

FIRST REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
SENATE SUBSTITUTE FOR  
SENATE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 215

94TH GENERAL ASSEMBLY

2007

0058S.09T

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## AN ACT

To amend chapter 379, RSMo, by adding thereto forty-nine new sections relating to the regulation of captive insurance companies.

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

Section A. Chapter 379, RSMo, is amended by adding thereto forty-nine  
2 new sections, to be known as sections 379.1300, 379.1302, 379.1304, 379.1306,  
3 379.1308, 379.1310, 379.1312, 379.1314, 379.1316, 379.1318, 379.1320, 379.1322,  
4 379.1324, 379.1326, 379.1328, 379.1330, 379.1332, 379.1336, 379.1338, 379.1340,  
5 379.1342, 379.1344, 379.1346, 379.1348, 379.1350, 379.1353, 379.1356, 379.1359,  
6 379.1361, 379.1364, 379.1367, 379.1370, 379.1373, 379.1376, 379.1379, 379.1382,  
7 379.1385, 379.1388, 379.1391, 379.1394, 379.1397, 379.1400, 379.1403, 379.1406,  
8 379.1409, 379.1412, 379.1415, 379.1418, and 379.1421, to read as follows:

**379.1300. As used in sections 379.1300 to 379.1350, the following**  
2 **terms shall mean:**

3 (1) "Affiliated company", any company in the same corporate  
4 system as a parent, an industrial insured, or a member organization by  
5 virtue of common ownership, control, operation, or management;

6 (2) "Alien captive insurance company", any insurance company  
7 formed to write insurance business for its parents and affiliates and  
8 licensed under the laws of an alien jurisdiction that imposes statutory  
9 or regulatory standards in a form acceptable to the director on  
10 companies transacting the business of insurance in such jurisdiction;

11 (3) "Annuity", a contract issued for a valuable consideration  
12 under which the obligations are assumed with respect to periodic

13 payments for a specified term or terms or where the making or  
14 continuance of all or of some of such payments, or the amount of any  
15 such payments, is dependent upon the continuance of human life;

16 (4) "Association", any legal association of individuals,  
17 corporations, limited liability companies, partnerships, associations, or  
18 other entities that has been in continuous existence for at least one  
19 year, the member organizations of which or which does itself, whether  
20 or not in conjunction with some or all of the member organizations:

21 (a) Own, control, or hold with power to vote all of the  
22 outstanding voting securities of an association captive insurance  
23 company incorporated as a stock insurer; or

24 (b) Have complete voting control over an association captive  
25 insurance company incorporated as a mutual insurer;

26 (5) "Association captive insurance company", any company that  
27 insures risks of the member organizations of the association and their  
28 affiliated companies;

29 (6) "Branch business", any insurance business transacted by a  
30 branch captive insurance company in this state;

31 (7) "Branch captive insurance company", any alien captive  
32 insurance company licensed by the director to transact the business of  
33 insurance in this state through a business unit with a principal place  
34 of business in this state;

35 (8) "Branch operations", any business operations of a branch  
36 captive insurance company in this state;

37 (9) "Captive insurance company", any pure captive insurance  
38 company, association captive insurance company, or industrial insured  
39 captive insurance company formed or licensed under sections 379.1300  
40 to 379.1350. For purposes of sections 379.1300 to 379.1350, a branch  
41 captive insurance company shall be a pure captive insurance company  
42 with respect to operations in this state, unless otherwise permitted by  
43 the director;

44 (10) "Controlled unaffiliated business", any company:

45 (a) That is not in the corporate system of a parent and affiliated  
46 companies;

47 (b) That has an existing contractual relationship with a parent  
48 or affiliated company; and

49 (c) Whose risks are managed by a pure captive insurance  
50 company in accordance with section 379.1338;

51 (11) "Director", the director of the department of insurance,  
52 financial and professional regulation;

53 (12) "Excess workers' compensation insurance", in the case of an  
54 employer that has insured or self-insured its workers' compensation  
55 risks in accordance with applicable state or federal law, insurance in  
56 excess of a specified per-incident or aggregate limit established by the  
57 director;

58 (13) "Industrial insured", an insured:

59 (a) Who procures the insurance of any risk or risks by use of the  
60 services of a full-time employee acting as an insurance manager or  
61 buyer;

62 (b) Whose aggregate annual premiums for insurance on all risks  
63 total at least twenty-five thousand dollars; and

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

65 (14) "Industrial insured captive insurance company", any  
66 company that insures risks of the industrial insureds that comprise the  
67 industrial insured group and their affiliated companies;

68 (15) "Industrial insured group", any group of industrial insureds  
69 that collectively:

70 (a) Own, control, or hold with power to vote all of the  
71 outstanding voting securities of an industrial insured captive insurance  
72 company incorporated as a stock insurer; or

73 (b) Have complete voting control over an industrial insured  
74 captive insurance company incorporated as a mutual insurer;

75 (16) "Member organization", any individual, corporation, limited  
76 liability company, partnership, association, or other entity that belongs  
77 to an association;

78 (17) "Mutual corporation", a corporation organized without  
79 stockholders and includes a nonprofit corporation with members;

80 (18) "Parent", a corporation, limited liability company,  
81 partnership, other entity, or individual, that directly or indirectly  
82 owns, controls, or holds with power to vote more than fifty percent of  
83 the outstanding voting:

84 (a) Securities of a pure captive insurance company organized as

85 a stock corporation; or

86 (b) Membership interests of a pure captive insurance company  
87 organized as a nonprofit corporation;

88 (19) "Pure captive insurance company", any company that insures  
89 risks of its parent and affiliated companies or controlled unaffiliated  
90 business.

379.1302. 1. Any captive insurance company, when permitted by  
2 its articles of association, charter, or other organizational document,  
3 may apply to the director for a license to do any and all insurance and  
4 annuity contracts comprised in section 376.010, RSMo, and subsection  
5 1 of section 379.010, other than workers' compensation and employers'  
6 liability; provided, however, that:

7 (1) No pure captive insurance company shall insure any risks  
8 other than those of its parent and affiliated companies or controlled  
9 unaffiliated business;

10 (2) No association captive insurance company shall insure any  
11 risks other than those of the member organizations of its association  
12 and their affiliated companies;

13 (3) No industrial insured captive insurance company shall insure  
14 any risks other than those of the industrial insureds that comprise the  
15 industrial insured group and their affiliated companies;

16 (4) No captive insurance company shall provide personal motor  
17 vehicle or homeowner's insurance coverage or any component thereof;

18 (5) No captive insurance company shall accept or cede  
19 reinsurance except as provided in section 379.1320;

20 (6) Any captive insurance company may provide excess workers'  
21 compensation insurance to its parent and affiliated companies, unless  
22 prohibited by the federal law or laws of the state having jurisdiction  
23 over the transaction. Any captive insurance company, unless  
24 prohibited by federal law, may reinsure workers' compensation of a  
25 qualified self-insured plan of its parent and affiliated companies,  
26 provided that sections 379.1300 to 379.1350 shall not divest the division  
27 of workers' compensation of any jurisdiction, as authorized by law,  
28 over workers' compensation self-insured plans;

29 (7) Any captive insurance company which insures life and  
30 accident and health risks described in section 376.010, RSMo, and

31 subdivision (4) of subsection 1 of section 379.010, shall comply with all  
32 applicable state and federal laws; and

33 (8) No captive insurance company shall transact business as a  
34 risk retention group under sections 375.1080 to 375.1105, RSMo.

35 2. No captive insurance company shall do any insurance business  
36 in this state unless:

37 (1) It first obtains from the director a license authorizing it to do  
38 insurance business in this state;

39 (2) Its board of directors or committee of managers holds at least  
40 one meeting each year in this state;

41 (3) It maintains its principal place of business in this state;

42 (4) It appoints a registered agent to accept service of process and  
43 to otherwise act on its behalf in this state; provided that, whenever  
44 such registered agent cannot with reasonable diligence be found at the  
45 registered office of the captive insurance company, the secretary of  
46 state shall be an agent of such captive insurance company upon whom  
47 any process, notice, or demand may be served; and

48 (5) It holds at least thirty-five percent of its assets either directly  
49 in this state or through a financial institution located in this state and  
50 approved by the director.

51 3. (1) Before receiving a license, a captive insurance company  
52 shall:

53 (a) File with the director a certified copy of its organizational  
54 documents, a statement under oath of its president and secretary  
55 showing its financial condition, and any other statements or documents  
56 required by the director; and

57 (b) Submit to the director for approval a description of the  
58 coverages, deductibles, coverage limits, and rates, together with such  
59 additional information as the director may reasonably require. In the  
60 event of any subsequent material change in any item in such  
61 description, the captive insurance company shall submit to the director  
62 for approval an appropriate revision and shall not offer any additional  
63 kinds of insurance until a revision of such description is approved by  
64 the director. The captive insurance company shall inform the director  
65 of any material change in rates within thirty days of the adoption of  
66 such change.

67           **(2) Each applicant captive insurance company shall also file with**  
68 **the director evidence of the following:**

69           **(a) The amount and liquidity of its assets relative to the risks to**  
70 **be assumed;**

71           **(b) The adequacy of the expertise, experience, and character of**  
72 **the person or persons who will manage it;**

73           **(c) The overall soundness of its plan of operation;**

74           **(d) The adequacy of the loss prevention programs of its insureds;**  
75 **and**

76           **(e) Such other factors deemed relevant by the director in**  
77 **ascertaining whether the proposed captive insurance company will be**  
78 **able to meet its policy obligations.**

79           **(3) Information submitted under this subsection shall be and**  
80 **remain confidential, and shall not be made public by the director or an**  
81 **employee or agent of the director without the written consent of the**  
82 **company; except that:**

83           **(a) Such information may be discoverable by a party in a civil**  
84 **action or contested case to which the captive insurance company that**  
85 **submitted such information is a party, upon a showing by the party**  
86 **seeking to discover such information that:**

87           **a. The information sought is relevant to and necessary for the**  
88 **furtherance of such action or case;**

89           **b. The information sought is unavailable from other**  
90 **nonconfidential sources; and**

91           **c. A subpoena issued by a judicial or administrative officer of**  
92 **competent jurisdiction has been submitted to the director; and**

93           **(b) The director may, in the director's discretion, disclose such**  
94 **information to a public officer having jurisdiction over the regulation**  
95 **of insurance in another state, provided that:**

96           **a. Such public official shall agree in writing to maintain the**  
97 **confidentiality of such information;**

98           **b. The laws of the state in which such public official serves**  
99 **require such information to be and to remain confidential; and**

100           **(c) The director may disclose information to the director of the**  
101 **division of workers' compensation regarding any captive insurance**  
102 **company issuing excess workers' compensation insurance provided that**

103 the director for the division of workers' compensation agrees in writing  
104 to maintain the confidentiality of such information provided by the  
105 director.

106 (4) Each captive insurance company shall pay to the director a  
107 nonrefundable license fee of seven thousand five hundred dollars for  
108 examining, investigating, and processing its application for license, and  
109 the director is authorized to retain legal, financial, and examination  
110 services from outside the department, the reasonable cost of which may  
111 be charged against the applicant. The provisions of sections 374.160 to  
112 374.162 and sections 374.202 to 374.207, RSMo, shall apply to  
113 examinations, investigations, and processing conducted under the  
114 authority of this section. In addition, each captive insurance company  
115 shall pay a renewal fee for each year thereafter of seven thousand five  
116 hundred dollars. Each captive insurance company may deduct the  
117 license and renewal fee paid from the premium taxes payable under  
118 section 397.1326, RSMo.

119 (5) If the director is satisfied that the documents and statements  
120 that such captive insurance company has filed comply with the  
121 provisions of sections 379.1300 to 379.1350, the director may grant a  
122 license authorizing it to do insurance business in this state until April  
123 first, which license may be renewed.

379.1304. No captive insurance company shall adopt a name that  
2 is the same, deceptively similar, or likely to be confused with or  
3 mistaken for any other existing business name registered in the state  
4 of Missouri.

379.1306. 1. No captive insurance company shall be issued a  
2 license unless it shall possess and thereafter maintain unimpaired paid-  
3 in capital and surplus of:

4 (1) In the case of a pure captive insurance company, not less  
5 than two hundred fifty thousand dollars;

6 (2) In the case of an association captive insurance company, not  
7 less than seven hundred fifty thousand dollars; and

8 (3) In the case of an industrial insured captive insurance  
9 company, not less than five hundred thousand dollars.

10 2. The director may prescribe additional capital and surplus  
11 based upon the type, volume, and nature of insurance business

12 transacted.

13           3. Capital and surplus may be in the form of cash or an  
14 irrevocable letter of credit issued by a bank chartered by the state of  
15 Missouri or a member bank of the Federal Reserve System, and  
16 approved by the director.

          379.1308. No captive insurance company shall pay a dividend out  
2 of, or other distribution with respect to, capital or surplus without the  
3 prior approval of the director. Approval of an ongoing plan for the  
4 payment of dividends or other distributions shall be conditioned upon  
5 the retention, at the time of each payment, of capital or surplus in  
6 excess of amounts specified by or determined in accordance with  
7 formulas approved by the director. Notwithstanding the provisions of  
8 section 355.661, RSMo, a captive insurance company organized under  
9 chapter 355, RSMo, may make such distributions as are in conformity  
10 with its purposes and approved by the director.

          379.1310. 1. A pure captive insurance company may be  
2 incorporated as a stock insurer with its capital divided into shares and  
3 held by the stockholders, as a nonprofit corporation with one or more  
4 members, or as a manager-managed limited liability company.

          2. An association captive insurance company or an industrial  
6 insured captive insurance company may be:

7           (1) Incorporated as a stock insurer with its capital divided into  
8 shares and held by the stockholders;

9           (2) Incorporated as a mutual insurer without capital stock, the  
10 governing body of which is elected by its insureds; or

11           (3) Organized as a manager-managed limited liability company.

12           3. A captive insurance company incorporated or organized in  
13 this state shall have not less than three incorporators or three  
14 organizers of whom not less than one shall be a resident of this state.

15           4. In the case of a captive insurance company:

16           (1) Formed as a corporation, before the articles of incorporation  
17 are transmitted to the secretary of state, the incorporators shall  
18 petition the director to issue a certificate setting forth the director's  
19 finding that the establishment and maintenance of the proposed  
20 corporation will promote the general good of the state. In arriving at  
21 such a finding the director shall consider:



22           **(a) The character, reputation, financial standing and purposes**  
23 **of the incorporators;**

24           **(b) The character, reputation, financial responsibility, insurance**  
25 **experience, and business qualifications of the officers and directors;**  
26 **and**

27           **(c) Such other aspects as the director shall deem advisable.**

28 **The articles of incorporation, such certificate, and the organization fee**  
29 **shall be transmitted to the secretary of state, who shall thereupon**  
30 **record both the articles of incorporation and the certificate;**

31           **(2) Formed as a limited liability company, before the articles of**  
32 **organization are transmitted to the secretary of state, the organizers**  
33 **shall petition the director to issue a certificate setting forth the**  
34 **director's finding that the establishment and maintenance of the**  
35 **proposed company will promote the general good of the state. In**  
36 **arriving at such a finding, the director shall consider the items set**  
37 **forth in paragraphs (a) to (c) of subdivision (1) of this subsection.**

38           **5. The capital stock of a captive insurance company incorporated**  
39 **as a stock insurer may be authorized with no par value.**

40           **6. In the case of a captive insurance company:**

41           **(1) Formed as a corporation, at least one of the members of the**  
42 **board of directors shall be a resident of this state;**

43           **(2) Formed as a limited liability company, at least one of the**  
44 **managers shall be a resident of this state.**

45           **7. Other than captive insurance companies formed as limited**  
46 **liability companies under chapter 347, RSMo, or as nonprofit**  
47 **corporations under chapter 355, RSMo, captive insurance companies**  
48 **formed as corporations under sections 379.1300 to 379.1350 shall have**  
49 **the privileges and be subject to chapter 351, RSMo, as well as the**  
50 **applicable provisions contained in sections 379.1300 to 379.1308. In the**  
51 **event of conflict between the provisions of such general corporation**  
52 **law and sections 379.1300 to 379.1350, sections 379.1300 to 379.1350 shall**  
53 **control.**

54           **8. Captive insurance companies formed under sections 379.1300**  
55 **to 379.1350:**

56           **(1) As limited liability companies shall have the privileges and**  
57 **be subject to the provisions of chapter 347, RSMo, as well as the**

58 applicable provisions contained in sections 379.1300 to 379.1350. In the  
59 event of a conflict between chapter 347, RSMo, and sections 379.1300 to  
60 379.1350, sections 379.1300 to 379.1350 shall control; or

61 (2) As nonprofit corporations shall have the privileges and be  
62 subject to the provisions of chapter 355, RSMo, as well as the applicable  
63 provisions contained in sections 379.1300 to 379.1350. In the event of  
64 conflict between chapter 355, RSMo, and sections 379.1300 to 379.1350,  
65 sections 379.1300 to 379.1350 shall control.

66 9. The provisions of section 375.355, RSMo, sections 379.980 to  
67 379.988, and chapter 382, RSMo, pertaining to mergers, consolidations,  
68 conversions, mutualizations, redomestications, and mutual holding  
69 companies shall apply in determining the procedures to be followed by  
70 captive insurance companies in carrying out any of the transactions  
71 described therein; except that:

72 (1) The director may waive or modify the requirements for public  
73 notice and hearing in accordance with rules which the director may  
74 adopt addressing categories of transactions. If a notice of public  
75 hearing is required, but no one requests a hearing, then the director  
76 may cancel the hearing;

77 (2) An alien insurer may be a party to a merger authorized under  
78 this subsection, if approved by the director.

79 10. The articles of incorporation or bylaws of a captive insurance  
80 company formed as a corporation may authorize a quorum of its board  
81 of directors to consist of no fewer than one-third of the full board of  
82 directors determined, provided that a quorum shall not consist of fewer  
83 than two directors.

379.1312. 1. Captive insurance companies shall not be required  
2 to make any annual report except as provided in sections 379.1300 to  
3 379.1350.

4 2. Prior to March first of each year, each captive insurance  
5 company shall submit to the director a report of its financial condition,  
6 verified by oath of two of its executive officers. Each captive insurance  
7 company shall report using generally accepted accounting principles,  
8 unless the director approves the use of statutory accounting principles,  
9 with any appropriate or necessary modifications or adaptations thereof  
10 required or approved or accepted by the director for the type of

11 insurance and kinds of insurers to be reported upon, and as  
12 supplemented by additional information required by the  
13 director. Except as otherwise provided, each association captive  
14 insurance company shall file its report in the form required by section  
15 375.041, RSMo. The director shall by rule propose the forms in which  
16 pure captive insurance companies and industrial insured captive  
17 insurance companies shall report. Subdivision (3) of subsection 2 of  
18 section 379.1302 shall apply to each report filed under this section.

19 3. Any pure captive insurance company or an industrial insured  
20 captive insurance company may make written application for filing the  
21 required report on a fiscal year end. If an alternative reporting date  
22 is granted:

23 (1) The annual report is due sixty days after the fiscal year end;  
24 and

25 (2) In order to provide sufficient detail to support the premium  
26 tax return, the pure captive insurance company or industrial insured  
27 captive insurance company shall file prior to March first of each year  
28 for each calendar year end, its balance sheet, income statement and  
29 statement of cash flows, verified by oath of two of its executive officers.

379.1314. 1. At least once every three years and whenever the  
2 director determines it to be prudent, the director shall personally, or  
3 by some competent person appointed by the director, visit each captive  
4 insurance company and thoroughly inspect and examine its affairs to  
5 ascertain its financial condition, its ability to fulfill its obligations, and  
6 whether it has complied with the provisions of sections 379.1300 to  
7 379.1350. The director may enlarge such three-year period to five  
8 years, provided the captive insurance company is subject to a  
9 comprehensive annual audit during such period of a scope satisfactory  
10 to the director by independent auditors approved by the director. The  
11 expenses and charges of the examination shall be paid to the state by  
12 the company or companies examined and the director shall issue his or  
13 her warrants for the proper charges incurred in all examinations, as  
14 provided in sections 374.160 and 374.162, RSMo.

15 2. The provisions of sections 374.202 to 374.207, RSMo, shall  
16 apply to examinations conducted under this section.

17 3. All examination reports, preliminary examination reports or

18 results, working papers, recorded information, documents and copies  
19 thereof produced by, obtained by or disclosed to the director or any  
20 other person in the course of an examination made under this section  
21 are confidential and are not subject to subpoena and shall not be made  
22 public by the director or an employee or agent of the director without  
23 the written consent of the company, except to the extent provided in  
24 this subsection. Nothing in this subsection shall prevent the director  
25 from using such information in furtherance of the director's regulatory  
26 authority under this title. The director may, in the director's  
27 discretion, grant access to such information to public officers having  
28 jurisdiction over the regulation of insurance in any other state or  
29 country, or to law enforcement officers of this state or any other state  
30 or agency of the federal government at any time, so long as such  
31 officers receiving the information agree in writing to hold it in a  
32 manner consistent with this section.

379.1316. 1. The license of a captive insurance company may be  
2 suspended or revoked by the director for any of the following reasons:  
3 (1) Insolvency or impairment of capital or surplus;  
4 (2) Failure to meet the requirements of section 379.1306;  
5 (3) Refusal or failure to submit an annual report, as required by  
6 sections 379.1300 to 379.1350, or any other report or statement required  
7 by law or by lawful order of the director;  
8 (4) Failure to comply with the provisions of its own charter,  
9 bylaws, or other organizational document;  
10 (5) Failure to submit to or pay the cost of examination or any  
11 legal obligation relative thereto, as required by sections 379.1300 to  
12 379.1350;  
13 (6) Use of methods that, although not otherwise specifically  
14 prohibited by law, nevertheless render its operation detrimental or its  
15 condition unsound with respect to the public or to its policyholders; or  
16 (7) Failure otherwise to comply with the laws of this state.  
17 2. Notwithstanding any other provision of sections 379.1300 to  
18 379.1350, if the director finds upon examination, hearing, or other  
19 evidence that any captive insurance company has violated any  
20 provision of subsection 1 of this section, the director may suspend or  
21 revoke such company's license if the director deems it in the best

22 interest of the public and the policyholders of such captive insurance  
23 company.

379.1318. 1. Association captive insurance companies shall  
2 comply with the investment requirements contained in chapter 375,  
3 RSMo, and sections 379.080 and 379.082, as applicable. Investments of  
4 association captive insurance companies shall be valued in accordance  
5 with the valuation procedures established by the National Association  
6 of Insurance Commissioners for insurance companies, except to the  
7 extent it is inconsistent with accounting standards in use by the  
8 company and approved by the director. Notwithstanding any other  
9 provision of sections 379.1300 to 379.1350, the director may approve the  
10 use of alternative reliable methods of valuation and rating.

11 2. No pure captive insurance company or industrial insured  
12 captive insurance company shall be subject to any restrictions on  
13 allowable investments whatever, including those limitations contained  
14 in sections 379.080 and 379.082; provided, however, that the director  
15 may prohibit or limit any investment that threatens the solvency or  
16 liquidity of any such company.

17 3. No pure captive insurance company shall make a loan to or an  
18 investment in its parent company or affiliates without prior written  
19 approval of the director, and any such loan or investment shall be  
20 evidenced by documentation approved by the director.

379.1320. 1. Any captive insurance company may provide  
2 reinsurance, comprised in section 376.010, RSMo, and subsection 1 of  
3 section 379.010, on risks ceded by any other insurer.

4 2. Any captive insurance company may take credit for the  
5 reinsurance of risks or portions of risks ceded to reinsurers complying  
6 with the provisions of section 375.246, RSMo. Prior approval of the  
7 director shall be required for ceding or taking credit for the  
8 reinsurance of risks or portions of risks ceded to reinsurers or under  
9 reinsurance agreements not complying with section 375.246, RSMo,  
10 except for business written by an alien captive insurance company  
11 outside the United States.

12 3. For all purposes of sections 379.1300 to 379.1350, insurance by  
13 a captive insurance company of any workers' compensation qualified  
14 self-insured plan of its parent and affiliates shall be deemed to be

15 reinsurance.

16           4. In addition to reinsurers authorized under the provisions of  
17 section 375.246, RSMo, a captive insurance company may take credit for  
18 the reinsurance of risks or portions of risks ceded to a pool, exchange,  
19 or association acting as a reinsurer which has been authorized by the  
20 director. The director may require any other documents, financial  
21 information, or other evidence that such a pool, exchange, or  
22 association will be able to provide adequate security for its financial  
23 obligations. The director may deny authorization or impose any  
24 limitations on the activities of a reinsurance pool, exchange, or  
25 association that, in the director's judgment, are necessary and proper  
26 to provide adequate security for the ceding captive insurance company  
27 and for the protection and consequent benefit of the public at large.

          379.1322. No captive insurance company shall be required to join  
2 a rating organization.

          379.1324. No captive insurance company shall be permitted to  
2 join or contribute financially to any plan, pool, association, or  
3 guaranty, or insolvency fund in this state, nor shall any such captive  
4 insurance company or any insured or affiliate thereof receive any  
5 benefit from any such plan, pool, association, or guaranty, or  
6 insolvency fund for claims arising out of the operations of such captive  
7 insurance company.

          379.1326. 1. Each captive insurance company shall pay to the  
2 director of revenue, on or before May first of each year, a premium tax  
3 at the rate of thirty-eight-hundredths of one percent on the first twenty  
4 million dollars and two hundred eighty-five-thousandths of one percent  
5 on the next twenty million dollars and nineteen-hundredths of one  
6 percent on the next twenty million dollars and seventy-two-thousandths  
7 of one percent on each dollar thereafter on the direct premiums  
8 collected or contracted for on policies or contracts of insurance written  
9 by the captive insurance company during the year ending December  
10 thirty-first next preceding, after deducting from the direct premiums  
11 subject to the tax the amounts paid to policyholders as return  
12 premiums which shall include dividends on unabsorbed premiums or  
13 premium deposits returned or credited to policyholders; provided,  
14 however, that no tax shall be due or payable as to considerations

15 received for annuity contracts.

16           2. Each captive insurance company shall pay to the director of  
17 revenue on or before May first of each year a premium tax at the rate  
18 of two hundred fourteen-thousandths of one percent on the first twenty  
19 million dollars of assumed reinsurance premium, and one hundred  
20 forty-three-thousandths of one percent on the next twenty million  
21 dollars and forty-eight-thousandths of one percent on the next twenty  
22 million dollars and twenty-four-thousandths of one percent of each  
23 dollar thereafter. However, no reinsurance premium tax applies to  
24 premiums for risks or portions of risks which are subject to taxation on  
25 a direct basis under subsection 1 of this section. No reinsurance  
26 premium tax shall be payable in connection with the receipt of assets  
27 in exchange for the assumption of loss reserves and other liabilities of  
28 another insurer under common ownership and control if such  
29 transaction is part of a plan to discontinue the operations of such other  
30 insurer, and if the intent of the parties to such transaction is to renew  
31 or maintain such business with the captive insurance company.

32           3. The annual minimum aggregate tax to be paid by a captive  
33 insurance company calculated under subsections 1 and 2 of this section  
34 shall be seven thousand five hundred dollars, and the annual maximum  
35 aggregate tax shall be two hundred thousand dollars.

36           4. Every captive insurance company shall, on or before February  
37 first each year, make a return on a form provided by the director,  
38 verified by the affidavit of the company's president and secretary or  
39 other authorized officers, to the director stating the amount of all  
40 direct premiums received and assumed reinsurance premiums received,  
41 whether in cash or in notes, during the year ending on December  
42 thirty-first next preceding. Upon receipt of such returns, the director  
43 of the department of insurance shall verify the same and certify the  
44 amount of tax due from the various companies on the basis and at the  
45 rate provided in subsections 1 to 3 of this section, and shall certify the  
46 same to the director of revenue, on or before March thirty-first of each  
47 year. The director of revenue shall immediately thereafter notify and  
48 assess each company the amount of tax due.

49           5. A captive insurance company failing to make returns as  
50 required by subsection 4 of this section or failing to pay within the

51 time required all taxes assessed by this section, shall be subject to the  
52 provisions of sections 148.375 and 148.410, RSMo.

53 6. Two or more captive insurance companies under common  
54 ownership and control shall be taxed, as though they were a single  
55 captive insurance company.

56 7. For the purposes of this section, "common ownership and  
57 control" shall mean:

58 (1) In the case of stock corporations, the direct or indirect  
59 ownership of eighty percent or more of the outstanding voting stock of  
60 two or more corporations by the same shareholder or shareholders; and

61 (2) In the case of mutual or nonprofit corporations, the direct or  
62 indirect ownership of eighty percent or more of the surplus and the  
63 voting power of two or more corporations by the same member or  
64 members.

65 8. The tax provided for in this section shall constitute all taxes  
66 collectible under the laws of this state from any captive insurance  
67 company, and no other occupation tax or other taxes shall be levied or  
68 collected from any captive insurance company by the state or any  
69 county, city, or municipality within this state, except ad valorem taxes  
70 on real and personal property used in the production of income.

71 9. The state treasurer shall annually transfer the premium tax  
72 revenues collected under this section to the general revenue fund,  
73 except as provided in section 379.1332.

74 10. The tax provided for in this section shall be calculated on an  
75 annual basis, notwithstanding policies or contracts of insurance or  
76 contracts of reinsurance issued on a multi-year basis. In the case of  
77 multi-year policies or contracts, the premium shall be prorated for  
78 purposes of determining the tax under this section.

79 11. A captive insurance company may deduct from premium  
80 taxes payable to this state, in addition to all other credits allowed by  
81 law, license fees and renewal fees payable under section 379.1302. A  
82 deduction for fees which exceeds a captive insurance company's  
83 premium tax liability for the same tax year shall not be refundable, but  
84 may be carried forward to any subsequent tax year, not to exceed five  
85 years, until the full deduction is claimed.

379.1328. The director may promulgate rules under section



2 374.045, RSMo, and from time to time amend such rules relating to  
3 captive insurance companies as are necessary to enable the director to  
4 carry out the provisions of sections 379.1300 to 379.1350.

379.1330. No provisions of the insurance laws of this state, other  
2 than those contained in sections 379.1300 to 379.1350 or contained in  
3 specific references contained therein, shall apply to captive insurance  
4 companies.

379.1332. 1. (1) The insurance dedicated fund under section  
2 374.150, RSMo, shall be adequately funded through the collection of fees  
3 and taxes for the purpose of providing the financial means for the  
4 director of insurance to administer sections 379.1300 to 379.1350 and  
5 for reasonable expenses incurred in promoting the captive insurance  
6 industry in Missouri. All fees and assessments received by the  
7 department for the administration of sections 379.1300 to 379.1350 shall  
8 be paid into the fund. In addition, the transfer of twenty percent of the  
9 premium tax under section 375.1014, RSMo, shall be made to the  
10 insurance dedicated fund until two hundred thousand dollars has been  
11 transferred. Thereafter, up to ten percent of the premium tax under  
12 section 379.1326 may be transferred to the insurance dedicated fund for  
13 the administration of sections 379.1300 to 379.1350, and up to two  
14 percent of the premium tax under section 379.1326 may be transferred  
15 to the department of economic development, with approval of the  
16 commissioner of administration, for promotional expenses. All fees  
17 received by the department from reinsurers who assume risk solely  
18 from captive insurance companies and are subject to the provisions of  
19 section 375.246, RSMo, shall be deposited into the insurance dedicated  
20 fund.

21 (2) All payments from the insurance dedicated fund for the  
22 maintenance of staff and expenses associated with the administration  
23 of sections 379.1300 to 379.1350, including contractual services as  
24 necessary, shall be disbursed from the state treasury only upon  
25 warrants issued by the director, after receipt of proper documentation  
26 regarding services rendered and expenses incurred.

27 2. The director may anticipate receipts to the insurance  
28 dedicated fund through the administration of sections 379.1300 to  
29 379.1350 and issue warrants based thereon.

379.1336. Except as otherwise provided in sections 379.1300 to  
2 379.1350, the terms and conditions set forth in sections 375.1150 to  
3 375.1246, RSMo, pertaining to insurance reorganizations, receiverships  
4 and injunctions shall apply in full to captive insurance companies  
5 formed or licensed under sections 379.1300 to 379.1350.

379.1338. The director may promulgate rules under section  
2 374.045, RSMo, establishing standards to ensure that a parent or  
3 affiliated company is able to exercise control of the risk management  
4 function of any controlled unaffiliated business to be insured by the  
5 pure captive insurance company; provided, however, that, until such  
6 time as rules under this section are adopted, the director may approve  
7 the coverage of such risks by a pure captive insurance company.

379.1340. 1. A branch captive may be established in this state in  
2 accordance with the provisions of sections 379.1300 to 379.1350 to write  
3 insurance, including insurance or reinsurance of the employee benefit  
4 business of its parent and affiliated companies which is subject to the  
5 provisions of the federal Employee Retirement Income Security Act of  
6 1974, as amended. In addition to the general provisions of sections  
7 379.1300 to 379.1350, the provisions of sections 379.1340 to 379.1350  
8 shall apply to branch captive insurance companies.

2. No branch captive insurance company shall do any insurance  
10 business in this state unless it maintains the principal place of business  
11 for its branch operations in this state.

379.1342. In the case of a branch captive insurance company, as  
2 security for the payment of liabilities attributable to the branch  
3 operations, the director shall require that a trust fund, funded by an  
4 irrevocable letter of credit or other acceptable asset, be established and  
5 maintained in the United States for the benefit of United States  
6 policyholders and United States ceding insurers under insurance  
7 policies issued or reinsurance contracts issued or assumed by the  
8 branch captive insurance company through its branch operations. The  
9 amount of such security shall be no less than the amount set forth in  
10 subdivision (1) of subsection 1 of section 379.1306 and the reserves on  
11 such insurance policies or such reinsurance contracts, including  
12 reserves for losses, allocated loss adjustment expenses, incurred but not  
13 reported losses, and unearned premiums with regard to business

14 written through the branch operations; provided, however, the director  
15 may permit a branch captive insurance company that is required to  
16 post security for loss reserves on branch business by its reinsurer to  
17 reduce the funds in the trust account required by this section by the  
18 same amount so long as the security remains posted with the reinsurer.  
19 If the form of security selected is a letter of credit, the letter of credit  
20 shall be established by or issued or confirmed by a bank chartered in  
21 this state or a member bank of the Federal Reserve System.

379.1344. In the case of a captive insurance company licensed as  
2 a branch captive, the alien captive insurance company shall petition  
3 the director to issue a certificate setting forth the director's finding  
4 that, after considering the character, reputation, financial  
5 responsibility, insurance experience, and business qualifications of the  
6 officers and directors of the alien captive insurance company, the  
7 licensing and maintenance of the branch operations will promote the  
8 general good of the state. The alien captive insurance company may  
9 register to do business in this state after the director's certificate is  
10 issued.

379.1346. Prior to March first of each year, or with the approval  
2 of the director within sixty days after its fiscal year end, a branch  
3 captive insurance company shall file with the director a copy of all  
4 reports and statements required to be filed under the laws of the  
5 jurisdiction in which the alien captive insurance company is formed,  
6 verified by oath of two of its executive officers. If the director is  
7 satisfied that the annual report filed by the alien captive insurance  
8 company in its domiciliary jurisdiction provides adequate information  
9 concerning the financial condition of the alien captive insurance  
10 company, the director may waive the requirement for completion of the  
11 captive annual statement for business written in the alien jurisdiction.

379.1348. 1. The examination of a branch captive insurance  
2 company under section 379.1314 shall be of branch business and branch  
3 operations only, so long as the branch captive insurance company  
4 provides annually to the director a certificate of compliance, or its  
5 equivalent, issued by or filed with the licensing authority of the  
6 jurisdiction in which the branch captive insurance company is formed,  
7 and demonstrates to the director's satisfaction that it is operating in

8 sound financial condition in accordance with all applicable laws and  
9 regulations of such jurisdiction.

10 2. As a condition of licensure, the alien captive insurance  
11 company shall grant authority to the director for examination of the  
12 affairs of the alien captive insurance company in the jurisdiction in  
13 which the alien captive insurance company is formed.

379.1350. In the case of a branch captive insurance company, the  
2 tax provided for in section 379.1326 shall apply only to the branch  
3 business of such company.

379.1353. As used in sections 379.1353 to 379.1421, the following  
2 terms shall mean:

3 (1) "Affiliate", a company that controls, is controlled by or under  
4 common control with the special purpose life reinsurance captive  
5 "SPLRC" as defined in this section;

6 (2) "Affiliated agreements", written agreements, including an  
7 SPLRC contract, between an SPLRC and its affiliate;

8 (3) "Ceded reinsurance agreements", reinsurance agreements  
9 entered into by the SPLRC with affiliates or unaffiliated parties for the  
10 purpose of obtaining reinsurance for all or some portion of the risks  
11 assumed by the SPLRC under SPLRC contracts;

12 (4) "Ceding company", the insurer ceding business to the SPLRC  
13 under the SPLRC contract;

14 (5) "Department", the Missouri department of insurance, financial  
15 and professional regulation;

16 (6) "Director", the director of the Missouri department of  
17 insurance, financial and professional regulation or its successor agency  
18 or his or her designee;

19 (7) "Financial guarantee policy", a financial guarantee policy  
20 issued by an insurer licensed to issue financial guarantee insurance  
21 policies by the director;

22 (8) "Letters of credit", clean, irrevocable, evergreen letters of  
23 credit issued meeting the requirements of subdivision (2) of section  
24 375.246, RSMo, and regulations issued thereunder that are issued or  
25 confirmed by a qualified United States financial institution or  
26 guaranteed by a financial guarantee insurance company authorized to  
27 issue financial guarantee insurance policies in the state of Missouri;

28           (9) "Organizational documents", means the SPLRC's articles of  
29 organization, bylaws, operating agreement or other foundational  
30 document that establishes the SPLRC as a legal entity or prescribes its  
31 existence;

32           (10) "Permitted investments", investments as authorized by  
33 sections 376.291 to 376.307, RSMo, or as specifically authorized by the  
34 director by order;

35           (11) "Rule", a rule promulgated by the director in accordance  
36 with the authority granted by section 379.1421;

37           (12) "SPLRC" or "special purpose life insurance captive", a  
38 captive insurance company that has received a license from the  
39 director for the limited purposes provided for in sections 379.1353 to  
40 379.1421;

41           (13) "SPLRC contract", a written contract between the SPLRC  
42 and the ceding company under which the SPLRC agrees to provide  
43 reinsurance protection to the ceding company for risks associated with  
44 the ceding company's written or assumed annuity, life insurance or  
45 accident and health insurance business;

46           (14) "State", the state of Missouri;

47           (15) "Surety bond", a surety bond issued by an insurer licensed  
48 to issue surety bonds by the director;

49           (16) "Surplus note", an unsecured subordinated debt obligation,  
50 including any contingent obligation for the repayment of a sum of  
51 money upon a written agreement that the loan or advance with interest  
52 shall be repaid only out of funds as specified in the approved plan of  
53 operation, or any approved amendment thereto;

54           (17) "Swap agreements", an agreement to exchange or to net  
55 payments at one or more times based on the actual or expected price,  
56 level, performance or value of one or more underlying interests.

          379.1356. No provision of the Missouri insurance laws, other than  
2 those specifically referenced in sections 379.1353 to 379.1421 apply to  
3 a SPLRC, its operations, assets, investments and SPLRC contracts. In  
4 the event of a conflict between a provision of the Missouri insurance  
5 laws and sections 379.1353 to 379.1421, the provisions of sections  
6 379.1353 to 379.1421 shall control as to the SPLRC and its operations,  
7 assets, dividends, SPLRC contracts, and surplus notes and

8 investments. The director may exempt all, or any one, SPLRC by rule  
9 or order from the provisions of sections 379.1353 to 379.1421 that he or  
10 she determines to be inappropriate, but may not expand the application  
11 of the Missouri insurance laws, except as specifically provided for in  
12 sections 379.1353 to 379.1421.

379.1359. 1. A SPLRC, when permitted by its organizational  
2 documents, may apply to the director for a license to conduct  
3 reinsurance in this state as authorized by sections 379.1353 to 379.1421.

4 2. A SPLRC may only reinsure the risks of its ceding company.  
5 A SPLRC may reinsure risks of more than one ceding company,  
6 provided all ceding companies from which a SPLRC assumes risks shall  
7 be affiliated with one another.

8 3. A SPLRC may cede all or a portion of its assumed risks under  
9 ceded reinsurance agreements.

10 4. A SPLRC may mitigate its risks by purchasing or participating  
11 in hedges such as credit default swaps and total return swaps.

12 5. To transact business in this state, a SPLRC shall:

13 (1) Obtain from the director a license authorizing it to conduct  
14 reinsurance business in this state;

15 (2) Hold at least one meeting of its board of directors each year  
16 within the state of Missouri;

17 (3) Maintain its principal place of business in Missouri;

18 (4) Appoint a resident registered agent to accept service of  
19 process and to otherwise act on its behalf in this state;

20 (5) Maintain a minimum surplus in this state, in cash, in the  
21 amount of two-hundred and fifty-thousand dollars;

22 (6) Pay all applicable fees as required by sections 379.1353 to  
23 379.1421.

24 6. To obtain a license to transact business as a SPLRC in this  
25 state, the SPLRC shall:

26 (1) File an application which must include the following:

27 (a) Certified copies of its organizational documents;

28 (b) A statement under oath from any of the applicant's officers  
29 as to the financial condition of the applicant as of the time the  
30 application is filed;

31 (c) Evidence of the applicant's assets as of the time of the

32 application;

33 (d) Complete biographical sketches for each officer and director  
34 on forms created by the National Association of Insurance  
35 Commissioners;

36 (e) A plan of operation as described in section 379.1361;

37 (f) An affidavit signed by the applicant that the SPLRC will  
38 operate only in accordance with the provisions of sections 379.1353 to  
39 379.1421 and its plan of operation;

40 (g) A description of the investment strategy the SPLRC will  
41 follow;

42 (h) A description of the source and form of the initial minimum  
43 capital proposed in the plan of operation;

44 (2) Demonstrate that the minimum surplus described in  
45 subdivision (5) of subsection 5 of this section is established and held in  
46 this state;

47 (3) Provide copies of any filings made by the ceding company  
48 with the ceding company's domiciliary insurance regulator to obtain  
49 approval for the ceding company to enter into the SPLRC contract and  
50 copies of any filings made by any affiliate of the SPLRC to obtain  
51 regulatory approval to contribute capital to the SPLRC or to acquire  
52 direct or indirect ownership of the SPLRC;

53 (4) Provide copies of any letters of approval or non-disapproval  
54 received from the insurance regulator responding to any filings for  
55 which copies were provided as described in subdivision (3) of this  
56 subsection.

57 7. No other requirements shall be imposed upon the SPLRC to  
58 transact business, except the director may require the SPLRC to revise  
59 its plan of operation under section 379.1361 and meet all requirements  
60 imposed by a revised plan of operation as approved by the director  
61 thereunder.

62 8. The department shall act upon a complete application within  
63 sixty days of its filing, provided the requirements identified in  
64 subdivisions (2), (3) and (4) of subsection 6 of this section are met five  
65 days prior to the end of the sixty day period. For purposes of this  
66 subsection, an application shall be considered complete when the items  
67 listed in subdivision (1) of subsection 6 of this section are filed with the

68 department. In the event the ceding company is not required to make  
69 filings with its domiciliary insurance regulator as described in  
70 subdivision (3) of subsection 6 of this section, no such filing shall be  
71 required under subdivision (3) of subsection 6 of this section in this  
72 state, provided the applicant provides the director with a certification  
73 signed by one of its officers attesting that no such filing is required  
74 with the ceding company's domiciliary regulator.

75 9. Once granted, a license under sections 379.1353 to 379.1421  
76 shall continue until March first of each year, at this time it may be  
77 renewed at the discretion of the director.

78 10. A SPLRC shall pay to the director a non-refundable  
79 application fee of ten thousand dollars for processing its application for  
80 a license under sections 379.1353 to 379.1421. Such fee shall be paid at  
81 the time the application is filed with the director. Each SPLRC may  
82 take a credit for the application fee against the taxes payable under  
83 section 379.1412, notwithstanding the imposition of an annual  
84 aggregate minimum tax by section 379.1412.

85 11. The director may retain legal, financial, actuarial, and  
86 examination services from outside the department to review the  
87 application. The reasonable cost of such services shall be billed to and  
88 paid by the applicant.

379.1361. A SPLRC must file, as part of its application, a plan of  
2 operation to consist of a description of the contemplated financing  
3 transaction or transactions and a detailed description of transaction  
4 documents to which the SPLRC will be a party, including, but not  
5 limited to, the SPLRC contract and related transactions to which the  
6 SPLRC will be a party which must include:

7 (1) Draft documentation or, at the director's discretion, a written  
8 summary of all material agreements to which the SPLRC is to be a  
9 party that are to be entered into to effectuate the SPLRC contract and  
10 the financing transaction;

11 (2) The purpose of the transaction;

12 (3) Maximum amounts;

13 (4) Interrelationships of the various transactions, to which the  
14 SPLRC will be a party, required to effectuate the financing;

15 (5) Investment strategy for the SPLRC;



16           **(6) Description of the underwriting, reporting and claims**  
17 **payment methods by which losses covered by the SPLRC contract will**  
18 **be reported, accounted for and settled;**

19           **(7) Initial minimum capital to be held by the SPLRC;**

20           **(8) Pro-forma balance sheet and income statements illustrating**  
21 **the performance of the SPLRC, the SPLRC contract, and any ceded**  
22 **reinsurance agreements under scenarios reasonably requested by the**  
23 **director or specified by rule; and**

24           **(9) The pro-forma balance sheets and income statements filed**  
25 **under this section must be updated by the SPLRC and filed with the**  
26 **director in the event of a material deviation from the original or most**  
27 **recently filed plan of operation. The plan of operation must specify**  
28 **which deviations are to be considered material.**

**379.1364. Each SPLRC shall pay to the director a license fee for**  
2 **the year of registration of seven thousand five hundred dollars for**  
3 **processing its license. The provisions of sections 374.160 to 374.162,**  
4 **RSMo, and sections 374.202 to 374.207, RSMo, shall apply to**  
5 **examinations, investigations, and processing conducted under the**  
6 **authority of this section. In addition, each SPLRC shall pay a renewal**  
7 **fee for each year thereafter of seven thousand five hundred**  
8 **dollars. Each SPLRC may take a credit for the license and renewal fees**  
9 **paid against the taxes payable under section 379.1412, notwithstanding**  
10 **the imposition of an annual aggregate minimum tax by section 379.1412.**

**379.1367. 1. In order to approve an application and issue a**  
2 **license to a SPLRC under sections 379.1353 to 379.1421, the director**  
3 **must find that:**

4           **(1) The proposed plan of operation provides a reasonable and**  
5 **expected successful operation;**

6           **(2) The terms of the transactions proposed in the plan of**  
7 **operation to which the SPLRC is a party comply with sections 379.1353**  
8 **to 379.1421; and**

9           **(3) The commissioner of the state of domicile of each ceding**  
10 **company has notified the director in writing or the applicant has**  
11 **otherwise provided assurance satisfactory to the director that such**  
12 **regulator has either approved or granted a nondisapproval of the**  
13 **SPLRC contract.**

14           2. In evaluating the expectation of a successful operation, the  
15 director shall consider whether the proposed SPLRC and its  
16 management are of known good character and reasonably believed not  
17 to be affiliated, directly or indirectly, with a person known to have  
18 been involved with the improper manipulation of assets, accounts or  
19 reinsurance. In the event the commissioner of the state of domicile of  
20 any ceding company is not required to review the SPLRC contract, then  
21 the approval described in subdivision (3) of subsection 1 of this section  
22 shall not be required for licensing of the SPLRC hereunder.

          379.1370. A SPLRC may be established as either a stock  
2 corporation, a Missouri statutory close corporation, a limited liability  
3 company or other form of organization approved by the director.

          379.1373. 1. Activities of a SPLRC must be limited to those  
2 necessary to accomplish its purpose as outlined in its plan of operation.

          2. The name must not be deceptively similar to or likely to be  
4 confused with another existing business name registered in the state.

          3. The SPLRC must have at least three incorporators or  
6 organizers of whom not fewer than two must be residents of the state.

          4. The capital stock of a SPLRC incorporated as a stock company  
8 must be issued at not less than par value.

          379.1376. A SPLRC may enter into a SPLRC contract with a  
2 ceding company, provided:

          (1) The SPLRC has been granted a license to transact business  
4 as an SPLRC under sections 379.1353 to 379.1421; and

          (2) The SPLRC provides the director with evidence of an  
6 approval or non-disapproval from the insurance regulatory official of  
7 the ceding company's state or country of domicile to enter into the  
8 SPLRC contract. If the ceding company's domiciliary insurance  
9 regulatory official does not customarily provide evidence of such  
10 approval or non-disapproval, the director shall approve the SPLRC's  
11 execution of such SPLRC contract if such SPLRC contract would be  
12 acceptable if an assuming insurer domiciled in this state were to  
13 propose execution of the same with its ceding company for the purpose  
14 of assuming such reinsurance and an officer of the SPLRC provides the  
15 director with a certification that terms of the SPLRC contract meet the  
16 requirements for the ceding company to obtain credit in its state of

17 **domicile for reinsurance ceded under the SPLRC contract.**

379.1379. **The SPLRC may enter into swap agreements for any  
2 purpose for which a Missouri domestic life insurer could enter into  
3 such a transaction under section 375.345, RSMo, or when the underlying  
4 interests are permitted investments if held directly by the SPLRC.**

379.1382. **1. A SPLRC may issue securities, subject to and in  
2 accordance with applicable law, its approved plan of operation and its  
3 organizational documents. A SPLRC may enter into and perform all its  
4 obligations under any required contract to facilitate the issuance of  
5 these securities.**

**6 2. Subject to the approval of the director, a SPLRC may:**

**7 (1) Account for the proceeds of surplus notes as surplus and not  
8 debt for purposes of statutory accounting; and**

**9 (2) Submit for prior approval of the director periodic written  
10 requests for payments of interest on and repayments of principal of  
11 surplus notes.**

**12 3. The director may approve formulas for the ongoing payment  
13 of interest payments or principal repayments, or both.**

**14 4. The obligation to repay principal or interest, or both, on the  
15 securities issued by the SPLRC must reflect the risk associated with the  
16 reinsurance obligations assumed by the SPLRC.**

**17 5. The approval given for the ongoing payment of interest or the  
18 repayment of principal related to any securities or surplus notes, as  
19 outlined in the plan of operations, may only be revoked or otherwise  
20 modified by the director in the event the performance of the insurance  
21 business assumed by the SPLRC under the SPLRC contract is  
22 demonstrated by the director to be following a scenario as to mortality,  
23 morbidity, investment, or lapse experience that will cause the SPLRC  
24 to fail to meet its obligations under the SPLRC contract.**

**379.1385. A SPLRC's assets must be managed in accordance with  
2 an investment management agreement filed with and approved by  
3 order of the director.**

**379.1388. 1. A SPLRC may recognize as an admitted asset on its  
2 financial statements filed with the director:**

**3 (1) Permitted investments;**

**4 (2) Letters of credit issued without recourse to the SPLRC;**

5           **(3) Financial guarantee policies issued for the sole benefit of the**  
6 **ceding company without recourse to the SPLRC by an insurer having**  
7 **a rating of no less than AAA by Standard and Poor's or less than AAA**  
8 **by Moody's Investor Service; and**

9           **(4) Surety bonds issued for the sole benefit of the ceding**  
10 **company without recourse to the SPLRC by an insurer having a rating**  
11 **of no less than AAA by Standard and Poor's or no less than AAA by**  
12 **Moody's Investors Service.**

13           **2. The assets of a SPLRC shall be valued in the same manner as**  
14 **the assets of a Missouri domestic life insurer. Notwithstanding the**  
15 **preceding, the director may by order authorize a SPLRC to value one**  
16 **or more of its assets through an alternative method. Letters of credit**  
17 **shall be valued at the amount available for drawings by the SPLRC or**  
18 **its ceding company as of the time of valuation. A financial guarantee**  
19 **policy shall be valued at the amount available to pay aggregate claims**  
20 **as of the time of valuation. A surety bond shall be valued at the**  
21 **amount available to pay aggregate claims as of the time of valuation.**

**379.1391. A SPLRC shall not:**

2           **(1) Enter into a SPLRC contract with a person that is not**  
3 **licensed or otherwise authorized to transact the business of insurance**  
4 **or reinsurance in at least its state or country of domicile;**

5           **(2) Lend or otherwise invest or place in custody, trust or under**  
6 **management any of its assets with, or to borrow money or receive a**  
7 **loan from, other than according to the plan of operation filed with and**  
8 **approved by the director.**

**379.1394. 1. A SPLRC may not declare or pay dividends in any**  
2 **form to its owners other than in accordance with the transaction**  
3 **agreements.**

4           **2. Dividends may not decrease the capital of the SPLRC below**  
5 **the minimum initial capital requirement.**

6           **3. After giving effect to the dividends the assets of the SPLRC,**  
7 **including assets held in trust and letters of credit issued for the**  
8 **exclusive benefit of the SPLRC, must be sufficient to satisfy the**  
9 **director that it can meet its obligations.**

10           **4. Approval of the director for ongoing dividends of other**  
11 **distributions must be conditioned upon the retention at the time of**

12 each payment, of capital or surplus equal to or in excess of amounts  
13 specified by, or determined in accordance with formulas approved for  
14 the SPLRC by the director.

15 5. Dividends may be declared by the management of the SPLRC  
16 provided that the dividend amount or form does not violate the  
17 provisions of sections 379.1353 to 379.1421 or jeopardize the fulfillment  
18 of the obligations of the SPLRC.

379.1397. Any material changes to a SPLRC's plan of operation  
2 shall require the prior written approval of the director. However, if  
3 initially approved in the plan of operation, the subsequent issuance of  
4 securities, additional financing, substitution of a party to a swap  
5 transaction with a party of similar rating or the inclusion of additional  
6 business under a SPLRC contract, shall not be considered a material  
7 change.

379.1400. Copies of all completed affiliated agreements to which  
2 the SPLRC is a party, including but not limited to the SPLRC contract  
3 or contracts and any ceded reinsurance agreements to which the  
4 SPLRC is a party must be filed with the director within thirty days of  
5 their execution.

379.1403. 1. No later than five months after the fiscal year end  
2 of the SPLRC, the SPLRC shall file with the director an audited  
3 financial report by an independent certified public accountant of the  
4 financial statements of the SPLRC and any trust accounts established  
5 for the benefit of the ceding company to secure reserve credits for the  
6 ceding company.

7 2. The SPLRC shall file by March first of each year financial  
8 information using statutory accounting principles with useful or  
9 necessary modifications or adaptations required or approved by the  
10 director, as supplemented by additional information as required by the  
11 director. Financial information must include:

- 12 (1) Income statement;
- 13 (2) Balance sheet, and if required;
- 14 (3) A detailed listing of invested assets.

15 The filing may also include RBC calculations and other adjusted capital  
16 calculations to assist the director. The statements must be prepared on  
17 forms required by the director. In addition, the director may require

18 the filing of performance assessments of the SPLRC contract.

379.1406. An SPLRC must be examined by the director at least  
2 once every five years and no more frequently than once every three  
3 years. In addition, the director may also examine an SPLRC in the  
4 event of an event of insolvency. The SPLRC shall pay to the director  
5 the expenses and costs of the examination as outlined in section  
6 374.160, RSMo. Neither reports, copies of documents obtained nor  
7 preliminary work and working papers may be disclosed without the  
8 prior written consent of the SPLRC. Such materials shall remain  
9 confidential and are not subject to subpoena. Nothing in this section  
10 shall prevent the director from using materials created during the  
11 examination or obtained during the examination in furtherance of the  
12 director's regulatory authority granted under sections 379.1353 to  
13 379.1421. The director may grant access to materials obtained or  
14 created during examinations conducted under this section to public  
15 officers having jurisdiction over the regulation of insurance in another  
16 state, the federal government or another country, including a securities  
17 regulatory authority, if the officers receiving the information agree in  
18 writing to hold such information in confidence and in a manner  
19 consistent with this section.

379.1409. The SPLRC shall maintain its books and records in the  
2 state and make the same available at any time for examination by the  
3 director. Notwithstanding the preceding, original books and records  
4 may be kept outside of the state, if a plan is adopted by the SPLRC and  
5 approved by the director whereby copies are maintained in the state  
6 with originals kept at another specified location. Records must be  
7 maintained for examination purposes until authorization to destroy is  
8 received from the director.

379.1412. 1. Each SPLRC shall pay to the director of revenue on  
2 or before May first of each year a premium tax at the rate of two  
3 hundred fourteen thousandths of one percent on the first twenty  
4 million dollars of assumed reinsurance premium, and one hundred  
5 forty-three thousandths of one percent on the next twenty million  
6 dollars and forty-eight thousandths of one percent on the next twenty  
7 million dollars and twenty-four thousandths of one percent of each  
8 dollar thereafter. No reinsurance premium tax shall be payable in

9 connection with the receipt of assets in exchange for the assumption of  
10 loss reserves and other liabilities of another insurer under common  
11 ownership and control if such transaction is part of a plan to  
12 discontinue the operations of such other insurer, and if the intent of  
13 the parties to such transaction is to renew or maintain such business  
14 with the captive insurance company.

15 2. The premium tax imposed by subsection 1 of this section shall  
16 constitute all taxes collectible under the laws of this state from any  
17 SPLRC, and no other occupation tax or other taxes shall be levied or  
18 collected from any captive insurance company by the state or any  
19 county, city, or municipality within this state, except ad valorem taxes  
20 on real and personal property used in the production of income.

21 3. The annual minimum aggregate tax to be paid by a SPLRC  
22 calculated under subsection 1 of this section shall be seven thousand  
23 five hundred dollars, and the annual maximum aggregate tax shall be  
24 two hundred thousand dollars.

25 4. A SPLRC may deduct from premium taxes payable to this  
26 state, in addition to all other credits allowed by law, application fees  
27 payable under section 379.1359 and license fees and renewal fees  
28 payable under section 379.1364. A deduction for fees which exceeds a  
29 SPLRC's premium tax liability for the same tax year shall not be  
30 refundable, but may be carried forward to any subsequent tax year, not  
31 to exceed five years, until the full deduction is claimed.

32 5. Every SPLRC shall, on or before February first each year,  
33 make a return on a form provided by the director, verified by the  
34 affidavit of the company's president and secretary or other authorized  
35 officers, to the director stating the amount of all direct premiums  
36 received and assumed reinsurance premiums received, whether in cash  
37 or in notes, during the year ending on December thirty-first next  
38 preceding. Upon receipt of such returns, the director shall verify the  
39 same and certify the amount of tax due from the various companies on  
40 the basis and at the rate provided in this section, and shall certify the  
41 same to the director of revenue, on or before March thirty-first of each  
42 year. The director of revenue shall immediately thereafter notify and  
43 assess each company the amount of tax due.

44 6. A SPLRC failing to make returns as required by subsection 5

45 of this section, or failing to pay within the time required all taxes  
46 assessed by this section, shall be subject to the provisions of sections  
47 148.375 and 148.410, RSMo.

379.1415. Information filed with the director is confidential and  
2 may not be disclosed without the prior written consent of the SPLRC,  
3 except:

4 (1) Information is discoverable in civil litigation provided:

5 (a) The SPLRC is found by the court to be a necessary party;

6 (b) The party seeking the information demonstrates by a clear  
7 and convincing standard that the information sought is relevant and  
8 necessary; and

9 (c) Where it is unavailable from other nonconfidential sources.

10 (2) The director may disclose the information to insurance  
11 regulators if:

12 (a) The regulator agrees in writing to maintain the  
13 confidentiality of the information; and

14 (b) The laws of the state in which the regulator serves preserve  
15 confidentiality of the information.

16 (3) In addition, the director may also disclose information to the  
17 Securities Exchange Commission if:

18 (a) The SEC agrees in writing to maintain the confidentiality of  
19 the information; and

20 (b) The SEC is authorized under securities law to request the  
21 information or the director is obligated to disclose the information.

379.1418. 1. The director may apply by petition to the circuit  
2 court for an order authorizing the director to conserve, rehabilitate or  
3 liquidate a SPLRC domiciled in this state on one or more of the  
4 following grounds:

5 (1) There has been embezzlement, wrongful sequestration,  
6 dissipation, or diversion of the assets of the SPLRC;

7 (2) The SPLRC is insolvent and the holders of a majority in  
8 outstanding principal amount of each class of SPLRC securities or  
9 surplus notes request or consent to conservation, rehabilitation or  
10 liquidation under the provisions of this section.

11 2. The court may not grant relief provided by subdivision (1) of  
12 subsection 1 of this section unless, after notice and a hearing, the



13 director, who must have the burden of proof, establishes by clear and  
14 convincing evidence that relief must be granted.

15 3. Notwithstanding another provision in sections 379.1353 to  
16 379.1421, rules promulgated under sections 379.1353 to 379.1421, or  
17 another applicable provision of law or rule, upon any order of  
18 conservation, rehabilitation, or liquidation of a SPLRC, the receiver  
19 shall manage the assets and liabilities of the SPLRC under the  
20 provisions of sections 379.1353 to 379.1421.

21 4. With respect to amounts recoverable under a SPLRC contract,  
22 the amount recoverable by the receiver must not be reduced or  
23 diminished as a result of the entry of an order of conservation,  
24 rehabilitation, or liquidation with respect to the ceding company,  
25 notwithstanding another provision in the SPLRC contract or other  
26 documentation governing the SPLRC's transactions.

27 5. Notwithstanding the provisions of sections 379.1353 to  
28 379.1421, an application or petition, or a temporary restraining order  
29 or injunction issued under the provisions of the insurance laws of a  
30 state, with respect to a ceding company, does not prohibit the  
31 transaction of a business by a SPLRC, including any payment by a  
32 SPLRC made under the SPLRC contract, the SPLRC's securities or  
33 surplus notes, or any action or proceeding against a SPLRC or its  
34 assets.

35 6. Notwithstanding the provisions of any Missouri insurance law  
36 to the contrary, the commencement of a summary proceeding or other  
37 interim proceeding commenced before a formal delinquency proceeding  
38 with respect to a SPLRC, and any order issued by the court does not  
39 prohibit the payment by a SPLRC made under securities issued by an  
40 SPLRC or an SPLRC contract or the SPLRC from taking any action  
41 required to make the payment.

42 7. Notwithstanding the provisions of the Missouri insurance laws:

43 (1) A receiver of a ceding company shall not void a  
44 nonfraudulent transfer by a ceding company of money or other  
45 property paid or paid pursuant to a SPLRC contract; and

46 (2) A receiver of a SPLRC shall not void a nonfraudulent transfer  
47 by the SPLRC of money or other property made to a ceding company  
48 pursuant to a SPLRC contract or made to or for the benefit of any

49 holder of a SPLRC security on account of the SPLRC security.

50           8. With the exception of the fulfillment of the obligations under  
51 a SPLRC contract, and notwithstanding another provision of sections  
52 379.1353 to 379.1421 or other laws of this state, the assets of a SPLRC,  
53 including assets held in trust, letters of credit, financial guarantee  
54 policies or surety bonds, shall not be consolidated with or included in  
55 the estate of a ceding company in any delinquency proceeding against  
56 the ceding company under the provisions of sections 379.1353 to  
57 379.1421 for any purpose including, without limitation, distribution to  
58 creditors of the ceding company.

59           9. Other than as set forth in this section, delinquency  
60 proceedings of a SPLRC shall be conducted under sections 375.1150 to  
61 375.1246, RSMo.

          379.1421. The director may promulgate all rules and regulations  
2 necessary to effectuate the purposes of sections 379.1353 to 379.1421. No  
3 regulations promulgated under this authority shall affect SPLRC  
4 Contracts or other transactions approved prior to the effective date of  
5 such rules. Any rule or portion of a rule, as that term is defined in  
6 section 536.010, RSMo, that is created under the authority delegated in  
7 this section shall become effective only if it complies with and is  
8 subject to all of the provisions of chapter 536, RSMo, and, if applicable,  
9 section 536.028, RSMo. This section and chapter 536, RSMo, are  
10 nonseverable and if any of the powers vested with the general assembly  
11 under chapter 536, RSMo, to review, to delay the effective date, or to  
12 disapprove and annul a rule are subsequently held unconstitutional,  
13 then the grant of rulemaking authority and any rule proposed or  
14 adopted after August 28, 2007, shall be invalid and void.

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