to 375.1246,

28 376.1350. For purposes of sections 376.1350 to 376.1390,

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the following terms mean:

- (1) "Adverse determination", a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service has been reviewed and, based upon the information provided, does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the payment for the requested service is therefore denied, reduced or terminated;
- (2) "Ambulatory review", utilization review of health care services performed or provided in an outpatient setting;
- (3) "Case management", a coordinated set of activities conducted for individual patient management of serious, complicated, protracted or other health conditions;
- (4) "Certification", a determination by a health carrier or its designee utilization review organization that an admission, availability of care, continued stay or other health care service has been reviewed and, based on the information provided, satisfies the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care and effectiveness;
- (5) "Clinical peer", a physician or other health care professional who holds a nonrestricted license in a state of the United States and in the same or similar specialty as typically manages the medical condition, procedure or treatment under review;
- (6) "Clinical review criteria", the written screening procedures, decision abstracts, clinical protocols and practice

- guidelines used by the health carrier to determine the necessity and appropriateness of health care services;
- 3 (7) "Concurrent review", utilization review conducted 4 during a patient's hospital stay or course of treatment;
- 5 (8) "Covered benefit" or "benefit", a health care service 6 that an enrollee is entitled under the terms of a health benefit 7 plan;
 - (9) "Director", the director of the department of insurance, financial and professional regulation;

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- 10 (10) "Discharge planning", the formal process for
 11 determining, prior to discharge from a facility, the coordination
 12 and management of the care that a patient receives following
 13 discharge from a facility;
 - (11) "Drug", any substance prescribed by a licensed health care provider acting within the scope of the provider's license and that is intended for use in the diagnosis, mitigation, treatment or prevention of disease. The term includes only those substances that are approved by the FDA for at least one indication;
 - (12) "Emergency medical condition", the sudden and, at the time, unexpected onset of a health condition that manifests itself by symptoms of sufficient severity that would lead a prudent lay person, possessing an average knowledge of medicine and health, to believe that immediate medical care is required, which may include, but shall not be limited to:
 - (a) Placing the person's health in significant jeopardy;
 - (b) Serious impairment to a bodily function;
 - (c) Serious dysfunction of any bodily organ or part;

- 1 (d) Inadequately controlled pain; or
- 2 (e) With respect to a pregnant woman who is having
- 3 contractions:

- a. That there is inadequate time to effect a safe transfer to another hospital before delivery; or
- b. That transfer to another hospital may pose a threat to the health or safety of the woman or unborn child;
- 8 (13) "Emergency service", a health care item or service
 9 furnished or required to evaluate and treat an emergency medical
 10 condition, which may include, but shall not be limited to, health
 11 care services that are provided in a licensed hospital's
 12 emergency facility by an appropriate provider;
- 13 (14) "Enrollee", a policyholder, subscriber, covered person 14 or other individual participating in a health benefit plan;
 - (15) "FDA", the federal Food and Drug Administration;
- 16 (16) "Facility", an institution providing health care
 17 services or a health care setting, including but not limited to
 18 hospitals and other licensed inpatient centers, ambulatory
 19 surgical or treatment centers, skilled nursing centers,
 20 residential treatment centers, diagnostic, laboratory and imaging
 21 centers, and rehabilitation and other therapeutic health
 22 settings;
- 23 (17) "Grievance", a written complaint submitted by or on 24 behalf of an enrollee regarding the:
- 25 (a) Availability, delivery or quality of health care 26 services, including a complaint regarding an adverse 27 determination made pursuant to utilization review;
 - (b) Claims payment, handling or reimbursement for health

- 1 care services; or
- 2 (c) Matters pertaining to the contractual relationship 3 between an enrollee and a health carrier;
- 4 (18) "Health benefit plan", a policy, contract, certificate
- 5 or agreement entered into, offered or issued by a health carrier
- 6 to provide, deliver, arrange for, pay for, or reimburse any of
- 7 the costs of health care services; except that, health benefit
- 8 plan shall not include any coverage pursuant to liability
- 9 insurance policy, workers' compensation insurance policy, or
- 10 medical payments insurance issued as a supplement to a liability
- 11 policy;
- 12 (19) "Health care professional", a physician or other
- 13 health care practitioner licensed, accredited or certified by the
- state of Missouri to perform specified health services consistent
- 15 with state law:
- 16 (20) "Health care provider" or "provider", a health care
- 17 professional or a facility;
- 18 (21) "Health care service", a service for the diagnosis,
- 19 prevention, treatment, cure or relief of a health condition,
- 20 illness, injury or disease;
- 21 (22) "Health carrier", an entity subject to the insurance
- 22 laws and regulations of this state that contracts or offers to
- contract to provide, deliver, arrange for, pay for or reimburse
- any of the costs of health care services, including a sickness
- 25 and accident insurance company, a health maintenance
- 26 organization, a nonprofit hospital and health service
- corporation, or any other entity providing a plan of health
- insurance, health benefits or health services; except that such

- 1 plan shall not include any coverage pursuant to a liability
- 2 insurance policy, workers' compensation insurance policy, or
- 3 medical payments insurance issued as a supplement to a liability
- 4 policy;
- 5 (23) "Health indemnity plan", a health benefit plan that is 6 not a managed care plan;
- 7 (24) "Managed care plan", a health benefit plan that either 8 requires an enrollee to use, or creates incentives, including 9 financial incentives, for an enrollee to use, health care 10 providers managed, owned, under contract with or employed by the
- 11 health carrier;

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- (25) "Participating provider", a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to enrollees with an expectation of receiving payment, other than coinsurance, co-payments or deductibles, directly or indirectly from the health carrier;
 - (26) "Peer-reviewed medical literature", a published scientific study in a journal or other publication in which original manuscripts have been published only after having been critically reviewed for scientific accuracy, validity and reliability by unbiased independent experts, and that has been determined by the International Committee of Medical Journal Editors to have met the uniform requirements for manuscripts submitted to biomedical journals or is published in a journal specified by the United States Department of Health and Human Services pursuant to Section 1861(t)(2)(B) of the Social Security Act, as amended, as acceptable peer-reviewed medical literature.

- 1 Peer-reviewed medical literature shall not include publications
- 2 or supplements to publications that are sponsored to a
- 3 significant extent by a pharmaceutical manufacturing company or
- 4 health carrier;
- 5 (27) "Person", an individual, a corporation, a partnership,
- 6 an association, a joint venture, a joint stock company, a trust,
- 7 an unincorporated organization, any similar entity or any
- 8 combination of the foregoing;
- 9 (28) "Prospective review", utilization review conducted
- prior to an admission or a course of treatment;
- 11 (29) "Retrospective review", utilization review of medical
- 12 necessity that is conducted after services have been provided to
- a patient, but does not include the review of a claim that is
- limited to an evaluation of reimbursement levels, veracity of
- documentation, accuracy of coding or adjudication for payment;
- 16 (30) "Second opinion", an opportunity or requirement to
- obtain a clinical evaluation by a provider other than the one
- originally making a recommendation for a proposed health service
- 19 to assess the clinical necessity and appropriateness of the
- 20 initial proposed health service;
- 21 (31) "Stabilize", with respect to an emergency medical
- 22 condition, that no material deterioration of the condition is
- 23 likely to result or occur before an individual may be
- 24 transferred;
- 25 "Standard reference compendia":
- 26 (a) The American Hospital Formulary Service-Drug
- 27 Information; or
- 28 (b) The United States Pharmacopoeia-Drug Information;

designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings. Techniques may include ambulatory review, prospective review, second opinion, certification, concurrent review, case management, discharge planning or retrospective review. Utilization review shall not include elective requests for clarification of coverage;

- (34) "Utilization review organization", a utilization review agent as defined in section 374.500, RSMo.
 - 376.1361. 1. A utilization review program shall use documented clinical review criteria that are based on sound clinical evidence and are evaluated periodically to assure ongoing efficacy. A health carrier may develop its own clinical review criteria, or it may purchase or license clinical review criteria from qualified vendors. A health carrier shall make available its clinical review criteria upon request by either the director of the department of health and senior services or the director [of the department of insurance].
 - 2. Any medical director who administers the utilization review program or oversees the review decisions shall be a qualified health care professional licensed in the state of Missouri. A licensed clinical peer shall evaluate the clinical appropriateness of adverse determinations.
 - 3. A health carrier shall issue utilization review decisions in a timely manner pursuant to the requirements of sections 376.1363, 376.1365 and 376.1367. A health carrier shall obtain all information required to make a utilization review

- decision, including pertinent clinical information. A health carrier shall have a process to ensure that utilization reviewers apply clinical review criteria consistently.
 - 4. A health carrier's data systems shall be sufficient to support utilization review program activities and to generate management reports to enable the health carrier to monitor and manage health care services effectively.

- 5. If a health carrier delegates any utilization review activities to a utilization review organization, the health carrier shall maintain adequate oversight, which shall include:
- (1) A written description of the utilization review organization's activities and responsibilities, including reporting requirements;
- (2) Evidence of formal approval of the utilization review organization program by the health carrier; and
 - (3) A process by which the health carrier evaluates the performance of the utilization review organization.
 - 6. The health carrier shall coordinate the utilization review program with other medical management activities conducted by the carrier, such as quality assurance, credentialing, provider contracting, data reporting, grievance procedures, processes for accessing member satisfaction and risk management.
 - 7. A health carrier shall provide enrollees and participating providers with timely access to its review staff by a toll-free number.
- 8. When conducting utilization review, the health carrier shall collect only the information necessary to certify the admission, procedure or treatment, length of stay, frequency and

- 1 duration of services.
- 2 9. Compensation to persons providing utilization review
- 3 services for a health carrier shall not contain direct or
- 4 indirect incentives for such persons to make medically
- 5 inappropriate review decisions. Compensation to any such persons
- 6 may not be directly or indirectly based on the quantity or type
- 7 of adverse determinations rendered.
- 8 10. A health carrier shall permit enrollees or a provider
- 9 on behalf of an enrollee to appeal for the coverage of medically
- 10 necessary pharmaceutical prescriptions and durable medical
- 11 equipment as part of the health carriers' utilization review
- 12 process.
- 13 11. (1) This subsection shall apply to:
- 14 (a) Any health benefit plan that is issued, amended,
- delivered or renewed on or after January 1, 1998, and provides
- 16 coverage for drugs; or
- 17 (b) Any person making a determination regarding payment or
- 18 reimbursement for a prescription drug pursuant to such plan.
- 19 (2) A health benefit plan that provides coverage for drugs
- 20 shall provide coverage for any drug prescribed to treat an
- 21 indication so long as the drug has been approved by the FDA for
- 22 at least one indication, if the drug is recognized for treatment
- of the covered indication in one of the standard reference
- 24 compendia or in substantially accepted peer-reviewed medical
- 25 literature and deemed medically appropriate.
- 26 (3) This section shall not be construed to require coverage
- 27 for a drug when the FDA has determined its use to be
- 28 contraindicated for treatment of the current indication.

1 (4) A drug use that is covered pursuant to subsection 1 of 2 this section shall not be denied coverage based on a "medical 3 necessity" requirement except for a reason that is unrelated to 4 the legal status of the drug use.

- (5) Any drug or service furnished in a research trial, if the sponsor of the research trial furnishes such drug or service without charge to any participant in the research trial, shall not be subject to coverage pursuant to subsection 1 of this section.
- (6) Nothing in this section shall require payment for nonformulary drugs, except that the state may exclude or otherwise restrict coverage of a covered outpatient drug from Medicaid programs as specified in the Social Security Act, Section 1927(d)(1)(B).
 - 12. A carrier shall issue a confirmation number to an enrollee when the health carrier, acting through a participating provider or other authorized representative, authorizes the provision of health care services.
 - 13. If an authorized representative of a health carrier authorizes the provision of health care services, the health carrier shall not subsequently retract its authorization after the health care services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless:
 - (1) Such authorization is based on a material misrepresentation or omission about the treated person's health condition or the cause of the health condition; or
 - (2) The health benefit plan terminates before the health care services are provided; or

1 (3) The covered person's coverage under the health benefit 2 plan terminates before the health care services are provided.

- 376.1550. 1. Notwithstanding any other provision of law to the contrary, each health carrier that offers or issues health benefit plans which are delivered, issued for delivery, continued, or renewed in this state on or after January 1, 2005, shall provide coverage for a mental health condition, as defined in this section, and shall comply with the following provisions:
 - (1) A health benefit plan shall provide coverage for treatment of a mental health condition and shall not establish any rate, term, or condition that places a greater financial burden on an insured for access to treatment for a mental health condition than for access to treatment for a physical health condition. Any deductible or out-of-pocket limits required by a health carrier or health benefit plan shall be comprehensive for coverage of all health conditions, whether mental or physical;
 - (2) The coverages set forth [is] in this subsection:
 - (a) May be administered pursuant to a managed care program established by the health carrier; and
 - (b) May deliver covered services through a system of contractual arrangements with one or more providers, hospitals, nonresidential or residential treatment programs, or other mental health service delivery entities certified by the department of mental health, or accredited by a nationally recognized organization, or licensed by the state of Missouri;
 - (3) A health benefit plan that does not otherwise provide for management of care under the plan or that does not provide for the same degree of management of care for all health

- 1 conditions may provide coverage for treatment of mental health
- 2 conditions through a managed care organization; provided that the
- 3 managed care organization is in compliance with rules adopted by
- 4 the [department of insurance] <u>director</u> that assure that the
- 5 system for delivery of treatment for mental health conditions
- does not diminish or negate the purpose of this section. The
- 7 rules adopted by the director shall assure that:

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- 8 (a) Timely and appropriate access to care is available;
- 9 (b) The quantity, location, and specialty distribution of 10 health care providers is adequate; and
 - (c) Administrative or clinical protocols do not serve to reduce access to medically necessary treatment for any insured;
- (4) Coverage for treatment for chemical dependency shall comply with sections 376.779, 376.810 to 376.814, and 376.825 to 376.836 and for the purposes of this subdivision the term "health insurance policy" as used in sections 376.779, 376.810 to 376.814, and 376.825 to 376.836, the term "health insurance policy" shall include group coverage.
 - 2. As used in this section, the following terms mean:
 - (1) "Chemical dependency", the psychological or physiological dependence upon and abuse of drugs, including alcohol, characterized by drug tolerance or withdrawal and impairment of social or occupational role functioning or both;
- 24 (2) "Health benefit plan", the same meaning as such term is defined in section 376.1350;
- 26 (3) "Health carrier", the same meaning as such term is defined in section 376.1350;
- 28 (4) "Mental health condition", any condition or disorder

- defined by categories listed in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders except for chemical dependency;
 - (5) "Managed care organization", any financing mechanism or system that manages care delivery for its members or subscribers, including health maintenance organizations and any other similar health care delivery system or organization;

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- (6) "Rate, term, or condition", any lifetime or annual payment limits, deductibles, co-payments, coinsurance, and other cost-sharing requirements, out-of-pocket limits, visit limits, and any other financial component of a health benefit plan that affects the insured.
- 13 This section shall not apply to a health plan or policy 14 that is individually underwritten or provides such coverage for 15 specific individuals and members of their families pursuant to section 376.779, sections 376.810 to 376.814, and sections 16 17 376.825 to 376.836, a supplemental insurance policy, including a 18 life care contract, accident-only policy, specified disease 19 policy, hospital policy providing a fixed daily benefit only, 20 Medicare supplement policy, long-term care policy, hospitalization-surgical care policy, short-term major medical 21 22 policies of six months or less duration, or any other 23 supplemental policy as determined by the director [of the
 - 4. Notwithstanding any other provision of law to the contrary, all health insurance policies that cover state employees, including the Missouri consolidated health care plan, shall include coverage for mental illness. Multiyear group

department of insurance].

- 1 policies need not comply until the expiration of their current
- 2 multiyear term unless the policyholder elects to comply before
- 3 that time.
- 4 5. The provisions of this section shall not be violated if
- 5 the insurer decides to apply different limits or exclude entirely
- from coverage the following:
- 7 (1) Marital, family, educational, or training services
- 8 unless medically necessary and clinically appropriate;
- 9 (2) Services rendered or billed by a school or halfway
- 10 house;
- 11 (3) Care that is custodial in nature;
- 12 (4) Services and supplies that are not immediately nor
- 13 clinically appropriate; or
- 14 (5) Treatments that are considered experimental.
- 15 6. The director shall grant a policyholder a waiver from
- the provisions of this section if the policyholder demonstrates
- 17 to the director by actual experience over any consecutive
- 18 twenty-four-month period that compliance with this section has
- 19 increased the cost of the health insurance policy by an amount
- that results in a two percent increase in premium costs to the
- 21 policyholder. The director shall promulgate rules establishing a
- 22 procedure and appropriate standards for making such a
- demonstration. Any rule or portion of a rule, as that term is
- defined in section 536.010, RSMo, that is created under the
- 25 authority delegated in this section shall become effective only
- 26 if it complies with and is subject to all of the provisions of
- 27 chapter 536, RSMo, and, if applicable, section 536.028, RSMo.
- This section and chapter 536, RSMo, are nonseverable and if any

- of the powers vested with the general assembly pursuant to
- 2 chapter 536, RSMo, to review, to delay the effective date, or to
- 3 disapprove and annul a rule are subsequently held
- 4 unconstitutional, then the grant of rulemaking authority and any
- 5 rule proposed or adopted after August 28, 2004, shall be invalid
- 6 and void.
- 7 <u>377.005. 1. As used in this chapter, unless otherwise</u>
- 8 <u>clearly indicated by the context, the following words mean:</u>
- 9 (1) "Department", the department of insurance, financial
- and professional regulation; and
- 11 (2) "Director", the director of the department of
- insurance, financial and professional regulation.
- 13 377.020. 1. Any number of persons, not less than seven,
- being citizens of the state of Missouri, may upon application to
- 15 the circuit court of the county or city in which it is proposed
- to locate the chief offices or place of business, become a body
- 17 politic or corporate under the name and style designated in the
- application, for the purpose of doing a life or casualty, or life
- 19 and casualty insurance business on the assessment plan; said
- 20 application shall in all cases be accompanied by the articles of
- 21 association, or agreements, setting forth specifically the
- 22 objects and purposes of the proposed corporation, as well as the
- 23 methods and plans by which its business shall be conducted, and
- 24 upon a hearing of the same, the court may grant or reject the
- 25 application as it may deem best.
- 26 2. If the application is granted it shall be the duty of
- 27 the applicant to cause a copy of said articles, with a copy of
- 28 the decree of the court duly certified by the clerk thereof, and

- by him endorsed on or attached thereto, to be recorded in the office of the recorder of deeds in the county in which said corporation is located and then filed in the office of the secretary of state.
- The secretary of state shall thereupon issue to the 3. 6 applicants aforesaid a certified copy of the said articles, with 7 the several certificates thereon, as filed in his office, which 8 certified copy shall be the charter of incorporation, and 9 thereupon said applicants, their associates and successors, shall 10 be created and be a body politic and corporate by the corporate 11 name as aforesaid, and such charter, together with sections 12 377.010 to 377.190, shall be received in all courts and places as 13 legal evidence of the incorporation of the said association, society or company; provided, that no decree shall be made, and 14 15 no certificate of incorporation issued as aforesaid until the 16 director [of the insurance department] shall certify that the 17 proposed name of the corporation is not the same and does not 18 resemble the name of any other corporations authorized to do business in this state, to the extent of misleading the public, 19 and further that the society, association or company seeking to 20 21 be incorporated has secured applications for not less than one 22 hundred thousand dollars insurance by not less than one hundred 23 persons, and that thirty thousand dollars in cash or securities, approved by the director [of insurance] has been deposited with 24 25 the department [of insurance], which fund shall be held in trust 26 as a beneficiary fund by the said director [of insurance]. 27 term "casualty insurance" as used in sections 377.010 to 377.190, 28 inclusive, shall be construed to mean only accident, health and

- 1 hospitalization insurance.
- 2 4. After September 1, 1953, no insurance company as
- 3 described herein may be incorporated to do business on the
- 4 assessment plan under the provisions of sections 377.010 to
- 5 377.190. This provision, however, shall not be construed as
- 6 restricting or abridging in any manner the right to do business
- 7 under the provisions of sections 377.010 to 377.190 of any
- 8 insurance company now incorporated and licensed to do business in
- 9 this state under the assessment plan.
- 10 377.030. 1. On written application by the board of
- directors, the director [of insurance] shall release to said
- 12 company from the beneficiary fund the amount herein stated for
- the purpose of paying policy beneficiaries as provided later
- 14 herein.
- 15 2. The board of directors shall certify the names of the
- beneficiaries and amounts in claims to the director [of
- insurance] and that the money so released is for no other purpose
- than to pay the claims so certified.
- 19 3. However, the amount released from this fund by the said
- 20 director shall not exceed twelve thousand dollars, which shall be
- 21 used solely for the purpose of paying beneficiaries.
- 4. Such funds so released shall be replaced on deposit by
- 23 the company within twelve months in four equal installments, in
- 24 three, six, nine and twelve months from the date of release. The
- 25 director [of insurance] at his own discretion may extend time of
- 26 replacement of said funds, if, in his judgment it is to the best
- interest of the policyholders.
- 28 5. This section and section 377.020 shall not apply to

- companies already incorporated and existing under the laws of the state of Missouri. Nothing in sections 377.010 to 377.190 shall prevent any such company or association from engaging in both life and casualty insurance and placing both a life and casualty clause in the same policy.
- 377.170. 1. Any domestic life or accident insurance 6 7 corporation, company or association existing or doing business in this state under sections 377.010 to 377.190, providing for 8 9 insurance on the assessment plan, may, by a majority vote of its directors or trustees, accept the provisions of sections 376.010 10 11 to 376.670, RSMo, and amend its articles of incorporation and its 12 bylaws to conform to said sections, the same as if it had 13 originally been incorporated thereunder, and shall submit a record of the proceedings of its board of trustees together with 14 15 the amended articles to the attorney general for his examination and approval of the legal form thereof, and shall file such 16 17 amended articles in the office of the secretary of state, and a 18 certified copy of the same in the office of the director [of 19 insurance of the state of Missouri], and deposit with said 20 director such securities as may be required of corporations originally incorporated under sections 376.010 to 376.670, RSMo. 21
 - 2. Insurance corporations, companies and associations complying with the provisions of this section shall thereafter enjoy and exercise all of the rights and privileges accorded by law to companies originally incorporated under sections 376.010 to 376.670, RSMo.

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3. Compliance with this section shall in no wise annul, modify or change any of the existing contracts or obligations of

- 1 the corporation, and any and all such contracts and liabilities
- 2 shall continue in force and effect the same as if such
- 3 corporation had not reincorporated under the provisions of this
- 4 section, but all contracts and policies made subsequent to the
- 5 compliance with the provisions of this section shall be
- 6 interpreted and construed under the provisions of sections
- 7 376.010 to 376.670, RSMo.
- 8 4. Compliance with the provisions of this section shall in
- 9 no wise prejudice, impede or impair any pending action,
- 10 proceeding or rights previously acquired.
- 11 377.220. 1. The persons mentioned in section 377.210 shall
- 12 be designated as corporators, and such persons shall associate
- themselves by articles of agreement, in writing, duly signed and
- 14 acknowledged, setting forth:
- 15 (1) The corporate name of the proposed corporation, which
- shall not be the name of any corporation heretofore incorporated
- or doing business in this state for similar purposes, or any such
- imitation of such name calculated to mislead the public;
- 19 (2) The name of the city, town or county in which the
- 20 principal office is located;
- 21 (3) The amount of the capital stock of the corporation,
- 22 provided the same be a stock company, which shall not be less
- than fifty thousand dollars and a surplus of not less than fifty
- thousand dollars, the number of shares into which the capital
- 25 stock is divided, and the par value thereof, that the same has
- been bona fide subscribed, and actually paid up in lawful money
- of the United States, and is in the custody of the persons named
- as the first board of directors; the name and place of the

- several shareholders and the number of shares subscribed by each;
- 2 (4) The number of the board of directors or managers, which
- 3 shall be not less than seven, their powers and duties and the
- 4 names agreed upon for the first year;
 - (5) The number of years the corporation is to continue;
- 6 (6) A statement that the company is formed for the purpose 7 of carrying on the business of insurance under the provisions of
- 8 sections 377.200 to 377.460;

- 9 (7) Any other provision of this section notwithstanding, a
- 10 stipulated premium life insurance company licensed to do business
- in this state on October 13, 1963, may renew its license for
- business specified therein until December 31, 1965, by
- maintaining in lieu of the capital and surplus requirements an
- 14 actual capital of at least twenty-five thousand dollars.
- 2. Said articles of agreement shall be submitted to the
- 16 director [of insurance] and attorney general, and if they are
- found by these officers to comply with the provisions of sections
- 18 377.200 to 377.460, they shall approve the same.
- 3. When approved, they shall be filed and recorded in the
- office of the secretary of state, who shall issue a certificate
- of incorporation, upon the receipt of which such persons shall be
- 22 a body corporate and politic, under the statutes of this state.
- 377.230. 1. No such corporation, company or association
- 24 shall commence the business of life insurance until at least two
- 25 hundred persons, eligible under the proposed plan of
- organization, shall have subscribed, in writing, to be insured
- 27 therein in the aggregate amount of at least two hundred [and]
- 28 fifty thousand dollars, and shall have each paid, in cash, the

amount of one annual stipulated net premium for their age at 1 2 entry on the amount of insurance severally subscribed for, and which shall be held in trust for the benefit of the members of 3 said corporation or their beneficiaries; nor until the director [of insurance] and attorney general shall have further certified 5 that it has complied with the provisions of sections 377.200 to 6 7 377.460, and is authorized to transact the business of insurance; 8 provided, however, that every corporation incorporating or 9 reincorporating under the provisions of sections 377.200 to 10 377.460 shall deposit with the director [of insurance] such 11 securities as are required by law to be deposited by insurance

companies, the sum of five thousand dollars, before it shall

2. Said five thousand dollars shall be a part of the insurance fund and an asset of the corporation.

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commence business.

- 3. The securities deposited with the [insurance] department pursuant to this section shall be held by the director in trust for the benefit and protection of and as security for the policyholders of such corporation, their legal representatives and beneficiaries.
 - 377.260. 1. After the first policy year the mortuary premium, according to the terms of premium payments of each policy, with the loading of the same as provided in section 377.250, together with all interest and other accumulations of said fund, except the special loading for limited payment policies, with interest thereon as provided in section 377.270, shall constitute the insurance fund of the corporation, company, or association from which all policy obligations shall be paid,

and the amount remaining in said fund not required to provide for death, disability and other policy claims, shall be set aside as an emergency fund, and may be deposited with the [insurance] department.

- 2. If by any reason of excessive mortality, or other cause, the emergency fund as thus constituted shall become exhausted, then the director [of the department of insurance] shall require the officers of such corporation, company or association to notify all policyholders on or before the first of the next succeeding month to pay, within thirty days from the mailing of such notice, an extra premium, sufficient to meet the amount of the maximum policy issued apportioned equitably.
- 3. If any member fails to pay such extra premium within the time named his policy shall be commuted proportionately, and the policy as thus commuted shall be the maximum amount for which the corporation shall be liable under said policy. Said thirty days' notice shall clearly state the proportionate amount due from the insured, and shall contain the further statement that in the event of failure to pay the same within thirty days said policy will be commuted as aforesaid.
- 377.400. No stipulated premium life insurance company or association organized under sections 377.200 to 377.460 shall consolidate with another company or transfer or reinsure its risks with any other company or association or assume or reinstate the whole or any part of the risks of any other company or association, except with the approval of a majority of the policy or stockholders present and voting at a regular or special meeting duly called; provided, however, that any such company may

- 1 reinsure a fractional part of any single risk, but no such
- 2 insurance shall in any manner release the company or association
- 3 from its obligation under contract with the policyholder. All
- 4 such reinsurance shall be reported annually to the director [of
- 5 insurance].
- 6 377.420. When any state, territory or foreign country shall
- 7 impose any obligations upon any such corporation of this state,
- 8 or their agents transacting business in such other state,
- 9 territory or foreign country, the like obligations are hereby
- 10 imposed upon similar corporations of such other state, territory
- or foreign country, their agents or representatives transacting
- 12 business in this state; and such corporation, company,
- association or society of such other state, territory or foreign
- 14 country, and its agents and representatives shall pay all
- licenses, fees or penalties to, and make deposits with the
- director [of insurance] imposed by the laws of such other state,
- 17 territory or foreign country upon any corporation of this state
- doing business therein; and in case of failure to pay the same,
- 19 the director shall refuse the certificate of authority herein
- 20 provided for or cancel such certificate, if one shall have been
- 21 previously issued.
- 22 377.430. 1. No foreign corporation, company, association
- or society shall be authorized to transact any business
- 24 authorized by sections 377.200 to 377.460 within this state,
- 25 unless it furnish evidence satisfactory to the director [of
- insurance that it has a reserve or emergency fund equal in
- amount to that required by sections 377.200 to 377.460, and the
- same is held for the benefit of policyholders only, and invested

- 1 as required by the insurance laws of its home state.
- 2. Neither shall any foreign corporation, company,
- 3 association or society be authorized to do business in this state
- 4 under sections 377.200 to 377.460, unless it collects in advance
- 5 for the benefit of its policyholders a net premium equal to at
- 6 least that provided for by the terms of sections 377.200 to
- 7 377.460; provided, that all such foreign corporations shall
- 8 annually pay a tax on the gross premiums received in this state
- 9 on account of business done in the state at the rate of one
- 10 percent per annum, which shall be in lieu of all other taxes as
- 11 herein otherwise provided; said tax shall be levied and collected
- 12 as is provided for in the collection of taxes on other insurance
- 13 companies.
- 14 378.604. As used in this chapter, the following terms shall
- 15 mean:
- 16 (1) "Benefit contract", the agreement for provision of
- benefits authorized by section 378.616, as that agreement is
- described in subsection 1 of section 378.619;
- 19 (2) "Benefit member", an adult member who is designated by
- 20 the laws or rules of the society to be a benefit member under a
- 21 benefit contract;
- 22 (3) "Certificate", the document issued as written evidence
- 23 of the benefit contract;
- 24 (4) "Director", the director of the department of
- insurance, financial and professional regulation;
- 26 (5) "Laws", the society's articles of incorporation,
- 27 constitution and bylaws, however designated;
- 28 (6) "Lodge", subordinate member units of the society, known

- 1 as camps, courts, councils, branches or by any other designation;
- 2 (7) "Premiums", premiums, rates, dues or other required
- 3 contributions by whatever name known, which are payable under the
- 4 certificate;
- 5 (8) "Rules", all rules, regulations or resolutions adopted
- 6 by the supreme governing body or board of directors which are
- 7 intended to have general application to the members of the
- 8 society;
- 9 (9) "Society", a fraternal benefit society, unless
- 10 otherwise indicated.
- 11 379.005. 1. As used in this chapter, unless otherwise
- 12 clearly indicated by the context, the following words mean:
- 13 (1) "Department", the department of insurance, financial
- and professional regulation; and
- 15 (2) "Director", the director of the department of
- insurance, financial and professional regulation.
- 17 379.080. 1. (1) The amount of the minimum capital
- 18 required of a stock company to write the lines of business it
- 19 proposes to transact or is transacting, or if the company is a
- 20 mutual company an amount equal to the minimum capital required of
- 21 a stock company transacting the same classes of business, shall
- 22 be held in cash or invested in:
- 23 (a) Treasury notes or bonds of the United States;
- 24 (b) Bonds of the state of Missouri;
- 25 (c) Bonds issued by any school district of the state of
- 26 Missouri;
- 27 (d) Bonds of any political subdivision of this state;
- 28 (2) The remainder of the capital, surplus or policyholders'

- 1 surplus of these companies and their other assets may be
- 2 invested, to the extent allowed by this or any other provision of
- 3 law, in:

- 4 (a) The investments authorized by subdivision (1) of subsection 1 of this section;
- 6 (b) Loans safely secured by personal property collateral
 7 worth, at its cash market value, not less than twenty percent in
 8 excess of the amount loaned thereon:
 - (c) Stocks, bonds or evidences of indebtedness issued by corporations organized under the laws of this state, or of the United States or of any other state;
 - (d) Bonds or other obligations issued by multinational development banks in which the United States is a member nation, including the African Development Bank;
 - (e) Bonds of any other state, or of any political subdivision of any other state;
 - (f) Mortgages or deeds of trust on unencumbered real estate in this or any other state worth not less than twenty percent in excess of the amount loaned thereon;
 - (g) If a company is authorized to do business in a foreign country or a possession of the United States or has outstanding insurance or reinsurance contracts on risks located in a foreign country or United States' possession, the company may invest the remainder of its capital and other assets in securities, cash or other investments payable in the currency of the foreign country or possession that are of substantially the same kinds and classes as those eligible for investments under this subsection, provided that such investments are made with the approval of the

director. The aggregate amount of the foreign investments and 1 2 cash shall not exceed the greater of one and one-half times the 3 amount of the company's reserves and other obligations under the contracts or the amount that the company is required by law to 5 invest in the foreign country or possession, and the aggregate 6 amount of foreign investments and cash shall not exceed five 7 percent of the company's admitted assets. All foreign investments shall be reported to the director from time to time 8 9 as he directs;

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- (h) Loans evidenced by bonds, notes or other evidences of indebtedness guaranteed or insured, but only to the extent guaranteed or insured by the United States, any state, territory or possession of the United States, the District of Columbia, or by any agency, administration, authority or instrumentality of any of the political units enumerated;
- (i) Shares of insured state-chartered building and loan associations and federal savings and loan associations, if such shares are insured by the Federal Deposit Insurance Corporation;
 - (i) Investments permitted by section 99.550, RSMo;
- (k) Data processing equipment, automobiles, real estate and put or call options and financial futures contracts to the extent allowed by this section and any other provision of law;
- 23 (1) Investments in subsidiaries to the extent allowed by section 382.020, RSMo;
 - (m) Any other investments not described herein provided the aggregate amount of such investments shall not exceed eight percent of the admitted assets of the company;
 - (n) Any investments in an investment pool meeting the

- 1 requirements of section 379.083 and any other provision of law
- 2 relating to investments made by individual property and casualty
- 3 companies;
- 4 (o) Any other investments expressly authorized in writing
- 5 by the director [of the department of insurance]; and
- 6 (p) Any investment in a Missouri tax credit certificate or
- 7 partnership interest which entitles the company to receive
- 8 Missouri tax credits that may be used as a credit against the
- 9 gross premium tax.
- 10 2. Violation of any of the provisions of this section by an
- insurer is grounds for the suspension or revocation of its
- 12 certificate of authority by the director.
- 13 379.083. 1. As used in this section, the following terms
- 14 mean:
- 15 (1) "Affiliate", as defined in section 382.010, RSMo;
- 16 (2) "Business entity", a corporation, limited liability
- 17 company, association, partnership, joint stock company, joint
- 18 venture, mutual fund trust, or other similar form of business
- organization, including such an entity when organized as a
- 20 not-for-profit entity;
- 21 (3) "Qualified bank", a national bank, state bank or trust
- company that at all times is no less than adequately capitalized
- as determined by the standards adopted by the United States
- 24 banking regulators and that is either regulated by state banking
- laws or is a member of the Federal Reserve System.
- 26 2. An insurer may acquire investments in investment pools
- that invest only in investments which an insurer may acquire
- pursuant to sections 379.080, 379.082 and other provisions of

- 1 law. The insurer's proportionate interest in the amount invested
- 2 in these investments shall not exceed the applicable limits of
- 3 sections 379.080, 379.082 and other provisions of law. An
- 4 insurer and its affiliated insurers may invest in a maximum of
- 5 three investment pools.
- 6 3. An investment pool qualified pursuant to this section
- 7 shall not:
- 8 (1) Acquire securities issued, assumed, guaranteed or
- 9 insured by the insurer or an affiliate of the insurer;
- 10 (2) Borrow or incur an indebtedness for borrowed money,
- 11 except for transactions that meet the requirements of sections
- 12 379.080, 379.082 and other provisions of law;
- 13 (3) Permit the aggregate value of securities then loaned or
- sold to, purchased from or invested in any one business entity,
- 15 which in no event will be an affiliated entity of the
- 16 participant, to exceed ten percent of the total assets of the
- investment pool; or
- 18 (4) Lend money or other assets to participants in the pool.
- 19 4. An insurer shall not acquire an investment in an
- investment pool pursuant to this section if, as a result of such
- 21 investment, the aggregate amount of investments then held by the
- insurer pursuant to this section:
- 23 (1) In any one investment pool would exceed ten percent of
- 24 its admitted assets; or
- 25 (2) In all investment pools would exceed thirty percent of
- 26 its admitted assets.
- 5. For an investment in an investment pool to be qualified
- 28 pursuant to this section, the manager of the investment pool

1 shall:

- 2 (1) Be organized under the laws of the United States or an individual state and be designated as the pool manager in a pooling agreement;
 - (2) Be the insurer, an affiliated insurer, a qualified bank, a business entity registered under the federal Investment Advisors Act of 1940 (15 U.S.C. section 80A-1 et seq.) as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact;
- 10 (3) Compile and maintain detailed accounting records
 11 setting forth:
 - (a) The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 - (b) A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date, if any, and other appropriate designations; and
 - (c) Other records which, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
 - (4) Maintain the assets of the investment pool in one custody account, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. All custodial agreements shall be filed with the department [of insurance] for prior approval. The custody agreement shall:
- 25 (a) State and recognize the claims and rights of each participant;
- 27 (b) Acknowledge that the underlying assets of the 28 investment pool are held solely for the benefit of each

- 1 participant in proportion to the aggregate amount of its
- 2 investments in the investment pool; and
- 3 (c) Contain an agreement that the underlying assets of the
- 4 investment pool shall not be commingled with the general assets
- 5 of the custodian qualified bank or any other person.
- 6. The pooling agreement for each investment pool shall be 7 in writing and shall provide that:
- 8 (1) An insurer and its affiliated insurers shall, at all
- 9 times, hold one hundred percent of the interests in the
- 10 investment pool;
- 11 (2) The underlying assets of the investment pool shall not
- 12 be commingled with the general assets of the pool manager or any
- 13 other person;
- 14 (3) In proportion to the aggregate amount of each pool
- participant's interest in the investment pool:
- 16 (a) Each participant owns an undivided interest in the
- 17 underlying assets of the investment pool; and
- 18 (b) The underlying assets of the investment pool are held
- 19 solely for the benefit of each participant;
- 20 (4) A participant or, in the event of the participant's
- 21 insolvency, bankruptcy or receivership, its trustee, receiver or
- other successor-in- interest, may withdraw all or any portion of
- 23 its investment from the pool under the terms of the pooling
- 24 agreement;
- 25 (5) Withdrawals may be made upon demand without penalty or
- other assessment on any business day, but settlement of funds
- 27 shall occur within a reasonable and customary period thereafter
- 28 not to exceed five business days. Distributions pursuant to this

- 1 subdivision shall be calculated in each case net of all then
- 2 applicable fees and expenses of the pool. The pooling agreement
- 3 shall provide that the pool manager shall distribute to a
- 4 participant, at the discretion of the pool manager:

investment pool;

- 5 (a) In cash, the then fair market value of the 6 participant's pro rata share of each underlying asset of the
- 8 (b) In kind, a pro rata share of each underlying asset; or
- 9 (c) In a combination of cash and in-kind distributions, a 10 pro rata share in each underlying asset; and
- 11 (6) The pool manager shall make the records of the
 12 investment pool available for inspection by the director [of the
 13 department of insurance].
- 7. The investment pool authorized pursuant to this section shall be a business entity.
- 8. The pooling agreement and any other arrangements or agreements relating to an investment pool, and any amendments thereto, shall be submitted to the department [of insurance] for prior approval pursuant to section 382.195, RSMo. Individual financial transactions between the pool and its participants in the ordinary course of the investment pool's operations shall not be subject to the provisions of section 382.195, RSMo.
- Investment activities of pools and transactions between pools and participants shall be reported annually in the registration
- 25 statement required by section 382.100, RSMo.
- 379.160. 1. Each fire insurance company doing business in the state of Missouri is hereby required to file the form of policy for use by it in the state of Missouri, covering the

responsibilities of the companies as well as the duties of the assured, to be classed and known as the standard fire insurance policy. Said policy form may be approved by the director [of insurance of the state], and no policy shall be issued in this state carrying risks by fire or lightning by any company which does not embrace the form filed and approved of, as herein provided. There may be printed upon such policy the words "Standard Fire Insurance Policy for Missouri" and there may be inserted before and after the word "Missouri" a designation of any state or states or territory in which such form is standard.

- 2. All such policies shall have an address of the company in the United States fully printed thereon, to which, in case of loss, the assured may send notice of such loss, and to which notice shall be given within sixty days after the loss.
- 3. The appearance of an adjuster of any company at the place of fire and loss in which said company is interested by reason of an insurance on such property, shall be considered evidence of notice and to be held as a waiver of the same on the part of the company; provided, that on any policies issued upon property, real or personal, or real and personal, there may be attached a coinsurance clause; and provided further, that when a coinsurance clause is attached to any policy a reduction in rate shall be given therefor, in accordance with coinsurance credits that are now or may hereafter be filed as a part of the public rating record in the office of the director [of insurance in this state], by fire insurance companies, that have been or shall hereafter be approved by the director [of insurance]; provided further, that in all suits brought upon policies of insurance

- 1 against loss or damage by fire hereafter issued or renewed, the
- 2 defendant shall not be permitted to deny that the property
- 3 insured thereby was worth at the time of the issuing of the
- 4 policy the full amount insured therein on said property covering
- 5 both real and personal property; and provided further, that
- 6 nothing in this section shall be construed to repeal or change
- 7 the provisions of section 379.140.
- 8 379.343. 1. The director [of insurance] may, at any time
- 9 he may deem it advisable, examine any insurer writing any class
- of insurance which is subject to the provisions of section
- 11 379.017 and sections 379.316 to 379.361, any rating organization
- 12 licensed under the provisions of section 379.323, any advisory
- organization referred to in section 379.326, and every group,
- 14 association, or other organization referred to in section
- 15 379.328, and he shall at least once every four years make or
- 16 cause to be made such examination.
- 17 2. The examination of an insurer may be made during the
- 18 course of an examination pursuant to provisions of other laws of
- 19 this state.
- 20 3. During the course of any examination provided for in
- 21 this section the officers, managers, agents and employees of the
- 22 insurer, rating organization, advisory organization, or group,
- association or other organization may be examined under oath and
- 24 shall exhibit all books, records, accounts, documents, or
- 25 agreements governing its method of operation as may be requested
- 26 by the director.
- 27 4. The reasonable cost of any examination provided for in
- 28 this section shall be paid by the insurer, rating organization,

advisory organization or group, association, or other organization undergoing such examination.

- 5. No report of examination shall be made public until the organization examined has an opportunity to review the proposed report and to file its comments with reference thereto, after which the report and its comments shall be filed for public inspection and become admissible in evidence as a public record.
 - 6. The director may accept the report of an examination made by the insurance supervisory official of another state in lieu of any examination provided for in this section.
 - 379.440. 1. No corporation, unincorporated association, partnership, or individual shall act as a rating organization in this state without first filing with the director [of insurance] a written application for, and securing a license as, a rating organization for such kinds of insurance or subdivisions thereof as are specified in its application.
 - 2. Any corporation, unincorporated association, partnership, or individual, whether located within or outside this state may make application for and obtain a license as a rating organization for such kinds of insurance or subdivision or class of risk or a part or combination thereof as are specified in its application, provided it shall meet the requirements for license set forth in sections 379.420 to 379.510.
- 3. To obtain a license as a rating organization, every such corporation, unincorporated association, partnership or individual shall file therewith
- 27 (1) A copy of its constitution, its articles of agreement 28 or association or its certificate of incorporation, and of its

- 1 bylaws, rules and regulations governing the conduct of its
- 2 business;

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- 3 (2) A list of its members and subscribers;
- 4 (3) The name and address of a resident of this state upon
 5 whom notices or orders of the director [of insurance] or process
 6 affecting such rating organization may be served; and
- 7 (4) A statement of its qualifications as a rating 8 organization.
- 9 379.445. To obtain and retain a license, a rating
 10 organization shall provide satisfactory evidence to the director
 11 of insurance that it will
 - (1) Permit any licensed insurer to become a subscriber to such rating organization or withdraw therefrom without obligation to adhere to its manual of classifications, rules and rates or rating plans or systems;
 - (2) Neither adopt any rule nor exact any agreement the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers. A plan for the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers shall not be deemed to be a rating plan or system;
 - (3) Neither practice nor sanction any plan or act of boycott, coercion or intimidation;
- 26 (4) Neither enter into nor sanction any contract or act by
 27 which any person is restrained from lawfully engaging in the
 28 insurance business;

- 1 (5) Submit to examination as prescribed by section 379.475;
- 2 (6) Notify the director [of insurance] promptly of every
- 3 change in its constitution, its articles of agreement or
- 4 association, or its articles of incorporation and of its bylaws,
- 5 rules and regulations governing the conduct of its business; its
- 6 list of members and subscribers; and the name and address of the
- 7 resident of this state designated by it upon whom notices or
- 8 orders of the director or process affecting such organization may
- 9 be served.
- 10 379.450. 1. If the director [of insurance] finds that the
- applicant meets the licensing requirements of sections 379.420 to
- 12 379.510 applicable to it and is trustworthy and competent to act
- as a rating organization and that its constitution, articles of
- 14 agreement or association or certificate of incorporation, and its
- bylaws, rules and regulations governing the conduct of its
- business conform to the requirements of sections 379.420 to
- 17 379.510, he shall issue a license specifying the kinds of
- insurance or subdivisions thereof for which the applicant is
- 19 authorized to act as a rating organization.
- 20 2. Every such application shall be granted or denied in
- 21 whole or in part by the director within sixty days of the date of
- 22 its filing with him.
- 3. Licenses issued pursuant to this section shall remain in
- effect until revoked as provided in sections 379.420 to 379.510.
- 25 379.475. 1. The director [of insurance] shall have the
- 26 power, at any time he may deem it advisable, to examine any
- insurer writing any class of insurance which is subject to the
- provisions of sections 379.420 to 379.510, any rating

- 1 organization licensed under said sections, any advisory
- 2 organization referred to in section 379.455, and every group,
- 3 association, or other organization referred to in section
- 4 379.460.
- 5 2. The examination of an insurer may be made during the
- 6 course of an examination pursuant to provisions of other laws of
- 7 this state.
- 8 3. It shall be the duty of the director at least once every
- 9 three years to make or cause to be made an examination of every
- rating organization licensed under sections 379.420 to 379.510.
- 11 4. During the course of any examination provided for in
- this section the officers, managers, agents and employees of the
- insurer, rating organization, advisory organization, or group,
- 14 association or other organization may be examined under oath and
- 15 shall exhibit all books, records, accounts, documents, or
- agreements governing its method of operation as may be requested
- 17 by the director.
- 18 5. The reasonable cost of any examination provided for in
- 19 this section shall be paid by the insurer, rating organization,
- 20 advisory organization or group, association, or other
- 21 organization undergoing such examination.
- 22 6. The director may accept the report of an examination
- 23 made by the insurance supervisory official of another state in
- lieu of any examination provided for in this section.
- 25 379.670. The subscribers so contracting among themselves
- shall, through their attorney, file with the director [of
- 27 insurance of this state 1 a declaration verified by the oath of
- 28 the attorney setting forth:

- (1) The name or title of the office at which the subscribers propose to exchange indemnity contracts. The name or title shall not be so similar to any other name or title previously adopted by a similar organization or by any insurance corporation or association as in the opinion of the director [of insurance] is calculated to result in confusion or deception;
- (2) The kind or kinds of insurance to be effected or exchanged;

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- (3) A copy of the form of policy contract or agreement under or by which the insurance is to be effected or exchanged;
- (4) A copy of the form of power of attorney or other authority of the attorney under which the insurance is to be effected or exchanged;
- (5) The location of the offices from which the contracts or agreements are to be issued;
- specifically mentioned in this subdivision, applications have been made for indemnity upon at least one hundred separate risks aggregating not less than one and one-half million dollars represented by executed contracts or bona fide applications to become concurrently effective. In the case of employer's liability or workers' compensation insurance, applications shall have been made for indemnity upon at least one hundred separate risks covering a total payroll of not less than two and one-half million dollars as represented by executed contracts or bona fide applications to become concurrently effective. In the case of automobile insurance, applications shall have been made for indemnity upon at least one thousand motor vehicles or for

- 1 insurance aggregating not less than one and one-half million
- 2 dollars represented by executed contracts or bona fide
- 3 applications to become concurrently effective on any or all
- 4 classes of automobile insurance effected by the subscribers
- 5 through the attorney;

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- 6 (7) That there is in the possession of the attorney and 7 available for the payment of losses, assets conforming to the 8 requirements of sections 379.700 and 379.710.
- 9 379.680. 1. Concurrently with the filing of the 10 declaration provided for by the terms of section 379.670, the 11 attorney shall file with the director [of insurance] an instrument in writing, executed by him for the subscribers, 12 13 conditioned that, upon the issuance of certificate of authority provided for in section 379.750, service of process may be had 14 15 upon the director [of insurance] in all suits in this state arising out of the policies, contracts or agreements, which 16 17 service shall be valid and binding upon all subscribers exchanging at any time reciprocal or interinsurance contracts 18 19 through the attorney.
 - 2. Three copies of the process shall be served, and the director [of insurance] shall file one copy, forward one copy to the attorney, and return one copy with his admission of service.
 - 379.690. There shall be filed with the director [of insurance of this state], by the attorney, a statement under the oath of the attorney, showing in the case of fire insurance, the maximum amount of indemnity upon any single risk, and the attorney shall, whenever and as often as the same shall be required, file with the director [of insurance] a statement

- 1 verified by his oath to the effect that he has examined the
- 2 commercial rating of the subscribers as shown by the reference
- 3 book of a commercial agency having at least one hundred thousand
- 4 subscribers, and that from the examination or from other
- 5 information in his possession, it appears that no subscriber has
- 6 assumed on any single fire insurance risk an amount greater than
- 7 ten percent of the net worth of the subscriber.
- 8 379.720. 1. If at any time the amounts on hand are less
- 9 than the requirements of sections 379.700 and 379.710, the
- 10 subscribers or their attorney for them shall make up the
- 11 deficiency.
- 12 2. Where funds other than those which have accrued from
- premiums or deposits of subscribers are supplied to make up a
- 14 deficiency as herein provided for they shall be deposited and
- 15 held for the benefit of subscribers under such terms and
- 16 conditions as the director [of insurance] may require so long as
- 17 the deficiency exists, thereafter to be returned to the
- 18 depositors.
- 3. "Net premiums" or "deposits" as used in this law shall
- 20 be construed to mean the advance premiums or deposits made by
- 21 subscribers after deducting therefrom the amount for expenses
- 22 specifically provided in the subscriber's agreement.
- 23 379.730. 1. The attorney shall make an annual report to
- the director [of insurance] for the calendar year, showing that
- 25 the financial condition of affairs at the office where the
- 26 contracts are issued is in accordance with the standard of
- 27 solvency provided for herein and shall furnish such additional
- information and reports as may be required to show the total

premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses; provided, however, that the attorney shall not be required to furnish the names and addresses of any subscribers.

- 2. The business affairs and assets of the reciprocal or interinsurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by the director [of insurance] as often as he sees fit, and the cost thereof shall be paid by the exchange examined.
- 379.750. 1. Each attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to in sections 379.650 to 379.790 shall procure from the director [of insurance] annually a certificate of authority, stating that all of the requirements of the sections have been complied with, and upon compliance and the payment of the fees required by those sections the director [of insurance] shall issue the certificate of authority.
- 2. The director [of insurance] may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by sections 379.650 to 379.790 after reasonable notice has been given the attorney, in writing, so that he may appear and show cause why action should not be taken.
- 3. Any attorney who may have procured a certificate of authority hereunder shall renew same annually as of July first thereafter; provided, however, that any certificate of authority shall continue in full force and effect until the new certificate of authority be issued or specifically refused.

379.770. Two or more domestic reciprocal exchanges or
interinsurers may merge or consolidate on affirmative vote of not
less than two-thirds of the subscribers of each exchange or
interinsurer who vote on the merger or consolidation, pursuant to
due notice and prior approval of the director [of the department
of insurance of this state] of the terms and manner of the notice
and of the manner and form of the voting and of the proposed
merger or consolidation.

- 379.800. All of the provisions of the law relating to insurance agents, agencies, brokers and companies, and to the administration and enforcement of the laws of the state relating to insurance by the [department of insurance] director, which are repealed by sections 374.030 to 379.790 and reenacted hereby in part or in whole under new section numbers in the same or a different chapter, so far as they are the same as those of the prior law, shall be construed as a continuation of such law and not as a new enactment.
- 18 379.815. As used in this section, the following terms mean:
 - (1) "All-industry placement facility" (hereinafter referred to as "the facility"), the organization formed by insurers to assist applicants in securing basic property insurance, to issue policies and to administer the program and the joint reinsurance association;
 - (2) "Basic property insurance", the coverage against direct loss to real and tangible personal property at a fixed location that is provided in the standard fire policy and extended coverage endorsement, including builders' risk, and such vandalism and malicious mischief endorsements, and such other

- 1 classes of insurance as may be added to the program with respect
- 2 to the property by amendment as hereinafter provided. Basic
- 3 property insurance does not include automobile risks or such
- 4 types of manufacturing risks as the governing committee may
- 5 exclude with the approval of the director. Any contract, as
- 6 defined in section 375.918, RSMo, of the facility shall be
- 7 subject to the provisions of section 375.918, RSMo;

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- 8 (3) "Commercial", basic property insurance not included 9 under the personal lines statistical plan;
- 10 (4) "Director", the director of the department of

 11 insurance, financial and professional regulation [of the state of

 12 Missouri];
- 13 (5) "Habitational", basic property insurance included under 14 the personal lines statistical plan;
 - (6) "Inspection bureau", the rating bureau or other organization designated by the facility with the approval of the director to make inspections as required under the program and to perform such other duties as may be authorized by the facility;
 - (7) "Insurer", any insurance company, reciprocal or interinsurance exchange or other organization licensed and authorized by the director to write property insurance, including the property insurance components of multiperil policies, on a direct basis, in this state;
 - (8) "Person" includes any individual or group of individuals, corporation, partnership, or association, or any other organized group of persons;
- 27 (9) "Premiums written", gross direct premiums (excluding that portion of premium on risks ceded to the joint reinsurance

- 1 association) charged during the second preceding calendar year
- 2 with respect to property in this state on all policies of basic
- 3 property insurance and the basic property insurance premium
- 4 components of all multiperil policies, as computed by the
- 5 facility, less return premiums, dividends paid or credited to
- 6 policyholders, or the unused or unabsorbed portions of premium
- 7 deposits;
- 8 (10) "Property owner", with respect to any real, personal,
- 9 or mixed real and personal property, means any person having an
- insurable interest in such property;
- 11 "Secretary", the Secretary of the United States
- 12 Department of Housing and Urban Development.
- 13 379.882. As used in sections 379.882 to 379.886:
- 14 (1) "Commercial casualty insurance" means casualty
- insurance for business or nonprofit interests which is not for
- personal, family or household purposes, and which is provided by
- 17 issuance of a policy of insurance and not merely a binder for
- 18 such insurance coverage;
- 19 (2) "Director" means the director of the department of
- insurance, financial and professional regulation;
- 21 (3) "Insurer" means all insurance companies, reciprocals or
- 22 interinsurance exchanges transacting the business of commercial
- 23 casualty insurance in this state;
- 24 (4) "Nonpayment of premium" means failure of the named
- insured to discharge when due any of his obligations in
- 26 connection with payment of premiums on the policies or any
- installment of the premium whether the premium is payable
- 28 directly to the insurer or its agents or indirectly under any

- 1 premium finance plan or extension of credit;
- 2 (5) "Nonrenewal" means the determination of an insurer not
- 3 to issue or deliver a policy replacing at the end of the policy
- 4 period a policy previously issued and delivered by the same
- 5 insurer or a certificate of notice extending the term of a policy
- 6 beyond its policy period or term;
- 7 (6) "Renewal" or "to renew" means a policy previously
- 8 issued and delivered by the same insurer or the issuance and
- 9 delivery of a certificate or notice extending the term of the
- 10 policy beyond its policy period or term, and any policy written
- for a term longer than one year or any policy with no fixed
- 12 expiration date shall be considered as if written for successive
- 13 policy periods or terms of one year.
- 379.888. 1. As used in sections 379.888 to 379.893, the
- 15 following terms mean:
- 16 (1) "'A' rated risk", any insurance coverage for which
- 17 rates are individually determined based upon judgment because
- neither a rate service organization nor the insurer has yet
- 19 established a manual rate based upon experience, except that if a
- 20 rate service organization or the insurer acquires sufficient
- 21 experience to establish, or if the insurer itself has, a manual
- 22 rate for such coverage, then such coverage shall no longer be
- considered an "A" rated risk for each insurer;
- 24 (2) "Base rate", the rate designed to reflect the average
- 25 aggregate experience of a particular market, prior to adjustment
- 26 for individual risk characteristics resulting from application of
- 27 any rating plan;

(3) "Classification", a grouping of insurance risks

- 1 according to a classification system used by an insurer;
- 2 (4) "Classification system", a schedule of classifications
- 3 and a rule or set of rules used by an insurer for determining the
- 4 classification applicable to an insured;
- 5 (5) "Commercial casualty insurance", casualty insurance for
- 6 business or nonprofit interests which is not for personal,
- 7 family, or household purposes;
- 8 (6) "Director", the director of the department of
- 9 insurance, financial and professional regulation;
- 10 (7) "Rate", a monetary amount applied to the units of
- 11 exposure basis assigned to a classification and used by an
- insurer to determine the premium for an insured;
- 13 (8) "Rating plan", a rule or set of rules used by an
- insurer to calculate premium for an insured, and the parameter
- 15 values used in such calculation, after application of
- 16 classification premium rates to units of exposure; and
- 17 (9) "Rating system", a collection of rating plans to be
- used by an insurer, rules for determining which rating plans are
- 19 applicable to an insured, a classification system, and other
- 20 rules used by an insurer for determining contractual
- 21 consideration for insured.
- 2. Nothing in this section applies to premium increases or
- 23 decreases from:
- 24 (1) Change in hazard of the insured's operation;
- 25 (2) Change in magnitude of the exposure basis for the
- insured, including, without limitation, changes in payroll or
- 27 sales:
- 28 (3) "A" rated risks.

- Any renewal notice of a commercial casualty insurance 1 2 policy as defined in section 379.882 for any Missouri risk or portion thereof which would have the effect of increasing the 3 premium charged to the insured due to a change in any scheduled 5 rating factor applied to the policy during the previous policy 6 period shall contain or be accompanied by a notice to the insured 7 informing the insured that any inquiry by the insured concerning the change may be directed to the agent of record or directly to 8 9 the insurer. When any insured makes a request for information 10 pursuant to this subsection, the insurer, directly or through the 11 insurer's agent, shall inform the insured in writing in terms 12 sufficiently clear and specific of the basis for any reduction in 13 a scheduled rating credit or increase in a scheduled rating debit which is applied to the policy. Evidence supporting the basis 14 15 for any scheduled rating credit or debit shall be retained by the insurer for the policy term plus two calendar years pursuant to 16 17 section 374.205, RSMo. The department [of insurance] shall 18 notify commercial casualty insurers of the requirements of this section by bulletin. 19
 - 4. Any renewal involving a "premium alteration requiring notification" as defined in subsection 6 of section 379.321, shall be handled pursuant to the requirements of that subsection.
- 379.930. 1. Sections 379.930 to 379.952 shall be known and may be cited as the "Small Employer Health Insurance Availability Act".

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- 2. For the purposes of sections 379.930 to 379.952:
- 27 (1) "Actuarial certification" means a written statement by 28 a member of the American Academy of Actuaries or other individual

- 1 acceptable to the director that a small employer carrier is in
- 2 compliance with the provisions of section 379.936, based upon the
- 3 person's examination, including a review of the appropriate
- 4 records and of the actuarial assumptions and methods used by the
- 5 small employer carrier in establishing premium rates for
- 6 applicable health benefit plans;
- 7 (2) "Affiliate" or "affiliated" means any entity or person
- 8 who directly or indirectly through one or more intermediaries,
- 9 controls or is controlled by, or is under common control with, a
- 10 specified entity or person;
- 11 (3) "Agent" means "insurance agent" as that term is defined
- 12 in section 375.012, RSMo;
- 13 (4) "Base premium rate" means, for each class of business
- 14 as to a rating period, the lowest premium rate charged or that
- 15 could have been charged under the rating system for that class of
- business, by the small employer carrier to small employers with
- 17 similar case characteristics for health benefit plans with the
- 18 same or similar coverage;
- 19 (5) "Basic health benefit plan" means a lower cost health
- benefit plan developed pursuant to section 379.944;
- 21 (6) "Board" means the board of directors of the program
- established pursuant to sections 379.942 and 379.943;
- 23 (7) "Broker" means "broker" as that term is defined in
- 24 section 375.012, RSMo;
- 25 (8) "Carrier" means any entity that provides health
- 26 insurance or health benefits in this state. For the purposes of
- sections 379.930 to 379.952, carrier includes an insurance
- company, health services corporation, fraternal benefit society,

- 1 health maintenance organization, multiple employer welfare
- 2 arrangement specifically authorized to operate in the state of
- 3 Missouri, or any other entity providing a plan of health
- 4 insurance or health benefits subject to state insurance
- 5 regulation;
- 6 (9) "Case characteristics" means demographic or other
- 7 objective characteristics of a small employer that are considered
- 8 by the small employer carrier in the determination of premium
- 9 rates for the small employer, provided that claim experience,
- 10 health status and duration of coverage since issue shall not be
- case characteristics for the purposes of sections 379.930 to
- 12 379.952;
- 13 (10) "Class of business" means all or a separate grouping
- of small employers established pursuant to section 379.934;
- 15 (11) "Committee" means the health benefit plan committee
- 16 created pursuant to section 379.944;
- 17 (12) "Control" shall be defined in manner consistent with
- 18 chapter 382, RSMo;
- 19 (13) "Dependent" means a spouse or an unmarried child under
- 20 the age of nineteen years; an unmarried child who is a full-time
- 21 student under the age of twenty-three years and who is
- 22 financially dependent upon the parent; or an unmarried child of
- 23 any age who is medically certified as disabled and dependent upon
- 24 the parent;
- 25 (14) "Director" means the director of the department of
- insurance, financial and professional regulation of this state;
- 27 (15) "Eligible employee" means an employee who works on a
- 28 full-time basis and has a normal work week of thirty or more

- 1 hours. The term includes a sole proprietor, a partner of a
- 2 partnership, and an independent contractor, if the sole
- 3 proprietor, partner or independent contractor is included as an
- 4 employee under a health benefit plan of a small employer, but
- 5 does not include an employee who works on a part-time, temporary
- or substitute basis. For purposes of sections 379.930 to
- 7 379.952, a person, his spouse and his minor children shall
- 8 constitute only one eligible employee when they are employed by
- 9 the same small employer;
- 10 (16) "Established geographic service area" means a
- 11 geographical area, as approved by the director and based on the
- 12 carrier's certificate of authority to transact insurance in this
- 13 state, within which the carrier is authorized to provide
- 14 coverage;
- 15 "Health benefit plan" means any hospital or medical
- 16 policy or certificate, health services corporation contract, or
- 17 health maintenance organization subscriber contract. Health
- benefit plan does not include a policy of individual accident and
- 19 sickness insurance or hospital supplemental policies having a
- fixed daily benefit, or accident-only, specified disease-only,
- 21 credit, dental, vision, Medicare supplement, long-term care, or
- 22 disability income insurance, or coverage issued as a supplement
- 23 to liability insurance, worker's compensation or similar
- insurance, or automobile medical payment insurance;
- 25 (18) "Index rate" means, for each class of business as to a
- 26 rating period for small employers with similar case
- 27 characteristics, the arithmetic mean of the applicable base
- 28 premium rate and the corresponding highest premium rate;

- dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period for which such individual is entitled to enroll under the terms of the health benefit plan, provided that such initial enrollment period is a period of at least thirty days. However, an eligible employee or dependent shall not be considered a late enrollee if:
 - (a) The individual meets each of the following:

- a. The individual was covered under qualifying previous coverage at the time of the initial enrollment;
- b. The individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, death of a spouse or divorce;
- c. The individual requests enrollment within thirty days after termination of the qualifying previous coverage;
- (b) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or
- (c) A court has ordered coverage be provided for a spouse or minor or dependent child under a covered employee's health benefit plan and request for enrollment is made within thirty days after issuance of the court order;
- (20) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or which could have been charged or offered, by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the

same or similar coverage;

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- 2 (21) "Plan of operation" means the plan of operation of the
- 3 program established pursuant to sections 379.942 and 379.943;
- 4 (22) "Premium" means all moneys paid by a small employer
 5 and eligible employees as a condition of receiving coverage from
 6 a small employer carrier, including any fees or other
 7 contributions associated with the health benefit plan;
- 8 (23) "Producer" includes an insurance agent or broker;
- 9 (24) "Program" means the Missouri small employer health 10 reinsurance program created pursuant to sections 379.942 and 11 379.943;
 - (25) "Qualifying previous coverage" and "qualifying existing coverage" mean benefits or coverage provided under:
 - (a) Medicare or Medicaid;
 - (b) An employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or
 - (c) An individual health insurance policy (including coverage issued by a health maintenance organization, health services corporation or a fraternal benefit society) that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that such policy has been in effect for a period of at least one year;
 - (26) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect;
 - (27) "Restricted network provision" means any provision of a health benefit plan that conditions the payment of benefits, in

- 1 whole or in part, on the use of health care providers that have
- 2 entered into a contractual arrangement with the carrier pursuant
- 3 to section 354.400, RSMo, et seq. to provide health care services
- 4 to covered individuals;
- 5 (28) "Small employer" means any person, firm, corporation,
- 6 partnership or association that is actively engaged in business
- 7 that, on at least fifty percent of its working days during the
- 8 preceding calendar quarter, employed not less than three nor more
- 9 than twenty-five eligible employees, the majority of whom were
- 10 employed within this state. In determining the number of
- 11 eligible employees, companies that are affiliated companies, or
- that are eligible to file a combined tax return for purposes of
- 13 state taxation, shall be considered one employer;
- 14 (29) "Small employer carrier" means a carrier that offers
- 15 health benefit plans covering eligible employees of one or more
- small employers in this state;
- 17 (30) "Standard health benefit plan" means a health benefit
- plan developed pursuant to section 379.944.
- 19 380.005. 1. As used in this chapter, unless otherwise
- 20 clearly indicated by the context, the following words mean:
- 21 (1) "Department", the department of insurance, financial
- 22 and professional regulation; and
- 23 (2) "Director", the director of the department of
- insurance, financial and professional regulation.
- 25 380.011. 1. All county mutual insurance companies, all
- town mutual insurance companies and all farmers' mutual insurance
- companies possessing a certificate of incorporation from the
- 28 secretary of state and operating under sections 380.009 to

- 1 380.270, 380.280 to 380.470 and 380.479 to 380.570, respectively,
- 2 shall be known as Missouri mutual insurance companies and shall
- 3 after January 1, 1985, operate under the provisions of sections
- 4 380.011 to 380.151. Only those county mutual insurance
- 5 companies, town mutual insurance companies and farmers' mutual
- 6 insurance companies possessing a certificate of incorporation
- 7 from the secretary of state upon January 1, 1985, shall operate
- 8 under sections 380.011 to 380.151, and no new companies shall be
- 9 formed to operate under those sections of the Revised Statutes of
- 10 Missouri.
- 11 2. All Missouri mutual insurance companies shall, within
- 12 ninety days of January 1, 1985, file a registration statement
- with the director [of insurance] which shall contain the name of
- 14 the company, the location and address of its principal office,
- the names and addresses of its officers and directors, and shall
- 16 be accompanied by copies of its articles of incorporation and
- bylaws. The director shall compile and maintain a list of all
- 18 companies registered and operating under the provisions of
- sections 380.011 to 380.151 and shall file this list with the
- secretary of state on or before May 1, 1985.
- 3. If any county mutual insurance company, town mutual
- 22 insurance company or farmers' mutual insurance company possessing
- 23 a certificate of incorporation from the secretary of state and
- operating under the provisions of sections 380.009 to 380.270,
- 25 380.280 to 380.470 or 380.479 to 380.570, respectively, fails to
- 26 file the required registration statement with the director [of
- insurance] within ninety days of January 1, 1985, the secretary
- of state shall irrevocably forfeit the company's corporate

1 charter.

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2 380.021. 1. All Missouri mutual insurance companies operating under the provisions of sections 380.011 to 380.151 3 shall be authorized to do the business of insurance on an 5 assessable, mutual and not-for-profit basis. All such companies 6 shall have authority to insure the property of their members from 7 loss or damage caused by fire; lightning; tornado; windstorm; cyclone; hail; explosion; riot; riot attending a strike; civil 8 9 commotion; aircraft; vehicles; smoke; physical damage to 10 livestock; overturn or collision of farm machinery; theft; 11 burglary; vandalism; malicious mischief; removal; breakage of 12 glass; falling objects; weight of ice, snow or sleet; collapse of 13 buildings; freezing, accidental discharge, leakage or overflow of 14 water or steam; other damage caused by steam; and sudden and 15 accidental injury from electrical currents. Nothing contained in these sections shall be construed as to allow any Missouri mutual 16 17 insurance company to insure its members against loss to their 18 motor vehicles, as defined in section 301.010, RSMo, from any 19 peril whatsoever or liability occasioned by the use of such motor 20 vehicles, or to insure property pursuant to or in connection with a specific loan or other credit transaction. 21

2. All Missouri mutual insurance companies shall do business only in the county or counties in which they are organized or in adjoining counties. Any Missouri mutual insurance company may write insurance against loss or damage to the crops of their members from the perils enumerated in subsection 1 of this section in any and all counties of this state so long as the company maintains a reserve fund of at least

three hundred thousand dollars and reinsurance sufficient to
protect the financial stability of the company. The director [of
insurance] may require additional reinsurance if he deems it
necessary to protect the policyholders of the company.

- 3. The corporation shall have all the powers, rights, privileges, duties and obligations of a corporation organized under chapter 355, RSMo, except insofar as such provisions are inconsistent with the provisions of sections 380.011 to 380.151. Nothing herein shall be construed as prohibiting any Missouri mutual insurance company from distributing underwriting or investment gain to its members or from accumulating a reasonable reserve fund for the payment of losses and other expenses.
- 380.051. Every such company shall, on or before the first day of March in each year, file a statement with the director [of insurance], verified by the affidavit of its president and secretary reporting the financial condition of the company for the preceding calendar year. The statement of financial condition shall provide such information and be in such form as may be prescribed by the director [of insurance]. Each company shall pay a fee of twenty-five dollars to the director of insurance at the time of filing the annual statement.
- 380.061. 1. It shall be the duty of the director [of insurance] or his duly appointed agents to make full and careful examination of the affairs of any company operating under the provisions of sections 380.011 to 380.151. The director shall examine such companies whenever, in his discretion, it is deemed necessary.
 - 2. He or any of his duly appointed agents may compel the

- 1 attendance before him, and may examine, under oath, the
- directors, officers, agents, employees, solicitors, attorneys or
- 3 any other person, in reference to the condition, affairs,
- 4 management of the business, or any matters relating thereto. He
- 5 may administer oaths or affirmations, may summon and compel the
- 6 attendance of witnesses, and may require and compel the
- 7 production of records, books, papers, contracts or other
- 8 documents, if necessary.
- 9 3. In every such examination, inquiry shall be made as to
- 10 the nature and resources of the corporation generally, the mode
- of conducting and managing its affairs, the actions of its
- directors and the security provided its members.
- 13 4. The refusal of any such company to permit the
- examination of its affairs as provided in this section shall be
- 15 sufficient cause for the institution of proceedings to wind up
- the affairs of the corporation as provided by section 380.071.
- 5. The expenses of such examination, as determined by the
- director [of insurance], shall be paid by the company examined.
- 19 6. In lieu of an examination by the department [of
- insurance] the director may accept, in a format acceptable to the
- 21 director, a financial examination report of such company prepared
- by an independent certified public accountant.
- 380.071. 1. If it appears to the director [of insurance]
- from a statement of any company filed pursuant to the provisions
- of section 380.051, or upon examination of any company made
- 26 pursuant to the provisions of section 380.061, or from any other
- 27 knowledge or information in his possession that such company is
- conducting its business in an unsafe manner or that its assets

- are insufficient to justify the continuance of business by such company, he shall send written notice of the situation to the officers and directors of the company.
- Such officers and directors may, in the discretion of 5 the director, be allowed a reasonable time in which to remedy the 6 situation. If the officers and directors fail to remedy the 7 situation after a reasonable time, or if at any time it shall 8 appear to the director [of insurance] that the continued 9 operation of the company would not be in the best interests of 10 the policyholders, the director [of insurance] shall institute 11 proceedings, in the circuit court in the city or county in which 12 the company has its principal office, to enjoin or restrain the 13 company from further prosecution of its business, either 14 temporarily or permanently, and if the director seeks to enjoin 15 or restrain the company permanently, he shall also institute 16 proceedings to settle and wind up the affairs, and to liquidate 17 and to dissolve the company.
- 18 380.081. 1. If at any time the director [of insurance] 19 shall find that a Missouri mutual insurance company is not 20 operating in compliance with the provisions of sections 380.011 21 to 380.151, he shall notify in writing the officers and directors 22 of such fact. The notice shall clearly set forth the director's 23 belief, his reasons and his proposed action. The director may, 24 after a hearing held pursuant to the provisions of chapter 536, 25 RSMo, order the company to bring its operations into compliance. 26 Judicial review of the director's order may be sought as provided in chapter 536, RSMo. 27
 - 2. Refusal or neglect by any such company to comply with

- 1 the requirements of the above order shall be sufficient cause for
- 2 the institution of proceedings to wind up the affairs of the
- 3 company. The director may, in his discretion, institute
- 4 proceedings to enjoin or restrain such company from the further
- 5 prosecution of its business as provided in section 380.071.
- 6 380.091. 1. All Missouri mutual insurance companies shall
- 7 file all applications, policy forms and all endorsements, riders
- 8 or amendments thereto with the director [of insurance]. Those
- 9 forms may be used upon filing unless disapproved by the director.
- 10 The director may disapprove any form if it does not comply with
- 11 the provisions of sections 380.011 to 380.151, or if it contains
- any provision which is deceptive, ambiguous or misleading. The
- company shall be notified in writing of any disapproval and the
- 14 reasons therefor.
- 2. Any disapproval of a form by the director [of insurance]
- shall be subject to judicial review under the provisions of
- 17 chapter 536, RSMo.
- 18 380.201. As used in sections 380.201 to 380.601, unless the
- 19 context clearly indicates otherwise, the following terms mean:
- 20 (1) "Assessment", the amount, or the policyholder's share
- of such amount, determined by the company to be necessary to pay
- accrued liabilities, to meet or defray anticipated needs of the
- 23 company and/or to add to or restore the quaranty fund;
- 24 (2) "Director", the director of the department of
- insurance, financial and professional regulation of the state of
- 26 Missouri;
- 27 (3) "Fee", the charge or that portion of such charge
- collected by the company which is used for or allocated to the

1 payment of acquisition or survey costs;

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- 2 (4) "Guaranty fund", accumulated assets in excess of accrued losses and expenses;
 - (5) "Initial charge", such charge or that portion of such charge not otherwise defined herein collected by the company before or at the time of the issuance or the renewal of the policy and used for, or allocated to, any purpose which the company deems desirable not prohibited by law;
 - (6) "Premium", a stipulated amount charged for a specified policy period, which the company is required to charge as a liability and maintain as an unearned premium reserve until the end of the specified policy period.
 - 380.221. 1. Any company operating under the provisions of sections 380.011 to 380.151 may avail itself of the rights, powers, privileges, obligations and immunities conferred by sections 380.201 to 380.591 by appropriate resolution to operate under sections 380.201 to 380.591 adopted by its board of directors and filed with the director [of insurance].
 - 2. Whenever any company shall elect to come under the provisions of sections 380.201 to 380.591, the secretary of state shall transfer to the director [of insurance] for custody all records and papers filed in the office of the secretary of state by such company. The secretary of state, however, shall retain in his office duplicate copies of all such records and papers.
 - 3. Upon receipt of the records and papers from the secretary of state, the director shall determine whether or not the company complies with sections 380.201 to 380.591 and any other applicable laws. If the director determines that the

- company is in compliance with the law, he shall issue a certificate of authority to commence business to the company, and
- 3 thereafter such company shall be fully subject to and governed by
- 4 the provisions of sections 380.201 to 380.591 and shall be
- 5 entitled to avail itself of those provisions.

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- 4. All companies formerly operating under sections 380.580 to 380.840 shall operate under sections 380.201 to 380.591.
- 8 5. Any company operating under the provisions of sections 9 380.011 to 380.151 which elects to come under the provisions of sections 380.201 to 380.601 within thirty days of January 1, 10 11 1985, may have all of the company's agents which have been agents 12 for one year or more on the date of this election licensed to 13 sell the same lines of insurance which the company is authorized 14 to write under sections 380.011 to 380.151 without the necessity of those agents taking an examination as provided in section 15 375.018, RSMo. Any company requesting this exemption shall file 16 17 a list of all agents eligible for the exemption, verified under 18 oath by the president of the company.
 - 6. Any mutual insurance company operating under the provisions of chapter 379, RSMo, and doing insurance business only in this state, and which was formerly organized under this chapter, may elect to come under the provisions of sections 380.201 to 380.591 on or before December 31, 1992. To so elect, such company shall adopt an appropriate amendment to its articles of incorporation under sections 375.201 to 375.226, RSMo, and apply for an amended certificate of authority. Upon the approval of the amendment to the articles and the filing of the application for an amended certificate of authority, the director

- shall issue an amended certificate of authority recognizing the company as an extended Missouri mutual company.
- 380.521. 1. No company organized or operating under the 4 provisions of sections 380.201 to 380.591 shall pay any 5 commission or other compensation to any person for any services, 6 as agent, in obtaining in this state any contract of insurance 7 except to an agent, agency or broker licensed by the [department 8 of insurance of the state of Missouri] director.
- 2. Any insurance agent, agency or broker that acts as such in connection with the procurement of an insurance contract through a company organized or operating under the provisions of sections 380.201 to 380.591 shall be subject to the provisions of sections 375.012 to 375.146, RSMo.

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- 380.611. 1. It is unlawful for any person to sell the corporate charter of a Missouri mutual insurance company operating under the provisions of sections 380.011 to 380.151 or operating under the provisions of sections 380.201 to 380.591.

 Any violation of this provision is a class A misdemeanor.
- 2. An agreement of contract under which any person, organization or corporation is granted the exclusive or dominant right to manage or control a Missouri mutual insurance company operating under the provisions of sections 380.011 to 380.151, or operating under the provisions of sections 380.201 to 380.591, shall be filed with and approved by the director [of insurance]. The director [of insurance] shall approve such agreements or contracts only if they are not detrimental to the policyholders of the company or the public.
- 28 382.010. As used in sections 382.010 to 382.300, the

following words and terms have the meanings indicated unless the context clearly requires otherwise:

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- (1) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;
- 7 (2) The term "control", including the terms "controlling", "controlled by" and "under common control with", means the 8 possession, direct or indirect, of the power to direct or cause 9 10 the direction of the management and policies of a person, whether 11 through the ownership of voting securities, by contract other 12 than a commercial contract for goods or nonmanagement services, 13 or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control 14 15 shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with power to vote, or holds proxies 16 17 representing, ten percent or more of the voting securities of any 18 other person. This presumption may be rebutted by a showing made in the manner provided by section 382.170 that control does not 19 exist in fact. The director may determine, after furnishing all 20 persons in interest notice and opportunity to be heard and making 21 22 specific findings of fact to support such determination, that 23 control exists in fact, notwithstanding the absence of a 24 presumption to that effect;
 - (3) [The term] "Department", the department of insurance, financial and professional regulation;
- 27 (4) "Director" [means], the director of insurance, [his deputies, or the department of insurance, as appropriate]

financial and professional regulation;

- [(4)] (5) An "insurance holding company system" consists of two or more affiliated persons, one or more of which is an insurer;
- [(5)] (6) The term "insurer" means an insurance company as defined in section 375.012, RSMo, including a reciprocal or interinsurance exchange, and which is qualified and licensed by the department of insurance, financial and professional regulation of Missouri to transact the business of insurance in this state; but it shall not include any company organized and

doing business under chapters 377, 378 or 380, RSMo;

- [(6)] (7) A "person" is an individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or any similar entity, or any combination of the foregoing acting in concert, but is not any securities broker performing no more than the usual and customary broker's function;
- [(7)] (8) A "securityholder" of a specified person is one who owns any security of that person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing;
- [(8)] (9) A "subsidiary" of a specified person is an affiliate controlled by that person directly, or indirectly through one or more intermediaries;
- [(9)] (10) The term "voting security" includes any security convertible into or evidencing a right to acquire a voting security.

- 1 383.005. 1. As used in this chapter, unless otherwise
- 2 clearly indicated by the context, the following words mean:
- 3 (1) "Department", the department of insurance, financial
- 4 and professional regulation; and
- 5 (2) "Director", the director of the department of
- 6 <u>insurance</u>, financial and professional regulation.
- 7 383.015. 1. Any such group of persons desiring to provide
- 8 malpractice insurance or indemnification for its members shall
- 9 pay a license fee of one hundred dollars and shall file articles
- of association with the director [of insurance]. The articles
- shall be filed in accordance with the provisions of sections
- 375.201 to 375.236, RSMo, and shall also include the names of
- persons initially associated, the method by which other persons
- 14 may be admitted to the association as members, the purposes for
- which organized, the amount of the initial assessment which has
- 16 been paid into the association, the method of assessment
- thereafter, and the maximum amount of any assessment which the
- 18 association may make against any member. The articles of
- 19 association shall provide for bylaws and for the amendment of the
- 20 articles of association and bylaws.
- 2. Each association shall designate and maintain a
- 22 registered agent within this state, and service upon the agent
- 23 shall be service upon the association and each of its members.
- 3. The articles of association shall be accompanied by a
- copy of the initial bylaws of the association. The bylaws shall
- 26 provide for a governing body for the association, a manner of
- 27 election thereof, the manner in which assessments will be made,
- 28 the specific kinds of insurance or indemnification which will be

- offered, the classes of membership which will be offered, and may
- 2 provide that assessments of various amounts for particular
- 3 classes of membership may be made. All assessments shall be
- 4 uniform within classes. The bylaws may provide for the transfer
- of risks to other insurance companies or for reinsurance.
- 6 383.020. The director [of insurance] shall, within thirty
- 7 days after any such articles of association are filed with him,
- 8 determine if the proposed association meets the requirements of
- 9 sections 383.010 to 383.040, and if it does, shall issue a
- 10 license to the association authorizing it to do business for a
- 11 one-year period.
- 12 383.025. The association may, on the seventh day
- 13 thereafter, commence to do business. The association shall be a
- 14 body corporate, and shall do business as a corporation. No
- member of the association shall be liable for any amounts because
- of his membership in the association other than his assessments
- as provided in the articles of association, the bylaws of the
- association or as ordered by the director [of the department of
- insurance pursuant to section 383.035. The business of the
- 20 association shall be conducted so as to preclude any distribution
- of income, profit or property of the association to the
- individual members thereof except in payment of claims or
- 23 indemnities or upon the final dissolution of the association, but
- 24 the association may pay dividends to its members as long as the
- association has a positive surplus both before and after any such
- 26 dividend is declared.
- 27 383.030. 1. The director [of the department of insurance]
- shall be authorized in accordance with sections [374.190 and

- 1 374.200] 374.202 to 374.207, RSMo, or in the event that either or
- 2 both of such sections are repealed, then any successor sections
- 3 relating to financial examination, to examine the financial
- 4 condition, affairs and management of any association organized
- 5 under the provisions of sections 383.010 to 383.040, and the
- 6 association shall pay the expenses of any such examination in
- 7 accordance with sections 374.160 and 374.220, RSMo. Annually
- 8 thereafter, within thirty days before the expiration of its
- 9 license, each association shall pay a renewal license fee of one
- 10 hundred dollars.
- 11 2. Any existing association shall also, at the time it
- 12 files for renewal of its license, file any amendments to its
- 13 articles of association or bylaws which have been adopted in the
- 14 preceding year.
- 15 383.060. As used in sections 383.060 to 383.069, the
- 16 following terms mean:
- 17 (1) "Director", the director of the department of
- 18 insurance, financial and professional regulation;
- 19 (2) "Real estate malpractice insurance", insurance coverage
- 20 against a civil liability arising against the insured resulting
- 21 from an act or omission by the insured, his agents or his
- 22 employees acting in their professional capacity.
- 383.075. As used in sections 383.075 to 383.083, the
- 24 following terms mean:
- 25 (1) "Director", the director of the department of
- insurance, financial and professional regulation;
- 27 (2) "Legal malpractice insurance", insurance coverage
- against a civil liability arising against the insured resulting

- from an act of omission by the insured or his employees acting in their professional capacity.
- 3 383.100. As used in sections 383.100 to 383.125, the following terms mean:

- (1) "Director", the director shall be the director of the department of insurance, financial and professional regulation;
- (2) "Health care provider" includes physicians, dentists, clinical psychologists, pharmacists, optometrists, podiatrists, registered nurses, physicians' assistants, chiropractors, physical therapists, nurse anesthetists, anesthetists, emergency medical technicians, hospitals, nursing homes and extended care facilities; but shall not include any nursing service or nursing facility conducted by and for those who rely upon treatment by spiritual means alone in accordance with the creed or tenets of any well-recognized church or religious denomination;
 - (3) "Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as a result of the negligence or malpractice in rendering professional service by any health care provider.
- 383.110. Such reports shall be made to the director [of the department of insurance] quarterly on dates and in the form to be determined by the director.
- 25 384.015. As used in sections 384.011 to 384.071:
- 26 (1) "Admitted insurer" means an insurer licensed to do an insurance business in this state;
 - (2) "Capital" means funds paid in for stock or other

1 evidence of ownership;

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annuities:

- 2 (3) "Director" means the director of the department of insurance, financial and professional regulation;
- 4 (4) "Eligible surplus lines insurer" means a nonadmitted 5 insurer with which a surplus lines licensee may place surplus 6 lines insurance;
- 7 (5) "Export" means to place surplus lines insurance with a nonadmitted insurer;
 - (6) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the director by admitted insurers;
 - (7) "Nonadmitted insurer" means an insurer not licensed to do an insurance business in this state, including insurance exchanges authorized under the laws of other states;
 - (8) "Producing broker" means the individual broker or agent dealing directly with the party seeking insurance;
 - (9) "Surplus" means funds over and above liabilities and capital of the company for the protection of policyholders;
 - (10) "Surplus lines insurance" means any insurance of risks resident, located or to be performed in this state, permitted to be placed through a surplus lines licensee with a nonadmitted insurer eligible to accept such insurance, other than reinsurance, wet marine and transportation insurance independently procured, and life and health insurance and
- 26 (11) "Surplus lines licensee" means a person licensed to
 27 place insurance on risks resident, located or to be performed in
 28 this state with nonadmitted insurers eligible to accept such

1 insurance;

- 2 (12) "Wet marine and transportation insurance" means:
- 3 (a) Insurance upon vessels, crafts, hulls and of interests 4 therein or with relation thereto;
 - (b) Insurance of marine builder's risks, marine war risks and contracts of marine protection and indemnity insurance;
 - (c) Insurance of freights and disbursements pertaining to a subject of insurance coming within this section; and
 - in the course of exportation from or importation into any country, or in the course of transportation coastwise or on inland waters, including transportation by land, water or air from point of origin to final destination, in connection with any and all risks or periods of navigation, transit or transportation, and while being prepared for and while awaiting shipment, and during any delays, transshipment, or reshipment

incident thereto.

- 385.020. 1. As used in sections 385.010 to 385.080, the following words and phrases mean:
- (1) "Credit accident and sickness insurance", insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy;
- (2) "Credit casualty insurance", insurance other than credit life insurance, credit accident and sickness insurance, credit involuntary unemployment insurance, or credit property insurance, by which the satisfaction of a debt in whole or in

- 1 part is a benefit provided upon the occurrence of any unknown or
- 2 contingent event whatever, when such insurance is sold to
- 3 individual consumers and written as part of a credit transaction,
- 4 but only insofar as it applies to personal debt incurred by
- 5 individual consumers and not debt incurred in any business, trade
- 6 or profession of the debtor;
- 7 (3) "Credit involuntary unemployment insurance", insurance
- 8 on a debtor to provide indemnity for payments becoming due on a
- 9 specific loan or other credit transaction while the debtor is
- involuntarily unemployed as defined in the policy;
- 11 (4) "Credit life insurance", insurance on the life of a
- debtor pursuant to or in connection with a specific loan or other
- 13 credit transaction;
- 14 (5) "Credit property insurance", insurance against loss of
- or damage to personal property, covering a creditor's security
- interest in such property, when such insurance is written as part
- of a loan or other credit transaction, but only insofar as it
- applies to property sold to individual consumers for personal
- 19 use, or pledge by them, and not used in any business, trade or
- 20 profession of the purchaser, except that such insurance shall not
- 21 mean homeowners', renters' or lessees' insurance;
- 22 (6) "Creditor", the lender of money or vendor or lessor of
- 23 goods, services, property, rights, or privileges for which
- 24 payment is arranged through a credit transaction, or any
- successor to the right, title, or interest of any such lender,
- vendor, or lessor, and any affiliate, associate, or subsidiary of
- any of them, or any director, officer, or employee of any of
- them, or any other person in any way associated with any of them,

- including a holding company;
- 2 (7) "Debtor", a borrower of money or a purchaser or lessee
- 3 of goods, services, property, rights, or privileges for which
- 4 payment is arranged through a credit transaction;
- 5 (8) "Decreasing term life coverage", credit life insurance
- 6 decreasing over the term of the coverage to correspond with the
- 7 scheduled or actual amount of unpaid indebtedness, whichever is
- 8 greater;
- 9 (9) "Director", director of the Missouri department of
- insurance, financial and professional regulation;
- 11 (10) "Identifiable charge", the amount a creditor charges a
- debtor or collects from him specifically for credit insurance in
- 13 addition to any other stated charges, including interest or
- 14 discount, permitted by law;
- 15 (11) "Indebtedness", the total amount payable by a debtor
- to a creditor in connection with a loan or other credit
- 17 transaction:
- 18 (12) "Insurer", an insurance company authorized to write
- 19 credit life insurance, credit accident and sickness insurance,
- 20 credit casualty insurance, credit involuntary unemployment
- 21 insurance or credit property insurance;
- 22 (13) "Joint life coverage", credit life insurance covering
- 23 two or more lives, the entire sum insured being payable upon the
- 24 death of the first insured debtor to die while the insurance is
- 25 in force;
- 26 (14) "Level term life coverage", credit life insurance
- 27 remaining level over the term of the coverage.
- 28 2. As used in sections 385.010 to 385.080, the following

1 technical terms shall have the indicated meanings:

in a consistent manner from year to year;

- 2 (1) "Claims", benefits payable on death, disability, debt 3 default, involuntary unemployment or property damage, excluding
- 4 loss adjustment expense, claims settlement costs, or other
- 5 additions of any kind;

- (2) "Claims incurred", claims actually paid during the reporting year plus the estimated reserves at the end of the year for reported claims in the process of settlement and for unreported claims, less the corresponding estimated reserves at the end of the preceding year. All reserves are to be determined
 - (3) "Credibility period", as of any point of time the period of at least three years immediately prior thereto;
 - (4) "Premiums earned", the total gross premiums which become due the insurer, without reduction of any kind, except the premiums refunded or adjusted on account of termination of coverage, appropriately adjusted for changes in gross unearned premiums in force upon a pro rata basis or a "sum of the digits" basis, where applicable. Where premiums are payable monthly on the basis of outstanding insured balances, "premiums earned" means the total premiums paid the insurer during the reporting year plus premiums due the insurer but unpaid at the end of that year, less premiums due the insurer but unpaid at the end of the previous year. As defined under either system, premiums are without reduction of any kind except for those refunded or adjusted because of termination of coverage.
- 400.008.117. 1. Notwithstanding any other provision of law, any fiduciary holding securities in its fiduciary capacity

and any insurance company with respect to its general account or 1 2 separate accounts, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company 3 holding securities as custodian for a fiduciary or insurance 5 company is authorized to deposit or arrange for the deposit of 6 such securities in a clearing corporation, or in a federal 7 reserve bank under book-entry system. When such securities are so deposited with a clearing corporation, certificates 8 representing securities of the same class of the same issuer may 9 10 be merged and held in bulk in the name of the nominee of such 11 clearing corporation by any person, regardless of the ownership 12 of such securities, and certificates of small denomination may be 13 merged into one or more certificates of larger denomination. 14 records of such fiduciary and the records of such bank or trust 15 company acting as custodian, as managing agent, or as custodian for a fiduciary or insurance company shall at all times show the 16 17 name of the party for whose account the securities are so 18 deposited. Title to such securities may be transferred by 19 bookkeeping entry on the books of such clearing corporation or 20 federal reserve bank without physical delivery of certificates or 21 documents representing such securities. A bank or trust company 22 so depositing securities pursuant to this section shall be 23 subject to such rules and regulations as the director of the 24 division of finance, and, in the case of national banking 25 associations, the comptroller of the currency, may from time to 26 time issue. An insurance company depositing securities pursuant 27 to this section shall be subject to such rules and regulations as 28 the director of the department of insurance, financial and

professional regulation may from time to time issue. A bank or 1 2 trust company acting as custodian for a fiduciary or insurance 3 company shall, on demand by the fiduciary or insurance company, certify in writing to the fiduciary or insurance company the securities so deposited by such bank or trust company in such 5 clearing corporation or federal reserve bank for the account of 6 7 such fiduciary or insurance company. A fiduciary shall, on demand by any party to a judicial proceeding, or on demand by the 8 9 attorney for such party, certify in writing to such party the securities deposited by such fiduciary in such clearing 10 11 corporation or federal reserve bank for its account as such 12 fiduciary. This section shall apply to any fiduciary holding 13 securities in its fiduciary capacity, any insurance company with respect to its general account or separate accounts, and to any 14 15 bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary, or insurance company, acting 16 17 on September 28, 1979, or who, thereafter, may act regardless of 18 the date of the agreement, instrument, or court order by which it 19 is appointed, and regardless of whether or not such fiduciary, 20 insurance company, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation. For 21 22 purposes of this subsection, "clearing corporation" shall also include securities intermediary as that term is defined in 23 24 section 400.8-102(a)(14).

2. Notwithstanding any other provision of law, the state treasurer may permit bonds standing as security for moneys deposited by him in banking institutions under the provisions of chapter 30, RSMo, to be deposited in book-entry collateral

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accounts maintained in a federal reserve bank or other clearing corporation as defined in section 400.8-102, or deposited with a banking institution in safekeeping for the state treasurer under procedures agreed upon by the governor, state auditor and state treasurer. The governor, state auditor and state treasurer shall also agree upon procedures to verify that the bonds are actually recorded in a book-entry collateral account or actually held in safekeeping.

- 3. Securities, of the kind and type in which insurance companies are permitted to invest their funds, deposited in a clearing corporation or in book-entry accounts maintained in a federal reserve bank by an insurance company shall be eligible for deposit under any and all provisions of the insurance laws of this state relating to deposit of securities with the director of the department of insurance, financial and professional regulation. The director shall establish procedures to verify that the securities are actually recorded in a book-entry account or actually held in safekeeping by a clearing corporation. Such procedures shall also provide that said securities on deposit with the department of insurance, financial and professional regulation cannot be withdrawn by the insurance company without the approval of the director.
- 407.020. 1. The act, use or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as

- defined in section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. The use by any person, in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in section 407.453, in or from the state of Missouri of the fact that the attorney general has approved any filing required by this chapter as the approval, sanction or endorsement of any activity, project or action of such person, is declared to be an unlawful practice. Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation.
 - 2. Nothing contained in this section shall apply to:

- (1) The owner or publisher of any newspaper, magazine, publication or printed matter wherein such advertisement appears, or the owner or operator of a radio or television station which disseminates such advertisement when the owner, publisher or operator has no knowledge of the intent, design or purpose of the advertiser; or
- (2) Any institution or company that is under the direction and supervision of the director of the department of insurance, financial and professional regulation, director of the division of credit unions, or director of the division of finance, unless the directors of such divisions specifically authorize the attorney general to implement the powers of this chapter or such powers are provided to either the attorney general or a private citizen by statute.
 - 3. Any person who willfully and knowingly engages in any

act, use, employment or practice declared to be unlawful by this section with the intent to defraud shall be guilty of a class D felony.

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- 4. It shall be the duty of each prosecuting attorney and circuit attorney in their respective jurisdictions to commence any criminal actions under this section, and the attorney general shall have concurrent original jurisdiction to commence such criminal actions throughout the state where such violations have occurred.
- 10 5. It shall be an unlawful practice for any long-term care 11 facility, as defined in section 660.600, RSMo, except a facility 12 which is a residential care facility or an assisted living 13 facility, as defined in section 198.006, RSMo, which makes, either orally or in writing, representation to residents, 14 15 prospective residents, their families or representatives regarding the quality of care provided, or systems or methods 16 utilized for assurance or maintenance of standards of care to 17 18 refuse to provide copies of documents which reflect the 19 facility's evaluation of the quality of care, except that the 20 facility may remove information that would allow identification of any resident. If the facility is requested to provide any 21 22 copies, a reasonable amount, as established by departmental rule, 23 may be charged.
 - 6. Any long-term care facility, as defined in section 660.600, RSMo, which commits an unlawful practice under this section shall be liable for damages in a civil action of up to one thousand dollars for each violation, and attorney's fees and costs incurred by a prevailing plaintiff, as allowed by the

- 1 circuit court.
- 2 407.1085. 1. The following acts or practices are exempt
- 3 from the provisions of sections 407.1070 to 407.1082:
- 4 (1) Telephone calls in which the sale of merchandise is not
- 5 completed, and payment or authorization of payment is not
- 6 required, until after a face-to-face sales presentation by the
- 7 telemarketer or seller; or
- 8 (2) Telephone calls in which the sale of merchandise is
- 9 completed and a written contract is forwarded to the consumer so
- 10 long as the consumer may return the merchandise within fourteen
- days of receipt of the merchandise and receive a refund of any
- moneys paid except for any coverage, fees or services earned;
- provided that the telemarketer shall inform the consumer at the
- 14 time of the call that:
- 15 (a) A written contract regarding the sale of the
- merchandise will be forwarded to the consumer;
- 17 (b) The approximate date of the delivery of the
- 18 merchandise; and
- 19 (c) The consumer will have a right to terminate the
- 20 contract within fourteen days of receipt of the merchandise, and
- 21 upon returning the merchandise, shall have a right to a refund as
- 22 provided in this subdivision.
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- 24 The term "merchandise" as used in this subdivision shall mean
- 25 merchandise sold by a person, institution or company that is
- 26 under the direction and supervision of the director of the
- 27 department of insurance, financial and professional regulation,
- 28 director of the division of credit unions or director of the

- division of finance or federally chartered banks, savings and loans and credit unions;
- 3 (3) Telephone calls initiated by a consumer that:

- 4 (a) Are not the result of any advertisement by a seller or telemarketer;
 - (b) Are in response to an advertisement through any media, other than direct mail or telemarketing, which discloses the name of the seller and the identity of the merchandise; provided that, this exemption shall not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is used to engage in telemarketing activities prohibited by subdivision (6) or (7) of section 407.1076; or
 - (c) Are in response to direct mail solicitations that clearly and conspicuously disclose and do not misrepresent the material information required by subsection 2 of section 407.1073; provided that, this exemption does not apply to calls initiated by the consumer in response to an advertisement that offers a prize or investment opportunity, or is to engage in telemarketing activities prohibited by subdivision (6) or (7) of section 407.1076; or
 - (d) Are in response to the mailing of a catalog which contains a written description or illustration of the goods or services offered for sale; includes the business address of the seller, includes multiple pages of written materials or illustrations; and has been issued not less frequently than once a year, when the seller or telemarketer does not contact consumers by telephone but only receives calls initiated by consumers in response to the catalog, and stops further

- solicitation of items not in a catalog when the consumer states that he or she is not interested in any further solicitations; or
 - (4) Telephone calls or messages:

- 4 (a) To any consumer with such consumer's prior express invitation or permission;
 - (b) To any consumer with whom the seller has an established business relationship; or
 - (c) By or on behalf of any entity over which either a state or federal agency has regulatory authority to the extent that:
- a. Subject to such authority, the entity is required to
 maintain a license, registration, certificate or permit to sell
 or provide the merchandise being offered through telemarketing;
 and
 - b. As of August 28, 2000, the state or federal agency has, directly or through a delegation of authority which is enforceable pursuant to state or federal law, promulgated rules that regulate the telemarketing sales practices of the entity for the merchandise that entity offers through telemarketing and are reasonably consistent with the requirements of section 407.1070 through section 407.1079 and which allow consumer redress pursuant to that agency's rules or applicable federal law;
 - (d) Between a telemarketer and any business except calls involving the retail sale of nondurable office and cleaning supplies.
 - 2. The office of the attorney general shall receive telemarketing complaints by means of a toll-free telephone number, by a notice in writing or by electronic means.

 Complaints against entities who are licensed, certificated or

- 1 permitted and whose telemarketing practices are regulated by the
- 2 same state or federal agency and which agency has rules
- 3 regulating telemarketing practices shall be forwarded for
- 4 investigation by the office of the attorney general to such
- 5 agency. All other complaints shall be handled by the office of
- 6 the attorney general.
- 7 407.1200. As used in sections 407.1200 to 407.1227, the
- 8 following terms shall mean:
- 9 (1) "Administrator", the person who is responsible for the
- 10 administration of the service contracts or the service contracts
- 11 plan and who is responsible for any filings required by sections
- 12 407.1200 to 407.1227;
- 13 (2) "Consumer", a natural person who buys other than for
- 14 purposes of resale any motor vehicle that is distributed in
- 15 commerce and that is normally used for personal, family, or
- household purposes and not for business or research purposes;
- 17 (3) "Director", the director of the department of
- insurance, financial and professional regulation;
- 19 (4) "Maintenance agreement", a contract of limited duration
- 20 that provides for scheduled maintenance only;
- 21 (5) "Manufacturer", a person that:
- 22 (a) Manufactures or produces the property and sells the
- 23 property under its own name or label;
- 24 (b) Is a wholly owned subsidiary of the person who
- 25 manufactures or produces the property;
- 26 (c) Is a corporation which owns one hundred percent of the
- person who manufactures or produces the property;
- 28 (d) Does not manufacture or produce the property, but the

1 property is sold under its trade name label;

- 2 (e) Manufactures or produces the property and the property 3 is sold under the trade name or label of another person; or
 - (f) Does not manufacture or produce the property but,
 pursuant to a written contract, licenses the use of its trade
 name or label to another person that sells the property under the
 licensor's trade name or label:
 - (6) "Mechanical breakdown insurance", a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or service, for the operational or structural failure of a motor vehicle due to a defect in materials or workmanship or to normal wear and tear;
 - (7) "Motor vehicle extended service contract" or "service contract", a contract or agreement for a separately stated consideration or for a specific duration to perform the repair, replacement, or maintenance of a motor vehicle or indemnification for repair, replacement, or maintenance, for the operational or structural failure due to a defect in materials, workmanship, or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including, but not limited to, towing, rental, and emergency road service, but does not include mechanical breakdown insurance or maintenance agreements;
 - (8) "Nonoriginal manufacturer's parts", replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts";
 - (9) "Person", an individual, partnership, corporation,

- 1 incorporated or unincorporated association, joint stock company,
- 2 reciprocal, syndicate, or any similar entity or combination of
- 3 entities acting in concert;

- 4 (10) "Premium", the consideration paid to an insurer for a reimbursement insurance policy;
 - (11) "Provider", a person who administers, issues, makes, provides, sells, or offers to sell a motor vehicle extended service contract, or who is contractually obligated to provide service under a motor vehicle extended service contract such as sellers, administrators, and other intermediaries;
 - (12) "Provider fee", the consideration paid for a service contract in excess of the premium;
 - insurance issued to a provider and pursuant to which the insurer agrees, for the benefit of the service contract holders, to discharge all of the obligations and liabilities of the provider under the terms of the service contracts in the event of nonperformance by the provider. All obligations and liabilities include, but are not limited to, failure of the provider to perform under the service contract and the return of the unearned provider fee in the event of the provider's unwillingness or inability to reimburse the unearned provider fee in the event of termination of a service contract;
 - (14) "Service contract holder" or "contract holder", a person who is the purchaser or holder of a service contract;
- 26 (15) "Warranty", a warranty made solely by the
 27 manufacturer, importer, or seller of property or services without
 28 charge, that is not negotiated or separated from the sale of the

- 1 product and is incidental to the sale of the product, that
- 2 guarantees indemnity for defective parts, mechanical or
- 3 electrical breakdown, labor, or other remedial measures, such as
- 4 repair or replacement of the property or repetition of services.
- 5 408.233. 1. No charge other than that permitted by section
- 6 408.232 shall be directly or indirectly charged, contracted for
- 7 or received in connection with any second mortgage loan, except
- 8 as provided in this section:
- 9 (1) Fees and charges prescribed by law actually and
- 10 necessarily paid to public officials for perfecting, releasing,
- or satisfying a security interest related to the second mortgage
- 12 loan;
- 13 (2) Taxes;
- 14 (3) Bona fide closing costs paid to third parties, which
- 15 shall include:
- 16 (a) Fees or premiums for title examination, title
- insurance, or similar purposes including survey;
- 18 (b) Fees for preparation of a deed, settlement statement,
- 19 or other documents;
- 20 (c) Fees for notarizing deeds and other documents;
- 21 (d) Appraisal fees; and
- 22 (e) Fees for credit reports;
- 23 (4) Charges for insurance as described in subsection 2 of
- 24 this section;
- 25 (5) A nonrefundable origination fee not to exceed five
- 26 percent of the principal which may be used by the lender to
- 27 reduce the rate on a second mortgage loan;
- 28 (6) Any amounts paid to the lender by any person,

- 1 corporation or entity, other than the borrower, to reduce the 2 rate on a second mortgage loan or to assist the borrower in
- 3 qualifying for the loan;

- 4 (7) For revolving loans, an annual fee not to exceed fifty dollars may be assessed.
 - 2. An additional charge may be made for insurance written in connection with the loan, including insurance protecting the lender against the borrower's default or other credit loss, and:
 - (1) For insurance against loss of or damage to property where no such coverage already exists; and
 - (2) For insurance providing life, accident, health or involuntary unemployment coverage.
 - 3. The cost of any insurance shall not exceed the rates filed with the [division] <u>department</u> of insurance, <u>financial and professional regulation</u>, and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state. Any person or entity making second mortgage loans, or any of its employees, may be licensed to sell insurance permitted in this section.
 - 4. On any second mortgage loan, a default charge may be contracted for and received for any installment or minimum payment not paid in full within fifteen days of its scheduled due date equal to five percent of the amount or fifteen dollars, whichever is greater, not to exceed fifty dollars. A default charge may be collected only once on an installment or a payment due however long it remains in default. A default charge may be collected at the time it accrues or at any time thereafter and for purposes of subsection 3 of section 408.234 a default charge

shall be treated as a payment. No default charge may be

collected on an installment or a payment due which is paid in

full within fifteen days of its scheduled due date even though an

earlier installment or payment or a default charge on earlier

installment or payments may not have been paid in full.

- by subsection 4 of this section, be allowed to assess the borrower or other maker of refused instrument the actual charge made by any institution for processing the negotiable instrument, plus a handling fee of not more than twenty-five dollars; and, if the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and are not handled by a salaried employee of the holder of the contract or note.
- 408.280. 1. The amount, if any, included for insurance, if a separate identified charge is made for the insurance, which insurance may be purchased by the seller or other person holding a retail time contract or account under a retail charge agreement, shall not exceed the applicable premium chargeable in accordance with the rates approved by the department of insurance, financial and professional regulation of this state where such rates are required by law to be approved by such department. All insurance shall be written by an insurance company authorized to do business in this state and all policies

- written in this state shall be countersigned by a duly licensed resident agent authorized to engage in the insurance business in this state, unless otherwise provided by law. A buyer may be required to provide insurance on the goods at his own cost for the protection of the seller or other person holding a retail time contract or account under a retail charge agreement, as well as the buyer, but such insurance shall be subject to limitations provided for in regulations promulgated and issued by the director of finance pursuant to the provisions of subsection 3 of this section. An additional charge may be made for insurance written in connection with the retail time contract which provides involuntary unemployment coverage.
 - 2. The seller or other person holding a retail time contract or account under a retail charge agreement shall, within thirty days after provision for any insurance is agreed to by the buyer, send or cause to be sent to the buyer a policy or policies or certificate or certificates of insurance, clearly setting forth the amount of the premium, the kind or kinds of insurance, the coverage and, if a policy, all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of insurance, or, if a certificate, a summary of the certificate.

3. The amount of any life insurance shall not exceed the amount of the total unpaid balance from time to time under a retail time contract or under a retail charge agreement, except that where the buyer's obligation under a retail time contract is repayable in payments which are not substantially equal in amount, such insurance may be level term insurance in an amount

- which shall not exceed by more than five dollars the time balance as determined under subsection 5 of section 408.260. director of finance, or such agency or agencies as may exercise the powers and duties now performed by such director, shall issue regulations providing for and governing the types and limits of all other insurance and the issuance of policies in connection with retail time transactions. Nothing in this section shall alter or amend the statutes of this state relating to insurance or affect the powers of the director of the department of insurance, financial and professional regulation under such statutes.
 - 4. The seller shall not decline existing insurance written by an insurance company authorized to do business in this state and the buyer shall have the privilege of purchasing insurance from an agent or broker of his own selection and of selecting his insurance company, except that the insurance company shall be acceptable to the holder, which acceptance shall not be unreasonably or arbitrarily withheld, and further, that the inclusion of the cost of the insurance premium in the retail time contract when the buyer selects his agent, broker or company shall be optional with the seller.

- 5. If any insurance is canceled, or the premium adjusted, any refund of the insurance premium received by the holder shall be credited to the final maturing payments of the contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder or either of them.
 - 427.140. Upon cancellation or expiration of collateral

- 1 protection coverage, the amount of unearned premiums, if any, as
- 2 calculated in accordance with the policy approved by the
- 3 department of insurance, financial and professional regulation as
- 4 permitted by law, shall be refunded to the debtor. The amount of
- 5 unearned premiums, however, may not be calculated by the rule of
- 6 78 or sum of the digits method. A refund of unearned premiums
- 7 may be credited to the debtor's obligation under the credit
- 8 agreement or distributed directly to the debtor by check or other
- 9 means.
- 10 427.145. Collateral protection coverage may be placed with
- any insurance carrier selected by the creditor that is licensed
- 12 to underwrite the insurance by the department of insurance_
- financial and professional regulation. The insurance shall be
- evidenced by an individual policy or a certificate of insurance.
- 15 436.005. As used in sections 436.005 to 436.071, unless the
- 16 context otherwise requires, the following terms shall mean:
- 17 (1) "Beneficiary", the individual who is to be the subject
- of the disposition and who will receive funeral services,
- 19 facilities or merchandise described in a preneed contract;
- 20 (2) "Division", the division of professional registration
- 21 [of the department of economic development];
- 22 (3) "Funeral merchandise", caskets, grave vaults, or
- 23 receptacles, and other personal property incidental to a funeral
- or burial service, and such term shall also include grave lots,
- 25 grave space, grave markers, monuments, tombstones, crypts, niches
- or mausoleums if, but only if, such items are sold:
- 27 (a) By a companion agreement which is sold in contemplation
- of trade or barter for grave vaults or funeral or burial services

1 and funeral merchandise; or

- 2 (b) At prices, in excess of prevailing market prices,
 3 intended to be offset by reductions in the costs of funeral or
 4 burial services or facilities which are not immediately required;
 - (4) "Person", any individual, partnership, corporation, cooperative, association, or other entity;
 - which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance;
 - (6) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon;
 - (7) "Provider", the person obligated to provide the disposition and funeral services, facilities, or merchandise described in a preneed contract;
- 26 (8) "Purchaser", the person who is obligated to make 27 payments under a preneed contract;
 - (9) "Seller", the person who sells a preneed contract to a

- 1 purchaser and who is obligated to collect and administer all
- payments made under such preneed contract;
- 3 (10) "State board", the Missouri state board of embalmers
- 4 and funeral directors;
- 5 (11) "Trustee", the trustee of a preneed trust, including
- 6 successor trustees.
- 7 443.803. 1. For the purposes of sections 443.800 to
- 8 443.893, the following terms mean:
- 9 (1) "Advertisement", the attempt by publication,
- dissemination or circulation to induce, directly or indirectly,
- any person to apply for a loan to be secured by residential real
- 12 estate;
- 13 (2) "Affiliate":
- 14 (a) Any entity that directly controls, or is controlled by,
- 15 the licensee and any other company that is directly affecting
- activities regulated by sections 443.800 to 443.893 that is
- 17 controlled by the company that controls the licensee;
- 18 (b) Any entity:
- 19 a. That is controlled, directly or indirectly, by a trust
- or otherwise by, or for the benefit of, shareholders who
- beneficially, or otherwise, control, directly or indirectly, by
- trust or otherwise, the licensee or any company that controls the
- 23 licensee; or
- b. A majority of the directors or trustees of which
- constitute a majority of the persons holding any such office with
- 26 the licensee or any company that controls the licensee;
- 27 (c) Any company, including a real estate investment trust,
- 28 that is sponsored and advised on a contractual basis by the

- 1 licensee or any subsidiary or affiliate of the licensee;
- 2 (3) "Annual audit", a certified audit of the licensee's
- 3 books and records and systems of internal control performed by a
- 4 certified public accountant in accordance with generally accepted
- 5 accounting principles and generally accepted auditing standards;
- 6 (4) "Board", the residential mortgage board, created in section 443.816;

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- (5) "Borrower", the person or persons who use the services of a loan broker, originator or lender;
- (6) "Director", the director of the division of finance
 [within the department of economic development];
- (7) "Escrow agent", a third party, individual or entity, charged with the fiduciary obligation for holding escrow funds on a residential mortgage loan pending final payout of those funds in accordance with the terms of the residential mortgage loan;
 - (8) "Exempt entity", the following entities:
- (a) Any bank or trust company organized under the laws of this or any other state or any national bank or any foreign banking corporation licensed by the division of finance or the United States Comptroller of the Currency to transact business in this state;
 - (b) Any state or federal savings and loan association, savings bank or credit union or any consumer finance company licensed under sections 367.100 to 367.215, RSMo, which is actively engaged in consumer credit lending;
- 26 (c) Any insurance company authorized to transact business 27 in this state;
- 28 (d) Any person engaged solely in commercial mortgage

- lending or any person making or acquiring residential or commercial construction loans with the person's own funds for the
- 4 (e) Any service corporation of a federally chartered or 5 state- chartered savings and loan association, savings bank or 6 credit union;

person's own investment;

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- (f) Any first-tier subsidiary of a national or state bank that has its principal place of business in this state, provided that such first-tier subsidiary is regularly examined by the division of finance or the Comptroller of the Currency or a consumer compliance examination of it is regularly conducted by the Federal Reserve;
 - (g) Any person engaged solely in the business of securing loans on the secondary market provided such person does not make decisions about the extension of credit to the borrower;
- (h) Any mortgage banker as defined in subdivision (19) of this subsection; or
 - (i) Any wholesale mortgage lender who purchases mortgage loans originated by a licensee provided such wholesale lender does not make decisions about the extension of credit to the borrower;
- 22 (j) Any person making or acquiring residential mortgage 23 loans with the person's own funds for the person's own 24 investment;
- 25 (k) Any person employed or contracted by a licensee to
 26 assist in the performance of the activities regulated by sections
 27 443.800 to 443.893 who is compensated in any manner by only one
 28 licensee;

1 (1) Any person licensed pursuant to the real estate agents
2 and brokers licensing law, chapter 339, RSMo, who engages in
3 servicing or the taking of applications and credit and appraisal
4 information to forward to a licensee or an exempt entity for
5 transactions in which the licensee is acting as a real estate
6 broker and who is compensated by either a licensee or an exempt
7 entity;

- (m) Any person who originates, services or brokers residential mortgagee loans and who receives no compensation for those activities, subject to the director's regulations regarding the nature and amount of compensation;
- (9) "Financial institution", a savings and loan association, savings bank, credit union, mortgage banker or bank organized under the laws of Missouri or the laws of the United States with its principal place of business in Missouri;
- (10) "First-tier subsidiary", as defined by administrative rule promulgated by the director;
- reasonably adequate to handle efficiently communications, questions and other matters relating to any application for a new, or existing, home mortgage loan which the licensee is brokering, funding, originating, purchasing or servicing. The management and operation of each full-service office must include observance of good business practices such as adequate, organized and accurate books and records, ample phone lines, hours of business, staff training and supervision and provision for a mechanism to resolve consumer inquiries, complaints and problems. The director shall promulgate regulations with regard to the

- 1 requirements of this subdivision and shall include an evaluation
- of compliance with this subdivision in the periodic examination
- 3 of the licensee;
- 4 (12) "Government-insured mortgage loan", any mortgage loan
- 5 made on the security of residential real estate insured by the
- 6 Department of Housing and Urban Development or Farmers Home Loan
- 7 Administration, or guaranteed by the Veterans Administration;
- 8 (13) "Lender", any person who either lends money for or
- 9 invests money in residential mortgage loans;
- 10 (14) "Licensee" or "residential mortgage licensee", a
- 11 person who is licensed to engage in the activities regulated by
- 12 sections 443.800 to 443.893;
- 13 (15) "Loan broker" or "broker", a person exempted from
- licensing pursuant to subdivision (8) of this subsection, who
- performs the activities described in subdivisions (17) and (32)
- 16 of this subsection;
- 17 (16) "Loan brokerage agreement", a written agreement in
- which a broker agrees to do either of the following:
- 19 (a) Obtain a residential mortgage loan for the borrower or
- assist the borrower in obtaining a residential mortgage loan; or
- 21 (b) Consider making a residential mortgage loan to the
- 22 borrower;
- 23 (17) "Loan brokering", "mortgage brokering", or "mortgage
- 24 brokerage service", the act of helping to obtain for an investor
- or from an investor for a borrower, a loan secured by residential
- 26 real estate situated in Missouri or assisting an investor or a
- borrower in obtaining a loan secured by residential real estate
- in return for consideration;

1 (18) "Making a residential mortgage loan" or "funding a 2 residential mortgage loan", for compensation or gain, either, 3 directly or indirectly, advancing funds or making a commitment to 4 an applicant for a residential mortgage loan;

- (19) "Mortgage banker", a mortgage loan company which is subject to licensing, supervision, or annual audit requirements by the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), or the United States Veterans Administration (VA), or the United States

 Department of Housing and Urban Development (HUD), or a successor of any of the foregoing agencies or entities, as an approved lender, loan correspondent, seller, or servicer;
- (20) "Mortgage loan" or "residential mortgage loan", a loan to, or for the benefit of, any natural person made primarily for personal, family or household use, including a reverse mortgage loan, primarily secured by either a mortgage or reverse mortgage on residential real property or certificates of stock or other evidence of ownership interests in, and proprietary leases from, corporations or partnerships formed for the purpose of cooperative ownership of residential real property;
 - (21) "Net worth", as provided in section 443.859;
- 22 (22) "Originating", the advertising, soliciting, taking
 23 applications, processing, closing, or issuing of commitments for,
 24 and funding of, residential mortgage loans;
- 25 (23) "Party to a residential mortgage financing
 26 transaction", a borrower, lender or loan broker in a residential
 27 mortgage financing transaction;
 - (24) "Payments", payment of all, or any part of, the

- 1 following: principal, interest and escrow reserves for taxes,
- 2 insurance and other related reserves and reimbursement for lender
- 3 advances;
- 4 (25) "Person", any individual, firm, partnership,
- 5 corporation, company or association and the legal successors
- 6 thereof;
- 7 (26) "Personal residence address", a street address, but
- 8 shall not include a post office box number;
- 9 (27) "Purchasing", the purchase of conventional or
- 10 government-insured mortgage loans secured by residential real
- 11 estate from either the lender or from the secondary market;
- 12 (28) "Residential mortgage board", the residential mortgage
- board created in section 443.816;
- 14 (29) "Residential mortgage financing transaction", the
- 15 negotiation, acquisition, sale or arrangement for, or the offer
- to negotiate, acquire, sell or arrange for, a residential
- 17 mortgage loan or residential mortgage loan commitment;
- 18 (30) "Residential mortgage loan commitment", a written
- 19 conditional agreement to finance a residential mortgage loan;
- 20 (31) "Residential real property" or "residential real
- 21 estate", real property located in this state improved by a
- one-family to four-family dwelling;
- 23 (32) "Servicing", the collection or remittance for, or the
- 24 right or obligation to collect or remit for, any lender,
- 25 noteowner, noteholder or for a licensee's own account, of
- 26 payments, interests, principal and trust items such as hazard
- insurance and taxes on a residential mortgage loan and includes
- loan payment follow-up, delinquency loan follow-up, loan analysis

- and any notifications to the borrower that are necessary to enable the borrower to keep the loan current and in good standing;
- (33)"Soliciting, processing, placing or negotiating a residential mortgage loan", for compensation or gain, either, 5 6 directly or indirectly, accepting or offering to accept an 7 application for a residential mortgage loan, assisting or offering to assist in the processing of an application for a 8 9 residential mortgage loan on behalf of a borrower, or negotiating 10 or offering to negotiate the terms or conditions of a residential 11 mortgage loan with a lender on behalf of a borrower including, 12 but not limited to, the submission of credit packages for the 13 approval of lenders, the preparation of residential mortgage loan 14 closing documents, and including a closing in the name of a 15 broker:
 - indirectly, owns or controls an ownership interest in a corporation, foreign corporation, alien business organization, trust or any other form of business organization regardless of whether the person owns or controls the ownership interest through one or more persons or one or more proxies, powers of attorney, nominees, corporations, associations, partnerships, trusts, joint stock companies or other entities or devices, or any combination thereof.

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- 2. The director may define by rule any terms used in sections 443.800 to 443.893 for efficient and clear administration.
- 447.572. The treasurer may at reasonable times and upon

reasonable notice examine the records of any person if the 1 2 treasurer has reason to believe that such person has failed to 3 report property that should have been reported pursuant to sections 447.500 to 447.595; provided, however, that examination of the records of any person or entity subject to the supervision of the divisions of finance, credit unions, the department of 6 7 insurance, financial and professional regulation or the public service commission shall be made by the chief officer of the 8 9 respective agency at the request of the treasurer. 10 examination by the chief officer of the respective agency may be 11 delegated to the chief officer's full-time employees, who 12 otherwise examine the specific listed institution regulated by 13 such agency. Such chief officer of the respective agency shall certify in writing to the treasurer and the institution under 15 examination when the chief officer has reason to believe that such institution has failed to report property that should have 16 17 been reported pursuant to sections 447.500 to 447.595. 18 case the treasurer may examine such institution. 19 communications between such chief officers and the treasurer 20 concerning this section shall be considered exceptions to any applicable confidentiality statutes. The treasurer may delegate 21 22 any duty imposed upon the treasurer pursuant to the provisions of sections 447.500 to 447.595 to such other agency employees as the 23 24 treasurer deems appropriate.

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525.050. Notice of garnishment shall be served on a corporation, in writing, by delivering such notice, or a copy thereof, only to a person designated by the corporation in a registered letter filed with the sheriff or officer for

collection in the corporation's county of primary business; provided, if such designated person is not available or if such designation is not filed with the sheriff or officer of collection, then such notice may be served upon the president, secretary, treasurer, cashier or other chief or managing officer of such corporation. Notice of garnishment may be served on railroad corporations by delivering the same, or a copy thereof, to any station or freight agent of such corporation, and on insurance companies not incorporated by or organized under the laws of this state, by delivering the same, or a copy thereof, to the director of the department of insurance, financial and professional regulation.

- 537.740. 1. If contributions to the fund do not produce sufficient funds to pay any claims which may be due, the board shall assess and each member, including any member who has withdrawn but was a member in the year in which the assessment is required, shall pay such additional amounts which are each member's proportionate share of total claims allowed and due. The board may abate or defer any part of the additional assessment of a member, if, in the opinion of the board, payment of the additional assessment would impair the ability of the member to fulfill its contractual obligations. The provisions of this subsection shall apply retroactively to the creation of the Missouri public entity risk management fund.
 - 2. The board, in order to carry out the purposes for which the fund is established, may select and employ, or contract with, persons experienced in insurance underwriting, accounting, the servicing of claims, and rate making, who shall serve at the

- 1 board's pleasure, as technical advisors in establishing the
- 2 annual contribution, or may call upon the director of the
- 3 department of insurance, financial and professional regulation
- 4 for such services.
- 5 537.756. 1. The maximum amount which may be paid from the
- fund, as defined in section 537.700, for the payment and
- 7 settlement of claims arising out of any single occurrence, is two
- 8 million dollars.
- 9 2. The limitation on awards for liability provided for in
- 10 this section shall be increased or decreased on an annual basis
- 11 effective January first of each year in accordance with the
- 12 Implicit Price Deflator for Personal Consumption Expenditures as
- published by the Bureau of Economic Analysis of the United States
- 14 Department of Commerce. The current value of the limitation
- shall be calculated by the director of the department of
- insurance, financial and professional regulation, who shall
- 17 furnish that value to the secretary of state, who shall publish
- such value in the Missouri Register as soon after each January
- 19 first as practicable, but it shall otherwise be exempt from the
- 20 provisions of section 536.021, RSMo.
- 21 620.010. 1. There is hereby created a "Department of
- 22 Economic Development" to be headed by a director appointed by the
- 23 governor, by and with the advice and consent of the senate. All
- of the general provisions, definitions and powers enumerated in
- 25 section 1 of the Omnibus State Reorganization Act of 1974 shall
- 26 continue to apply to this department and its divisions, agencies
- and personnel.
- 28 2. The office of director of the department of business and

2 all powers, duties, personnel and property of that office, not previously reassigned by executive reorganization plan no. 1 of 3 4 1973 as submitted by the governor pursuant to chapter 26, RSMo,

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administration, chapter 35, RSMo, and others, is abolished and

- are transferred by type I transfer to the director of the 6 department of economic development. The department of business 7 and administration is hereby abolished.
 - The duties and responsibilities relating to subsection 2 of section 35.010, RSMo, are transferred by type I transfer to the personnel division, office of administration.
- 11 The powers, duties and functions vested in the public 12 service commission, chapters 386, 387, 388, 389, 390, 392, and 13 393, RSMo, and others, and the administrative hearing commission, sections 621.015 to 621.198, RSMo, [and others, are transferred 14 15 by type III transfers, and the state banking board, chapter 361, 16 RSMo, and others, and the savings and loan commission, chapter 17 369, RSMo, and others, are transferred by type II transfers to 18 the department of economic development. The director of the 19 department is directed to provide and coordinate staff and 20 equipment services to these agencies in the interest of 21 facilitating the work of the bodies and achieving optimum 22 efficiency in staff services common to all the bodies. Nothing in the Reorganization Act of 1974 shall prevent the chairman of 23 24 the public service commission from presenting additional budget 25 requests or from explaining or clarifying its budget requests to 26 the governor or general assembly.
- 2.7 The powers, duties and functions vested in the office of 28 the public counsel are transferred by type III transfer to the

department of economic development. Funding for the general counsel's office shall be by general revenue.

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- 6. The public service commission is authorized to employ such staff as it deems necessary for the functions performed by the general counsel other than those powers, duties and functions relating to representation of the public before the public service commission.
- 7. [There is hereby created a "Division of Credit Unions" in the department of economic development, to be headed by a director, nominated by the department director and appointed by the governor with the advice and consent of the senate. All the powers, duties and functions vested in the state supervisor of credit unions in chapter 370, RSMo, and the powers and duties relating to credit unions vested in the commissioner of finance in chapter 370, RSMo, are transferred to the division of credit unions of the department of economic development, by a type II transfer, and the office of the state supervisor of credit unions is abolished. The salary of the director of the division of credit unions shall be set by the director of the department within the limits of the appropriations therefor. The director of the division shall assume all the duties and functions of the state supervisor of credit unions and the commissioner of finance only where the director has duties and responsibilities relating to credit unions as set out in chapter 370, RSMo.
 - 8. The powers, duties and functions vested in the division of finance, chapters 361, 362, 364, 365, 367, and 408, RSMo, and others, are transferred by type II transfer to the department of economic development. There shall be a director of the division

who shall be nominated by the department director and appointed by the governor with the advice and consent of the senate.

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- 9. All the powers, duties and functions vested in the 3 director of the division of savings and loan supervision in chapter 369, RSMo, sections 443.700 to 443.712, RSMo, or by any 5 6 other provision of law are transferred to the division of finance 7 of the department of economic development by a type I transfer. The position of the director of the division of savings and loan 8 9 supervision is hereby abolished. The director of the division of 10 finance shall assume all the duties and functions of the director 11 of the division of savings and loan supervision as provided in 12 chapter 369, RSMo, sections 443.700 to 443.712, RSMo, and by any 13 other provision of law. The division of savings and loan is 14 hereby abolished. The powers of the savings and loan commission 15 are hereby limited to hearing appeals from decisions of the director of the division of finance approving or denying 16 17 applications to incorporate savings and loan associations or to 18 establish branches of savings and loan associations and approving 19 regulations pertaining to savings and loan associations. 20 appeals shall be held in accordance with section 369.319, RSMo.
 - 10. On and after August 28, 1990, the status of the division is modified under a specific type transfer pursuant to section 1 of the Omnibus Reorganization Act of 1974. The status of the division is modified from that of a division transferred to the department of economic development pursuant to a type II transfer, as provided for in this section, to that of an agency possessing the characteristics of a division transferred pursuant to a type III transfer; provided, however, that the division will

- remain within the department of economic development. 1 2 division of insurance shall be assigned to the department of economic development as a type III division, and the director of 3 the department of economic development shall have no supervision, authority or control over the actions or decisions of the 5 6 director of the division. All authority, records, property, 7 personnel, powers, duties, functions, matter pending and all 8 other pertinent vestiges pertaining thereto shall be retained by 9 the division except as modified by this section. If the division 10 of insurance becomes a department by operation of a 11 constitutional amendment, the department of economic development 12 shall continue until December 31, 1991, to provide at least the 13 same assistance as was provided in previous fiscal years for personnel, data processing support and other benefits from 14 15 appropriations.
- 16 11.] All the powers, duties and functions of the commerce 17 and industrial development division and the industrial 18 development commission, chapters 184 and 255, RSMo, and others, not otherwise transferred, are transferred by type I transfer to 19 the department of economic development, and the industrial 20 21 development commission is abolished. All powers, duties and 22 functions of the division of commerce and industrial development 23 and the division of community development are transferred by a 24 type I transfer to the department of economic development, and the division of commerce and industrial development and the 25 26 division of community development are abolished.
 - [12.] <u>8.</u> All the powers, duties and functions vested in the tourism commission, chapter 258, RSMo, and others, are

- transferred to the "Division of Tourism", which is hereby created, by type III transfer.
- [13.] 9. All the powers, duties and functions of the department of community affairs, chapter 251, RSMo, and others, not otherwise assigned, are transferred by type I transfer to the department of economic development, and the department of community affairs is abolished. The director of the department of economic development may assume all the duties of the director of community affairs or may establish within the department such subunits and advisory committees as may be required to administer the programs so transferred. The director of the department shall appoint all members of such committees and heads of subunits.
 - [14. (1) There is hereby established a "Division of Professional Registration" assigned to the department of economic development as a type III division, headed by a director appointed by the governor with the advice and consent of the senate.

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registration shall promulgate rules and regulations which designate for each board or commission assigned to the division the renewal date for licenses or certificates. After the initial establishment of renewal dates, no director of the division shall promulgate a rule or regulation which would change the renewal date for licenses or certificates if such change in renewal date would occur prior to the date on which the renewal date in effect at the time such new renewal date is specified next occurs. Each board or commission shall by rule or regulation establish

licensing periods of one, two, or three years. Registration fees set by a board or commission shall be effective for the entire licensing period involved, and shall not be increased during any current licensing period. Persons who are required to pay their first registration fees shall be allowed to pay the pro rata share of such fees for the remainder of the period remaining at the time the fees are paid. Each board or commission shall provide the necessary forms for initial registration, and thereafter the director may prescribe standard forms for renewal of licenses and certificates. Each board or commission shall by rule and regulation require each applicant to provide the information which is required to keep the board's records current. Each board or commission shall issue the original license or certificate.

(3) The division shall provide clerical and other staff services relating to the issuance and renewal of licenses for all the professional licensing and regulating boards and commissions assigned to the division. The division shall perform the financial management and clerical functions as they each relate to issuance and renewal of licenses and certificates. "Issuance and renewal of licenses and certificates" means the ministerial function of preparing and delivering licenses or certificates, and obtaining material and information for the board or commission in connection with the renewal thereof. It does not include any discretionary authority with regard to the original review of an applicant's qualifications for licensure or certification, or the subsequent review of licensee's or certificate holder's qualifications, or any disciplinary action

contemplated against the licensee or certificate holder. The division may develop and implement microfilming systems and automated or manual management information systems.

- of accounting and budgeting, in cooperation with the director of the department, the office of administration, and the state auditor's office, to ensure proper charges are made to the various boards for services rendered to them. The general assembly shall appropriate to the division and other state agencies from each board's funds, moneys sufficient to reimburse the division and other state agencies for all services rendered and all facilities and supplies furnished to that board.
- For accounting purposes, the appropriation to the division and to the office of administration for the payment of rent for quarters provided for the division shall be made from the "Professional Registration Fees Fund", which is hereby created, and is to be used solely for the purpose defined in subdivision (4) of subsection 14 of this section. The fund shall consist of moneys deposited into it from each board's fund. Each board shall contribute a prorated amount necessary to fund the division for services rendered and rent based upon the system of accounting and budgeting established by the director of the division as provided in subdivision (4) of this subsection. Transfers of funds to the professional registration fees fund shall be made by each board on July first of each year; provided, however, that the director of the division may establish an alternative date or dates of transfers at the request of any Such transfers shall be made until they equal the

- 1 prorated amount for services rendered and rent by the division.
- 2 The provisions of section 33.080, RSMo, to the contrary
- 3 notwithstanding, money in this fund shall not be transferred and
- 4 placed to the credit of general revenue.

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- The director of the division shall be responsible for 6 collecting and accounting for all moneys received by the division 7 or its component agencies. Any money received by a board or commission shall be promptly given, identified by type and 8 source, to the director. The director shall keep a record by 9 board and state accounting system classification of the amount of 10 11 revenue the director receives. The director shall promptly 12 transmit all receipts to the department of revenue for deposit in 13 the state treasury to the credit of the appropriate fund. 14 director shall provide each board with all relevant financial
 - (7) All educational transcripts, test scores, complaints, investigatory reports, and information pertaining to any person who is an applicant or licensee of any agency assigned to the division of professional registration by statute or by the department of economic development are confidential and may not be disclosed to the public or any member of the public, except with the written consent of the person whose records are involved. The agency which possesses the records or information shall disclose the records or information if the person whose records or information is involved has consented to the disclosure. Each agency is entitled to the attorney-client privilege and work-product privilege to the same extent as any

information in a timely fashion. Each board shall cooperate with

the director by providing necessary information.

- 1 other person. Provided, however, that any board may disclose
- 2 confidential information without the consent of the person
- 3 involved in the course of voluntary interstate exchange of
- 4 information, or in the course of any litigation concerning that
- 5 person, or pursuant to a lawful request, or to other
- 6 administrative or law enforcement agencies acting within the
- 7 scope of their statutory authority. Information regarding
- 8 identity, including names and addresses, registration, and
- 9 currency of the license of the persons possessing licenses to
- 10 engage in a professional occupation and the names and addresses
- of applicants for such licenses is not confidential information.
- 12 (8) Any deliberations conducted and votes taken in
- rendering a final decision after a hearing before an agency
- 14 assigned to the division shall be closed to the parties and the
- 15 public. Once a final decision is rendered, that decision shall
- be made available to the parties and the public.
- 17 15. (1) The division of registration and examination,
- department of education, within chapter 161, RSMo, and others, is
- 19 abolished and the following boards and commissions are
- 20 transferred by specific type transfers to the division of
- 21 professional registration, department of economic development:
- 22 state board of accountancy, chapter 326, RSMo; state board of
- 23 barber examiners, chapter 328, RSMo; state board of registration
- for architects, professional engineers and land surveyors,
- 25 chapter 327, RSMo; state board of chiropractic examiners, chapter
- 331, RSMo; state board of cosmetology, chapter 329, RSMo; state
- board of healing arts, chapter 334, RSMo; Missouri dental board,
- 28 chapter 332, RSMo; state board of embalmers and funeral

directors, chapter 333, RSMo; state board of optometry, chapter 336, RSMo; state board of nursing, chapter 335, RSMo; board of pharmacy, chapter 338, RSMo; state board of podiatry, chapter 330, RSMo; Missouri real estate commission, chapter 339, RSMo; and Missouri veterinary medical board chapter 340, RSMo. The governor shall appoint members of these boards by and with the advice and consent of the senate from nominees submitted by the director of the department.

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The boards and commissions assigned to the division shall exercise all their respective statutory duties and powers, except those clerical and other staff services involving collecting and accounting for moneys and financial management relating to the issuance and renewal of licenses, which services shall be provided by the division, within the appropriation therefor. All clerical and other staff services relating to the issuance and renewal of licenses of the individual boards and commissions are abolished. All clerical and other staff services pertaining to collecting and accounting for moneys and to financial management relative to the issuance and renewal of licenses of the individual boards and commissions are abolished. Nothing herein shall prohibit employment of professional examining or testing services from professional associations or others as required by the boards or commissions on contract. Nothing herein shall be construed to affect the power of a board or commission to expend its funds as appropriated. However, the division shall review the expense vouchers of each board. results of such review shall be submitted to the board reviewed and to the house and senate appropriations committees annually.

- 1 (3) Notwithstanding any other provisions of law, the
 2 director of the division shall exercise only those management
 3 functions of the boards and commissions specifically provided in
 4 the Reorganization Act of 1974, and those relating to the
 5 allocation and assignment of space, personnel other than board
 6 personnel, and equipment.
- 7 "Board personnel", as used in this section or chapters 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 338, 339 8 9 and 340, RSMo, shall mean personnel whose functions and 10 responsibilities are in areas not related to the clerical duties 11 involving the issuance and renewal of licenses, to the collecting 12 and accounting for moneys, or to financial management relating to issuance and renewal of licenses; specifically included are 13 14 executive secretaries (or comparable positions), consultants, 15 inspectors, investigators, counsel, and secretarial support staff for these positions; and such other positions as are established 16 17 and authorized by statute for a particular board or commission. 18 Boards and commissions may employ legal counsel, if authorized by 19 law, and temporary personnel if the board is unable to meet its 20 responsibilities with the employees authorized above. Any board or commission which hires temporary employees shall annually 21 22 provide the division director and the appropriation committees of 23 the general assembly with a complete list of all persons employed 24 in the previous year, the length of their employment, the amount of their remuneration and a description of their 25 26 responsibilities.
 - (5) Board personnel for each board or commission shall be employed by and serve at the pleasure of the board or commission,

shall be supervised as the board or commission designates, and shall have their duties and compensation prescribed by the board or commission, within appropriations for that purpose, except that compensation for board personnel shall not exceed that established for comparable positions as determined by the board or commission pursuant to the job and pay plan of the department of economic development. Nothing herein shall be construed to permit salaries for any board personnel to be lowered except by board action.

- (6) Each board or commission shall receive complaints concerning its licensees' business or professional practices.

 Each board or commission shall establish by rule a procedure for the handling of such complaints prior to the filing of formal complaints before the administrative hearing commission. The rule shall provide, at a minimum, for the logging of each complaint received, the recording of the licensee's name, the name of the complaining party, the date of the complaint, and a brief statement of the complaint and its ultimate disposition.

 The rule shall provide for informing the complaining party of the progress of the investigation, the dismissal of the charges or the filing of a complaint before the administrative hearing commission.
 - 16. All the powers, duties and functions of the division of athletics, chapter 317, RSMo, and others, are transferred by type I transfer to the division of professional registration. The athletic commission is abolished.
- 27 17.] $\underline{10}$. The state council on the arts, chapter 185, RSMo, and others, is transferred by type II transfer to the department

of economic development, and the members of the council shall be appointed by the director of the department.

- [18.] 11. The Missouri housing development commission, chapter 215, RSMo, is assigned to the department of economic development, but shall remain a governmental instrumentality of the state of Missouri and shall constitute a body corporate and politic.
 - [19.] 12. All the authority, powers, duties, functions, records, personnel, property, matters pending and other pertinent vestiges of the division of manpower planning of the department of social services are transferred by a type I transfer to the "Division of Job Development and Training", which is hereby created, within the department of economic development. The division of manpower planning within the department of social services is abolished. The provisions of section 1 of the Omnibus State Reorganization Act of 1974, Appendix B, relating to the manner and procedures for transfers of state agencies shall apply to the transfers provided in this section.
 - [20.] 13. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this chapter shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. All rulemaking authority delegated prior to August 28, 1999, is of no force and effect and repealed. Nothing in this section shall be interpreted to repeal or affect the validity of any rule filed or adopted prior to August 28, 1999, if it fully complied with all applicable provisions of law. This section and chapter

- 1 536, RSMo, are nonseverable and if any of the powers vested with
- 2 the general assembly pursuant to chapter 536, RSMo, to review, to
- 3 delay the effective date or to disapprove and annul a rule are
- 4 subsequently held unconstitutional, then the grant of rulemaking
- 5 authority and any rule proposed or adopted after August 28, 1999,
- 6 shall be invalid and void.
- 7 621.045. 1. The administrative hearing commission shall
- 8 conduct hearings and make findings of fact and conclusions of law
- 9 in those cases when, under the law, a license issued by any of
- 10 the following agencies may be revoked or suspended or when the
- licensee may be placed on probation or when an agency refuses to
- 12 permit an applicant to be examined upon his qualifications or
- 13 refuses to issue or renew a license of an applicant who has
- 14 passed an examination for licensure or who possesses the
- 15 qualifications for licensure without examination:
- Missouri State Board of Accountancy
- 17 Missouri State Board [of Registration] for Architects,
- Professional Engineers [and], Professional Land Surveyors and
- 19 Landscape Architects
- 20 [Board of Barber Examiners]
- 21 Board of Cosmetology <u>and Barber Examiners</u>
- Board of Chiropody and Podiatry
- Board of Chiropractic Examiners
- 24 Missouri Dental Board
- 25 Board of Embalmers and Funeral Directors
- 26 Board of Registration for the Healing Arts
- 27 Board of Nursing
- 28 Board of Optometry

- 1 Board of Pharmacy
- 2 Missouri Real Estate Commission
- 3 Missouri Veterinary Medical Board
- 4 Supervisor of Liquor Control
- 5 Department of Health and Senior Services
- 6 Department of Insurance, Financial and Professional

7 <u>Regulation</u>

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- 8 Department of Mental Health.
- 9 2. If in the future there are created by law any new or
 10 additional administrative agencies which have the power to issue,
 11 revoke, suspend, or place on probation any license, then those
 12 agencies are under the provisions of this law.
- 3. Notwithstanding any other provision of this section to
 the contrary, after August 28, 1995, in order to encourage
 settlement of disputes between any agency described in subsection
 1 or 2 of this section and its licensees, any such agency shall:
 - (1) Provide the licensee with a written description of the specific conduct for which discipline is sought and a citation to the law and rules allegedly violated, together with copies of any documents which are the basis thereof and the agency's initial settlement offer, or file a contested case against the licensee;
 - (2) If no contested case has been filed against the licensee, allow the licensee at least sixty days, from the date of mailing, to consider the agency's initial settlement offer and to contact the agency to discuss the terms of such settlement offer;
- 27 (3) If no contested case has been filed against the 28 licensee, advise the licensee that the licensee may, either at

the time the settlement agreement is signed by all parties, or
within fifteen days thereafter, submit the agreement to the
administrative hearing commission for determination that the
facts agreed to by the parties to the settlement constitute
grounds for denying or disciplining the license of the licensee;
and

- (4) In any contact pursuant to this subsection by the agency or its counsel with a licensee who is not represented by counsel, advise the licensee that the licensee has the right to consult an attorney at the licensee's own expense.
- 4. If the licensee desires review by the administrative hearing commission pursuant to subdivision (3) of subsection 3 of this section at any time prior to the settlement becoming final, the licensee may rescind and withdraw from the settlement and any admissions of fact or law in the agreement shall be deemed withdrawn and not admissible for any purposes under the law against the licensee. Any settlement submitted to the administrative hearing commission shall not be effective and final unless and until findings of fact and conclusions of law are entered by the administrative hearing commission that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the license of the licensee.
- 660.551. 1. The department of insurance, financial and professional regulation shall precertify long-term care insurance policies which are issued by insurers who, in addition to complying with other relevant laws and regulations:
- (1) Alert the purchaser to the availability of consumer information and public education provided by the [division of

- aging] <u>department of health and senior services</u> and the
- 2 department of insurance, financial and professional regulation
- 3 pursuant to sections 660.546 to 660.557;

- 4 (2) Offer the option of home- and community-based services 5 in lieu of nursing home care;
 - (3) Offer automatic inflation protection or optional periodic per diem upgrades until the insured begins to receive long-term care benefits; provided, however, that such inflation protection or upgrades shall not be required of life insurance policies or riders containing accelerated long-term care benefits;
 - (4) Provide for the keeping of records and an explanation of benefits reports to the insured and the department of insurance, financial and professional regulation on insurance payments which count toward Medicaid resource exclusion; and
 - (5) Provide the management information and reports necessary to document the extent of Medicaid resource protection offered and to evaluate the Missouri partnership for long-term care including, but not limited to, the information listed in section 660.553.
- Included among those policies precertified under this section shall be life insurance policies which offer long-term care either by rider or integrated into the life insurance policy.
 - 2. No policy shall be precertified pursuant to sections 660.546 to 660.557, if it requires prior hospitalization or a prior stay in a nursing home as a condition of providing benefits.
 - 3. The department of insurance, financial and professional

- regulation may adopt regulations to carry out the provisions of sections 660.546 to 660.557.
- 3 660.553. The department of insurance, financial and
 4 professional regulation shall provide public information to
- 5 assist individuals in choosing appropriate insurance coverage,
- 6 and shall establish an outreach program to educate consumers as
- 7 to:

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- 8 (1) The need for long-term; and
- 9 (2) The availability of long-term care insurance.
- 10 660.555. The director of the department of insurance_
- financial and professional regulation each year, on January first
- shall report in writing to the department of social services the
- 13 following information:
- 14 (1) The success in implementing the provisions of sections 15 660.546 to 660.557;
- 16 (2) The number of policies precertified pursuant to sections 660.546 to 660.557;
- 18 (3) The number of individuals filing consumer complaints
 19 with respect to precertified policies; and
- 20 (4) The extent and type of benefits paid, in the aggregate,
 21 under such policies that could count toward Medicaid resource
 22 protection.
 - [329.240. 1. All fees provided for in this chapter shall be payable to the director of the division of professional registration in the department of economic development who shall keep a record of the account showing the total payments received and shall immediately thereafter transmit them to the department of revenue for deposit in the state treasury to the credit of a fund to be known as the "State Board of Cosmetology Fund". All the salaries and expenses for the operation of the board shall be appropriated and paid from such fund.

2. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.]

[374.261. As used in sections 374.261 to 374.269, the following words mean:

- (1) "Director", the director of the department of insurance;
- (2) "Examiners", nonsalaried employees of the department of insurance conducting an examination pursuant to section 374.190;
- (3) "Sick leave", those days of leave taken during the conduct of an examination during which an examiner is prevented from conducting an examination due to illness or injury.]
- [374.263. There is hereby created in the state treasury a fund to be known as the "Insurance Examiner's Sick Leave Fund", hereinafter referred to as the "fund". The fund shall be used to pay the daily wages of department of insurance examiners who are temporarily unable to continue an examination of an insurance company or companies pursuant to section 374.190, because of illness or injury suffered or sustained by the examiner during the course of the examination which the examiner is conducting.]
- [374.267. 1. The director of the department of insurance, his agents or appointees shall be empowered to make assessments pursuant to section 374.265, and to administer the fund.
- 2. The director, his agents or appointees shall compensate an examiner out of the fund only after the examiner has satisfied the director, his agents or appointees that:
- (1) The examiner was employed by the department of insurance to conduct an examination of an insurance company or companies pursuant to section 374.190 at the time of the illness or injury for which daily wages are claimed; and

(2) The examiner was prevented from conducting the examination due to illness or injury.

3. The amount paid by the director, his agents or appointees to an examiner from the fund shall not exceed the amount of the examiner's daily wages times the number of days during which the examiner was prevented from conducting an examination as result of illness or injury, but in no event shall any examiner be paid for more than one and one-fourth days times the number of months for which he has been employed by the department of insurance as an examiner, nor shall an examiner be paid for or receive credit for sick leave after August 13, 1988, for or on the basis of any month, months or portion thereof before August 13, 1988.1

[374.456. The director of the department of insurance shall personally report to the appropriate committees of the general assembly by March first of each year on the status of all actions initiated, maintained by the director, or which have been concluded, during the preceding year to enforce the provisions of this act. The director shall answer all questions regarding such actions, or regarding other matters that are related to the provisions of this act.]

- [375.041. 1. The provisions of this section shall apply to all domestic, foreign and alien insurers who are authorized to transact business in this state, and shall also apply to those companies organized and authorized to transact business in this state pursuant to the provisions of chapter 354, 377, 378 or 381, RSMo.
- Each domestic, foreign and alien insurer who is authorized to transact insurance in this state, and each company organized and authorized to transact business in this state pursuant to the provisions of chapter 354, 377, 378 or 381, RSMo, shall annually, on or before March first of each year, file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with such additional filings as prescribed by the director of the department of insurance for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the director of the department of insurance and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing

subsequently filed with the director of the department of insurance shall also be filed with the National Association of Insurance Commissioners. Foreign insurers that are domiciled in a state which has a law substantially similar to this subsection shall be deemed in compliance with this subsection.

- In the absence of actual malice, or gross negligence, members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees and task forces, their delegates, National Association of Insurance Commissioners' employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the director of the department of insurance under the authority of this section and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review and analysis or dissemination of the data and information collected from the filings required under this section.
- 4. The director of the department of insurance may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the director, for good cause, may have granted.]

[620.105. The provisions of this act relating to disciplinary proceedings against any person licensed or regulated under the provisions of chapter 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 345 or 346, RSMo, do not apply for any circumstance occurring prior to September 28, 1981, or to the construction and application of any defense in a disciplinary proceeding for such circumstances. All disciplinary proceedings for circumstances occurring prior to September 28, 1981, shall be conducted and determined according to the provisions of law existing at the time of the occurrence of the circumstances involved in the proceeding in the same manner as if this act had not been enacted, any other provision of law to the contrary notwithstanding.]

[620.106. Effective August 28, 1999, no new licensing activity or other statutory requirements assigned to the division of professional registration shall become effective until expenditures or personnel are specifically appropriated for the purpose of conducting the business as required and the initial

rules filed, if appropriate, have become effective. The director of the division of professional registration shall have the authority to borrow funds from any agency within the division to commence operations upon appropriation for such purpose. This authority shall cease at such time that a sufficient fund has been established by the agency to fund its operations and repay the amount borrowed.]

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- [620.111. 1. Contrary provisions of the law notwithstanding, no complaint, investigatory report or information received from any source must be disclosed prior to its review by the appropriate division.
- 2. At its discretion an agency may disclose complaints, completed investigatory reports and information obtained from state administrative and law enforcement agencies to a licensee or license applicant in order to further an investigation or to facilitate settlement negotiations.
- 3. Information obtained from a federal administrative or law enforcement agency shall be disclosed only after the agency has obtained written consent to the disclosure from the federal administrative or law enforcement agency.
- 4. At its discretion an agency may disclose complaints and investigatory reports in the course of a voluntary interstate exchange of information, or in the course of any litigation concerning a licensee or license applicant, or pursuant to a lawful request, or to other state or federal administrative or law enforcement agencies.
- 5. Except as disclosure is specifically provided above and in section 610.021, RSMo, deliberations, votes or minutes of closed proceedings of agencies shall not be subject to disclosure or discovery.]
- [620.120. When making appointments to the boards governed by chapters 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340 and 346, RSMo, the governor shall take affirmative action to appoint women and members of minority groups. In addition, the governor shall not discriminate against or in favor of any person on the basis of race, sex, religion, national origin, ethnic background, or language.]
- [620.125. No rule or portion of a rule promulgated under the authority of chapters 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 345, and 346, RSMo, shall become effective unless it has been promulgated pursuant to the

provisions of section 536.024, RSMo.]

[620.127. Notwithstanding any provision of law to the contrary, every application for a license, certificate, registration, or permit, or renewal of a license, certificate, registration, or permit issued in this state shall contain the Social Security number of the applicant. This provision shall not apply to an original application for a license, certificate, registration, or permit submitted by a citizen of a foreign country who has never been issued a Social Security number and who previously has not been licensed by any other state, United States territory, or federal agency. A citizen of a foreign country applying for licensure with the division of professional registration shall be required to submit his or her visa or passport identification number in lieu of the Social Security number.]

[620.130. An orientation program for appointees to all boards or commissions in the division of professional registration shall be prepared under the direction of the director of the department of economic development, which shall acquaint new appointees with their duties and provide available information on subject matters of concern to the board or commission to which each public member has been appointed.]

[620.132. 1. Any public member authorized under the provisions of sections 326.160, RSMo, 327.031, RSMo, 328.030, RSMo, 329.190, RSMo, 330.110, RSMo, 331.090, RSMo, 332.021, RSMo, 333.151, RSMo, 334.120, RSMo, 335.021, RSMo, 336.130, RSMo, 337.050, RSMo, 338.110, RSMo, 339.120, RSMo, 340.120, RSMo, and 346.120, RSMo, who misses three consecutive regularly scheduled meetings of the board or council on which he serves shall forfeit his membership on that board or council. A new public member shall be appointed to the respective board or council by the governor with the advice and consent of the senate.

2. Each public member authorized under the provisions of law cited in subsection 1 of this section shall, at the conclusion of each meeting of his respective board or council, make a report on that meeting to at least one major newspaper and one major radio station which serves the city or town in which the meeting occurred.]

[620.135. Except as otherwise specifically provided by law, no license for any occupation or

profession shall be denied solely on the grounds that an applicant has been previously convicted of a felony.]

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- [620.140. 1. All fees charged by each board assigned to the division of professional registration shall be collected by that division and promptly transmitted to the department of revenue for deposit in the state treasury, credited to the proper account as provided by law.
- The division and its component agencies shall permit any licensee to submit payment for fees established by rule in the form of personal check, money order, or cashier's check. All checks or money orders shall be made payable to the appropriate board. Any check or financial instrument which is returned to the division or one of its agencies due to insufficient funds, a closed account, or for other circumstances in which the check or financial instrument is not honored may subject an individual to additional costs, substantial penalties, or other actions by the division or one of its agencies. In such cases involving renewal of licenses, the renewal license may be withheld, and if issued, is not valid until the appropriate fee and any additional costs are collected. The division may require the payment of collection costs or other expenses. The affected board may establish penalty fees by rule and may suspend or revoke a license if such behavior is repetitive or the licensee fails to pay required penalty fees.
- 3. License renewal fees are generally nonrefundable. Overpayments or other incorrect fees may be refundable. The division shall establish a refund reserve through the appropriation to the professional registration fees fund.
- 4. Notwithstanding any other provision of law to the contrary, no board, commission or any other registration, licensing or certifying agency of the division of professional registration shall be required to collect or distribute any fee which is required for administering any test to qualify for a license, registration or certificate, if any portion of the fee is to be remitted to a private testing service.]

[620.145. The division of professional registration shall maintain, for each board in the division, a registry of each person holding a current license, permit or certificate issued by that board. The registry shall contain the name, Social Security number and address of each person licensed or

registered together with other relevant information as determined by the board. The registry for each board shall at all times be available to the board and copies shall be supplied to the board on request. Copies of the registry, except for the registrant's Social Security number, shall be available from the division or the board to any individual who pays the reasonable copying cost. Any individual may copy the registry during regular business hours. The information in the registry shall be furnished upon request to the division of child support enforcement. Questions concerning the currency of license of any individual shall be answered, without charge, by the appropriate board. Each year each board may publish, or cause to be published, a directory containing the name and address of each person licensed or registered for the current year together with any other information the board deems necessary. Any expense incurred by the state relating to such publication shall be charged to the board. An official copy of any such publication shall be filed with the director of the department of economic development.]

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[620.146. 1. Notwithstanding other provisions of law, the director of the division of professional registration may destroy records and documents of the division or the boards in the division at any time if such records and documents have been photographed, microphotographed, electronically generated, electronically recorded, photostatted, reproduced on film or other process capable of producing a clear, accurate and permanent copy of the original. Such film or reproducing material shall be of durable material and the device used to reproduce the records, reports, returns and other related documents on film or material shall be such as to accurately reproduce and perpetuate the original records and documents in all details.

- 2. The reproductions so made may be used as permanent records of the original. When microfilm or a similar reproduction is used as a permanent record by the director of revenue, one copy shall be stored in a fireproof vault and other copies may be made for use by any person entitled thereto. All reproductions shall retain the same confidentiality as is provided in the law regarding the original record.
- 3. Such photostatic copy, photograph, microphotograph, electronically generated, electronically recorded or other process copy shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or

administrative agencies. A transcript, exemplification or certified copy of any records or documents made from such photostatic copy, photograph, microphotograph, electronically generated, electronically recorded or other process copy shall, for all purposes be deemed to be a transcript, exemplification or certified copy of the original and shall be admissible in evidence in all courts or administrative agencies. No document shall be admissible pursuant to this section unless the offeror shall comply with section 490.692, RSMo, when applicable.

4. "Records and documents" include, but are not limited to, papers, documents, facsimile information, microphotographic process, electronically generated or electronically recorded information, deposited or filed with the division of professional registration or any of the boards in the division.]

[620.148. Notwithstanding any other law to the contrary, the director of the division of professional registration is authorized to contract with third parties to collect, account for and deposit fees on behalf of the division and licensing agencies within the division.]

[620.149. 1. Whenever a board within the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of a license, the board, as an alternative to refusing to issue a license, may, at its discretion, issue to an applicant a license subject to probation.

2. The board shall notify the applicant in writing of the terms of the probation imposed, the basis therefor, and the date such action shall become effective. The notice shall also advise the applicant of the right to a hearing before the administrative hearing commission, if the applicant files a complaint with the administrative hearing commission within thirty days of the date of delivery or mailing by certified mail of written notice of the probation. the board issues a probated license, the applicant may file, within thirty days of the date of delivery or mailing by certified mail of written notice of the probation, a written complaint with the administrative hearing commission seeking review of the board's determination. Such complaint shall set forth that the applicant or licensee is qualified for nonprobated

licensure pursuant to the laws and administrative regulations relating to his or her profession. Upon receipt of such complaint the administrative hearing commission shall cause a copy of such complaint to be served upon the board by certified mail or by delivery of such copy to the office of the board, together with a notice of the place of and the date upon which the hearing on such complaint will be held. Hearings shall be held pursuant to chapter 621, RSMo. The burden shall be on the board to demonstrate the existence of the basis for imposing probation on the licensee. If no written request for a hearing is received by the administrative hearing commission within the thirty-day period, the right to seek review of the board's decision shall be considered waived.

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3. If the probation imposed includes restrictions or limitations on the scope of practice, the license issued shall plainly state such restriction or limitation. When such restriction or limitation is removed, a new license shall be issued.]

There shall be established in each [620.150. board within the division of professional registration, including the division itself when empowered with licensing authority, which was on August 28, 1998, required or authorized to revoke a license for failure to submit an application for renewal, failure to provide information required for renewal or nonpayment of the required renewal fee, a classification for a licensee who, desires to remove himself or herself from participating in the licensing system of the board or This classification shall be distinguished division. from revocation of a license and from surrender of a license pursuant to an agreement between the board or division and the licensee filed with and approved by the administrative hearing commission. classification shall not be available to a licensee during the time there is an investigation of the licensee or the licensee's practices or during the pendency of a disciplinary complaint filed with the administrative hearing commission. Each board within the division or the division when empowered with licensing authority shall establish by rule qualifications for such classification and procedures for a licensee to request an inactive license as provided in this section. Notwithstanding any other law to the contrary, no board within the division or the division shall be required to revoke a license when the licensee qualifies for the classification authorized by this section, as provided by rule.

inactive license authorized by this section shall be subject to the same requirements for reinstatement or restoration as a lapsed, expired or revoked license due to failure to renew the license. This section shall not affect those boards which are otherwise authorized to classify a license as inactive.]

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[620.151. For the purpose of determining whether cause for discipline or denial exists under the statutes of any board, commission or committee within the division of professional registration, any licensee, registrant, permittee or applicant that test positive for a controlled substance, as defined in chapter 195, RSMo, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state or the federal government is upon the licensee, registrant, permittee or applicant.]

[620.153. Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.]

- [620.154. 1. Except as provided in this section, no disciplinary proceeding against any person or entity licensed, registered or certified to practice a profession within the department of economic development, division of professional registration shall be initiated unless such action is commenced within three years of the date upon which the licensing, registering or certifying agency received notice of an alleged violation of an applicable statute or regulation.
- 2. For the purpose of this section, notice shall be limited to:
 - (1) A written complaint;
- (2) Notice of final disposition of a malpractice claim, including exhaustion of all extraordinary remedies and appeals;

- (3) Notice of exhaustion of all extraordinary remedies and appeals of a conviction based upon a criminal statute of this state, any other state or the federal government;
- (4) Notice of exhaustion of all extraordinary remedies and appeals in a disciplinary action by a hospital, state licensing, registering or certifying agency, or an agency of the federal government.
- 3. For the purposes of this section, an action is commenced when a complaint is filed by the agency with the administrative hearing commission, any other appropriate agency or in a court; or when a complaint is filed by the agency's legal counsel with the agency in respect to an automatic revocation or a probation violation.
- 4. Disciplinary proceedings based upon repeated negligence shall be exempt from all limitations set forth in this section.
- 5. Disciplinary proceedings based upon a complaint involving sexual misconduct shall be exempt from all limitations set forth in this section.
- 6. Any time limitation provided in this section shall be tolled:
- (1) During any time the accused licensee, registrant or certificant is practicing exclusively outside the state of Missouri or residing outside the state of Missouri and not practicing in Missouri;
- (2) As to an individual complainant, during the time when such complainant is less than eighteen years of age;
- (3) During any time the accused licensee, registrant or certificant maintains legal action against the agency; or
- (4) When a settlement agreement is offered to the accused licensee, registrant or certificant, in an attempt to settle such disciplinary matter without formal proceeding pursuant to section 621.045, RSMo, until the accused licensee, registrant or certificant rejects or accepts the settlement agreement.
- 7. The licensing agency may, in its discretion, toll any time limitation when the accused licensee, registrant or certificant enters into and participates in a treatment program for chemical dependency or mental impairment.
- 8. This section shall become effective January 1, 1998. The above statute of limitations shall not apply to any notice received by the agency prior to January 1, 1998.]