

SENATE SUBSTITUTE

FOR

SENATE BILL NO. 6

AN ACT

To repeal sections 319.131, 375.246, and 379.120, RSMo, and to enact in lieu thereof thirteen new sections relating to insurance.

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

Section A. Sections 319.131, 375.246, and 379.120, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 319.131, 375.246, 376.2080, 379.120, 379.1800, 379.1803, 379.1806, 379.1809, 379.1812, 379.1815, 379.1818, 379.1821, and 379.1824, to read as follows:

319.131. 1. Any owner or operator of one or more petroleum storage tanks may elect to participate in the petroleum storage tank insurance fund to meet the financial responsibility requirements of sections 319.114 and 414.036. Subject to regulations of the board of trustees, owners or operators may elect to continue their participation in the fund subsequent to the transfer of their property to another party. Current or former refinery sites or petroleum pipeline or marine terminals are not eligible for participation in the fund.

2. The board shall establish an advisory committee which shall be composed of insurers, owners and operators of petroleum storage tanks, and other interested parties. The advisory committee established pursuant to this subsection shall report to the board. The committee shall monitor the fund and recommend statutory and administrative changes as may be necessary to assure efficient operation of the fund. The committee, in consultation with the board and the department of commerce and insurance, shall report every two

20 years to the general assembly on the availability and
21 affordability of the private insurance market as a viable
22 method of meeting the financial responsibilities required by
23 state and federal law in lieu of the petroleum storage tank
24 insurance fund.

25 3. (1) Except as otherwise provided by this section,
26 any person seeking to participate in the insurance fund
27 shall submit an application to the board of trustees and
28 shall certify that the petroleum tanks meet or exceed and
29 are in compliance with all technical standards established
30 by the United States Environmental Protection Agency, except
31 those standards and regulations pertaining to spill
32 prevention control and counter-measure plans, and rules
33 established by the Missouri department of natural resources
34 and the Missouri department of agriculture. The applicant
35 shall submit proof that the applicant has a reasonable
36 assurance of the tank's integrity. Proof of tank integrity
37 may include but not be limited to any one of the following:
38 tank tightness test, electronic leak detection, monitoring
39 wells, daily inventory reconciliation, vapor test or any
40 other test that may be approved by the director of the
41 department of natural resources or the director of the
42 department of agriculture. The applicant shall submit
43 evidence that the applicant can meet all applicable
44 financial responsibility requirements of this section.

45 (2) A creditor, specifically a person who, without
46 participating in and not otherwise primarily engaged in
47 petroleum production, refining, and marketing, holds indicia
48 of ownership primarily for the purpose of, or in connection
49 with, securing payment or performance of a loan or to
50 protect a security interest in or lien on the tank or the
51 property where the tank is located, or serves as trustee or
52 fiduciary upon transfer or receipt of the property, may be a

53 successor in interest to a debtor pursuant to this section,
54 provided that the creditor gives notice of the interest to
55 the insurance fund by certified mail, return receipt
56 requested. Part of such notice shall include a copy of the
57 lien, including but not limited to a security agreement or a
58 deed of trust as appropriate to the property. The term
59 "successor in interest" as provided in this section means a
60 creditor to the debtor who had qualified real property in
61 the insurance fund prior to the transfer of title to the
62 creditor, and the term is limited to access to the insurance
63 fund. The creditor may cure any of the debtor's defaults in
64 payments required by the insurance fund, provided the
65 specific real property originally qualified pursuant to this
66 section. The creditor, or the creditor's subsidiary or
67 affiliate, who forecloses or otherwise obtains legal title
68 to such specific real property held as collateral for loans,
69 guarantees or other credit, and which includes the debtor's
70 aboveground storage tanks or underground storage tanks, or
71 both such tanks shall provide notice to the fund of any
72 transfer of creditor to subsidiary or affiliate. Liability
73 pursuant to sections 319.100 to 319.137 shall be confined to
74 such creditor or such creditor's subsidiary or affiliate. A
75 creditor shall apply for a transfer of coverage and shall
76 present evidence indicating a lien, contractual right, or
77 operation of law permitting such transfer, and may utilize
78 the creditor's affiliate or subsidiary to hold legal title
79 to the specific real property taken in satisfaction of
80 debts. Creditors may be listed as insured or additional
81 insured on the insurance fund, and not merely as mortgagees,
82 and may assign or otherwise transfer the debtor's rights in
83 the insurance fund to the creditor's affiliate or
84 subsidiary, notwithstanding any limitations in the insurance
85 fund on assignments or transfer of the debtor's rights.

86 (3) Any person participating in the fund shall
87 annually submit an amount established pursuant to subsection
88 1 of section 319.133 which shall be deposited to the credit
89 of the petroleum storage tank insurance fund.

90 4. Any person making a claim pursuant to this section
91 and sections 319.129 and 319.133 shall be liable for the
92 first ten thousand dollars of the cost of cleanup associated
93 with a release from a petroleum storage tank without
94 reimbursement from the fund. The petroleum storage tank
95 insurance fund shall assume all costs, except as provided in
96 subsection 5 of this section, which are greater than ten
97 thousand dollars but less than one million dollars per
98 occurrence or two million dollars aggregate per year. The
99 liability of the petroleum storage tank insurance fund is
100 not the liability of the state of Missouri. The provisions
101 of sections 319.100 to 319.137 shall not be construed to
102 broaden the liability of the state of Missouri beyond the
103 provisions of sections 537.600 to 537.610 nor to abolish or
104 waive any defense which might otherwise be available to the
105 state or to any person. The presence of existing
106 contamination at a site where a person is seeking insurance
107 in accordance with this section shall not affect that
108 person's ability to participate in this program, provided
109 the person meets all other requirements of this section.
110 Any person who qualifies pursuant to sections 319.100 to
111 319.137 and who has requested approval of a project for
112 remediation from the fund, which request has not yet been
113 decided upon shall annually be sent a status report
114 including an estimate of when the project may expect to be
115 funded and other pertinent information regarding the request.

116 5. The fund shall provide coverage for third-party
117 claims involving property damage or bodily injury caused by
118 leaking petroleum storage tanks whose owner or operator is

119 participating in the fund at the time the release occurs or
120 is discovered. Coverage for third-party property damage or
121 bodily injury shall be in addition to the coverage described
122 in subsection 4 of this section but the total liability of
123 the petroleum storage tank insurance fund for all cleanup
124 costs, property damage, and bodily injury shall not exceed
125 one million dollars per occurrence or two million dollars
126 aggregate per year. The fund shall not compensate an owner
127 or operator for repair of damages to property beyond that
128 required to contain and clean up a release of a regulated
129 substance or compensate an owner or operator or any third
130 party for loss or damage to other property owned or
131 belonging to the owner or operator, or for any loss or
132 damage of an intangible nature, including, but not limited
133 to, loss or interruption of business, pain and suffering of
134 any person, lost income, mental distress, loss of use of any
135 benefit, or punitive damages.

136 6. [The fund shall, within limits specified in this
137 section, assume costs of third-party claims and cleanup of
138 contamination caused by releases from petroleum storage
139 tanks.] In addition to other coverage limits in this
140 section, the fund shall provide the defense of eligible
141 third-party claims including the negotiations of any
142 settlement and may specify a legal defense cost coverage
143 limit.

144 7. Nothing contained in sections 319.100 to 319.137
145 shall be construed to abrogate or limit any right, remedy,
146 causes of action, or claim by any person sustaining personal
147 injury or property damage as a result of any release from
148 any type of petroleum storage tank, nor shall anything
149 contained in sections 319.100 to 319.137 be construed to
150 abrogate or limit any liability of any person in any way
151 responsible for any release from a petroleum storage tank or

152 any damages for personal injury or property damages caused
153 by such a release.

154 8. (1) The fund shall provide moneys for cleanup of
155 contamination caused by releases from petroleum storage
156 tanks, the owner or operator of which is participating in
157 the fund or the owner or operator of which has made
158 application for participation in the fund by December 31,
159 1997, regardless of when such release occurred, provided
160 that those persons who have made application are ultimately
161 accepted into the fund. Applicants shall not be eligible
162 for fund benefits until they are accepted into the fund.
163 This section shall not preclude the owner or operator of
164 petroleum storage tanks coming into service after December
165 31, 1997, from making application to and participating in
166 the petroleum storage tank insurance fund.

167 (2) Notwithstanding the provisions of section 319.100
168 and the provisions of subdivision (1) of this section, the
169 fund shall provide moneys for cleanup of contamination
170 caused by releases from petroleum storage tanks owned by
171 school districts all or part of which are located in a
172 county of the third classification without a township form
173 of government and having a population of more than ten
174 thousand seven hundred but less than eleven thousand
175 inhabitants, and which make application for participation in
176 the fund by August 28, 1999, regardless of when such release
177 occurred. Applicants shall not be eligible for fund
178 benefits until they are accepted into the fund, and costs
179 incurred prior to that date shall not be eligible expenses.

180 9. (1) The fund shall provide moneys for cleanup of
181 contamination caused by releases from underground storage
182 tanks which contained petroleum and which have been taken
183 out of use prior to December 31, 1997, provided such sites
184 have been documented by or reported to the department of

185 natural resources prior to December 31, 1997, and provided
186 further that the fund shall make no reimbursements for
187 expenses incurred prior to August 28, 1995. The fund shall
188 also provide moneys for cleanup of contamination caused by
189 releases from underground storage tanks which contained
190 petroleum and which have been taken out of use prior to
191 December 31, 1985, if the current owner of the real property
192 where the tanks are located purchased such property before
193 December 31, 1985, provided such sites are reported to the
194 fund on or before June 30, 2000. The fund shall make no
195 payment for expenses incurred at such sites prior to August
196 28, 1999. Nothing in sections 319.100 to 319.137 shall
197 affect the validity of any underground storage tank fund
198 insurance policy in effect on August 28, 1996.

199 (2) An owner or operator who submits a request as
200 provided in this subsection is not required to bid the costs
201 and expenses associated with professional environmental
202 engineering services. The board may disapprove all or part
203 of the costs and expenses associated with the environmental
204 engineering services if the costs are excessive based upon
205 comparable service costs or current market value of similar
206 services. The owner or operator shall solicit bids for
207 actual remediation and cleanup work as provided by rules of
208 the board.

209 (3) After December 31, 2017, the current legal owner
210 of the site shall be the responsible party for corrective
211 action, pursuant to section 319.109, of any releases from
212 underground storage tanks described in this subsection,
213 provided the creditor, who is a successor in interest as
214 provided in subdivision (2) of subsection 3 of this section,
215 is subject to no greater or lesser responsibility for
216 corrective action than such successor in interest would have
217 on or before December 31, 2017. Nothing in this subdivision

218 shall in any way be construed to alter, alleviate, or modify
219 in any manner any liabilities that the fund has to pay for
220 in cleaning up the site.

221 10. (1) The fund shall provide moneys for cleanup of
222 contamination caused by releases from aboveground storage
223 tanks utilized for the sale of products regulated by chapter
224 414 which have been taken out of use prior to December 31,
225 1997, provided such sites have been documented by or
226 reported to the department of natural resources prior to
227 December 31, 1997, and provided further that the fund shall
228 make no reimbursements for expenses incurred prior to July
229 1, 1997.

230 (2) After December 31, 2017, the current legal owner
231 of the site shall be the responsible party for corrective
232 action of any releases from aboveground storage tanks
233 described in this subsection, provided the creditor, who is
234 a successor in interest as provided in subdivision (2) of
235 subsection 3 of this section, is subject to no greater or
236 lesser responsibility for corrective action than such
237 successor in interest would have on or before December 31,
238 2017. Nothing in this subdivision shall in any way be
239 construed to alter, alleviate, or modify in any manner any
240 liabilities that the fund has to pay for in cleaning up the
241 site.

375.246. 1. Credit for reinsurance shall be allowed a
2 domestic ceding insurer as either an asset or a reduction
3 from liability on account of reinsurance ceded only when the
4 reinsurer meets the requirements of subdivisions (1) [to],
5 (2), (3), (4), (5), (6), or (7) of this subsection; provided
6 further, that the director may adopt by rule under
7 subdivision (2) of subsection 4 of this section specific
8 additional requirements relating to or setting forth the
9 valuation of assets or reserve credits, the amount and forms

10 of security supporting reinsurance arrangements described in
11 subdivision (2) of subsection 4 of this section, or the
12 circumstances under which credit will be reduced or
13 eliminated. Credit shall be allowed pursuant to subdivision
14 (1), (2) or (3) of this subsection only as respects cessions
15 of those kinds or classes of business which the assuming
16 insurer is licensed or otherwise permitted to write or
17 assume in its state of domicile or, in the case of a United
18 States branch of an alien assuming insurer, in the state
19 through which it is entered and licensed to transact
20 insurance or reinsurance. Credit shall be allowed pursuant
21 to subdivision (3), (4), or (5) of this subsection only if
22 the applicable requirements of subdivision [(7)] (8) have
23 been satisfied.

24 (1) Credit shall be allowed when the reinsurance is
25 ceded to an assuming insurer that is licensed to transact
26 insurance in this state;

27 (2) Credit shall be allowed when the reinsurance is
28 ceded to an assuming insurer that is accredited by the
29 director as a reinsurer in this state. In order to be
30 eligible for accreditation, a reinsurer shall:

31 (a) File with the director evidence of its submission
32 to this state's jurisdiction;

33 (b) Submit to the authority of the department of
34 commerce and insurance to examine its books and records;

35 (c) Be licensed to transact insurance or reinsurance
36 in at least one state, or in the case of a United States
37 branch of an alien assuming insurer is entered through and
38 licensed to transact insurance or reinsurance in at least
39 one state;

40 (d) File annually with the director a copy of its
41 annual statement filed with the insurance department of its

42 state of domicile and a copy of its most recent audited
43 financial statement; and

44 (e) Demonstrate to the satisfaction of the director
45 that it has adequate financial capacity to meet its
46 reinsurance obligations and is otherwise qualified to assume
47 reinsurance from domestic insurers. An assuming insurer is
48 deemed to meet such requirement as of the time of its
49 application if it maintains a surplus regarding
50 policyholders in an amount not less than twenty million
51 dollars and its accreditation has not been denied by the
52 director within ninety days after submission of its
53 application;

54 (3) Credit shall be allowed when the reinsurance is
55 ceded to an assuming insurer that is domiciled in, or in the
56 case of a United States branch of an alien assuming insurer
57 is entered through, a state that employs standards regarding
58 credit for reinsurance substantially similar to those
59 applicable under this statute and the assuming insurer or
60 United States branch of an alien assuming insurer:

61 (a) Maintains a surplus as regards policyholders in an
62 amount not less than twenty million dollars; except that
63 this paragraph does not apply to reinsurance ceded and
64 assumed pursuant to pooling arrangements among insurers in
65 the same holding company system; and

66 (b) Submits to the authority of the department of
67 commerce and insurance to examine its books and records;

68 (4) (a) Credit shall be allowed when the reinsurance
69 is ceded to an assuming insurer that maintains a trust fund
70 in a qualified United States financial institution, as
71 defined in subdivision (2) of subsection 3 of this section,
72 for the payment of the valid claims of its United States
73 ceding insurers, their assigns and successors in interest.
74 To enable the director to determine the sufficiency of the

75 trust fund, the assuming insurer shall report annually to
76 the director information substantially the same as that
77 required to be reported on the National Association of
78 Insurance Commissioners' annual statement form by licensed
79 insurers. The assuming insurer shall submit to examination
80 of its books and records by the director.

81 (b) Credit for reinsurance shall not be granted
82 pursuant to this subdivision unless the form of the trust
83 and any amendments to the trust have been approved by:

84 a. The commissioner or director of the state agency
85 regulating insurance in the state where the trust is
86 domiciled; or

87 b. The commissioner or director of another state who,
88 pursuant to the terms of the trust instrument, has accepted
89 principal regulatory oversight of the trust.

90 (c) The form of the trust and any trust amendments
91 shall also be filed with the commissioner or director in
92 every state in which the ceding insurer beneficiaries of the
93 trust are domiciled. The trust instrument shall provide
94 that contested claims shall be valid and enforceable upon
95 the final order of any court of competent jurisdiction in
96 the United States. The trust shall vest legal title to its
97 assets in its trustees for the benefit of the assuming
98 insurer's United States ceding insurers, their assigns and
99 successors in interest. The trust and the assuming insurer
100 shall be subject to examination as determined by the
101 director.

102 (d) The trust shall remain in effect for as long as
103 the assuming insurer has outstanding obligations due under
104 the reinsurance agreements subject to the trust. No later
105 than February twenty-eighth of each year the trustees of the
106 trust shall report to the director in writing the balance of
107 the trust and listing the trust's investments at the

108 preceding year end and shall certify the date of termination
109 of the trust, if so planned, or certify that the trust will
110 not expire prior to the next following December thirty-first.

111 (e) The following requirements apply to the following
112 categories of assuming insurers:

113 a. The trust fund for a single assuming insurer shall
114 consist of funds in trust in an amount not less than the
115 assuming insurer's liabilities attributable to reinsurance
116 ceded by the United States ceding insurers, and, in
117 addition, the assuming insurer shall maintain a trusteed
118 surplus of not less than twenty million dollars, except as
119 provided in subparagraph b. of this paragraph;

120 b. At any time after the assuming insurer has
121 permanently discontinued underwriting new business secured
122 by the trust for at least three full years, the director
123 with principal regulator oversight of the trust may
124 authorize a reduction in the required trusteed surplus, but
125 only after a finding based on an assessment of risk that the
126 new required surplus level is adequate for the protection of
127 United States ceding insurers, policyholders, and claimants
128 in light of reasonably foreseeable adverse loss
129 development. The risk assessment may involve an actuarial
130 review, including an independent analysis of reserves and
131 cash flows, and shall consider all material risk factors
132 including, when applicable, the lines of business involved,
133 the stability of the incurred loss estimates, and the effect
134 of the surplus requirements on the assuming insurer's
135 liquidity or solvency. The minimum required trusteed
136 surplus shall not be reduced to an amount less than thirty
137 percent of the assuming insurer's liabilities attributable
138 to reinsurance ceded by United States ceding insurers
139 covered by the trust;

140 c. In the case of a group of incorporated and
141 individual unincorporated underwriters:

142 (i) For reinsurance ceded under reinsurance agreements
143 with an inception, amendment or renewal date on or after
144 January 1, 1993, the trust shall consist of a trustee
145 account in an amount not less than the respective
146 underwriter's several liabilities attributable to business
147 ceded by United States domiciled ceding insurers to any
148 underwriter of the group;

149 (ii) For reinsurance ceded under reinsurance
150 agreements with an inception date on or before December 31,
151 1992, and not amended or renewed after that date,
152 notwithstanding the other provisions of this section, the
153 trust shall consist of a trustee account in an amount not
154 less than the respective underwriter's several insurance and
155 reinsurance liabilities attributable to business in the
156 United States; and

157 (iii) In addition to these trusts, the group shall
158 maintain in trust a trustee surplus of which one hundred
159 million dollars shall be held jointly for the benefit of the
160 United States domiciled ceding insurers of any member of the
161 group for all years of account;

162 d. The incorporated members of the group shall not be
163 engaged in any business other than underwriting as a member
164 of the group and shall be subject to the same level of
165 regulation and solvency control by the group's domiciliary
166 regulator as are the unincorporated members;

167 e. Within ninety days after its financial statements
168 are due to be filed with the group's domiciliary regulator,
169 the group shall provide to the director an annual
170 certification by the group's domiciliary regulator of the
171 solvency of each underwriter member; or if a certification
172 is unavailable, financial statements, prepared by

173 independent public accountants, of each underwriter member
174 of the group;

175 (5) (a) Credit shall be allowed when the reinsurance
176 is ceded to an assuming insurer that has been certified by
177 the director as a reinsurer in this state and secures its
178 obligations in accordance with the requirements of this
179 subdivision.

180 (b) In order to be eligible for certification, the
181 assuming insurer shall meet the following requirements:

182 a. The assuming insurer shall be domiciled and
183 licensed to transact insurance or reinsurance in a qualified
184 jurisdiction, as determined by the director under paragraph
185 (d) of this subdivision;

186 b. The assuming insurer shall maintain minimum capital
187 and surplus, or its equivalent, in an amount to be
188 determined by the director by rule;

189 c. The assuming insurer shall maintain financial
190 strength ratings from two or more rating agencies deemed
191 acceptable by the director by rule;

192 d. The assuming insurer shall agree to submit to the
193 jurisdiction of this state, appoint the director as its
194 agent for service of process in this state, and agree to
195 provide security for one hundred percent of the assuming
196 insurer's liabilities attributable to reinsurance ceded by
197 United States ceding insurers if it resists enforcement of a
198 final United States judgment;

199 e. The assuming insurer shall agree to meet applicable
200 information filing requirements as determined by the
201 director, both with respect to an initial application for
202 certification and on an ongoing basis; and

203 f. The assuming insurer shall satisfy any other
204 requirements for certification deemed relevant by the
205 director.

206 (c) An association including incorporated and
207 individual unincorporated underwriters may be a certified
208 reinsurer. To be eligible for certification, in addition to
209 satisfying requirements of paragraph (b) of this subdivision:

210 a. The association shall satisfy its minimum capital
211 and surplus requirements through the capital and surplus
212 equivalents (net of liabilities) of the association and its
213 members, which shall include a joint central fund that may
214 be applied to any unsatisfied obligation of the association
215 or any of its members, in an amount determined by the
216 director to provide adequate protection;

217 b. The incorporated members of the association shall
218 not be engaged in any business other than underwriting as a
219 member of the association and shall be subject to the same
220 level of regulation and solvency control by the
221 association's domiciliary regulator as are the
222 unincorporated members; and

223 c. Within ninety days after its financial statements
224 are due to be filed with the association's domiciliary
225 regulator, the association shall provide to the director:

226 (i) An annual certification by the association's
227 domiciliary regulator of the solvency of each underwriter
228 member; or

229 (ii) If a certification is unavailable, financial
230 statements prepared by independent public accountants of
231 each underwriter member of the association.

232 (d) a. The director shall create and publish a list
233 of qualified jurisdictions, under which an assuming insurer
234 licensed and domiciled in such jurisdiction is eligible to
235 be considered for certification by the director as a
236 certified reinsurer.

237 b. To determine whether the domiciliary jurisdiction
238 of a non-United States assuming insurer is eligible to be

239 recognized as a qualified jurisdiction, the director shall
240 evaluate the appropriateness and effectiveness of the
241 reinsurance supervisory system of the jurisdiction, both
242 initially and on an ongoing basis, and consider the rights,
243 benefits, and extent of reciprocal recognition afforded by
244 the non-United States jurisdiction to reinsurers licensed
245 and domiciled in the United States. A qualified
246 jurisdiction shall agree to share information and cooperate
247 with the director with respect to all certified reinsurers
248 domiciled within that jurisdiction. A jurisdiction shall
249 not be recognized as a qualified jurisdiction if the
250 director has determined that the jurisdiction does not
251 adequately and promptly enforce final United States
252 judgments and arbitration awards. Additional factors may be
253 considered at the discretion of the director.

254 c. The director may consider a list of qualified
255 jurisdictions published by the National Association of
256 Insurance Commissioners (NAIC) in determining qualified
257 jurisdictions for the purposes of this section. If the
258 director approves a jurisdiction as qualified that does not
259 appear on the list of qualified jurisdictions, the director
260 shall provide thoroughly documented justification in
261 accordance with criteria to be developed by rule.

262 d. United States jurisdictions that meet the
263 requirement for accreditation under the NAIC financial
264 standards and accreditation program shall be recognized as
265 qualified jurisdictions.

266 e. If a certified reinsurer's domiciliary jurisdiction
267 ceases to be a qualified jurisdiction, the director has the
268 discretion to suspend the reinsurer's certification
269 indefinitely, in lieu of revocation.

270 (e) The director shall assign a rating to each
271 certified reinsurer, giving due consideration to the

272 financial strength ratings that have been assigned by rating
273 agencies deemed acceptable to the director by rule. The
274 director shall publish a list of all certified reinsurers
275 and their ratings.

276 (f) a. A certified reinsurer shall secure obligations
277 assumed from United States ceding insurers under this
278 subdivision at a level consistent with its rating, as
279 specified in regulations promulgated by the director.

280 b. For a domestic ceding insurer to qualify for full
281 financial statement credit for reinsurance ceded to a
282 certified reinsurer, the certified reinsurer shall maintain
283 security in a form acceptable to the director and consistent
284 with the provisions of this section or in a multibeneficiary
285 trust in accordance with paragraph (e) of subdivision (4) of
286 this subsection, except as otherwise provided in this
287 subdivision.

288 c. If a certified reinsurer maintains a trust to fully
289 secure its obligations under paragraph (d) of subdivision
290 (4) of this subsection and chooses to secure its obligations
291 incurred as a certified reinsurer in the form of a
292 multibeneficiary trust, the certified reinsurer shall
293 maintain separate trust accounts for its obligations
294 incurred under reinsurance agreements issued or renewed as a
295 certified reinsurer with reduced security as permitted by
296 this subsection or comparable laws of other United States
297 jurisdictions and for its obligations subject to paragraph
298 (e) of subdivision (4) of this subsection. It shall be a
299 condition to the grant of certification under this section
300 that the certified reinsurer shall have bound itself, by the
301 language of the trust and agreement with the director with
302 principal regulatory oversight of each such trust account,
303 to fund, upon termination of any such trust account, out of

304 the remaining surplus of such trust any deficiency of any
305 other such trust account.

306 d. The minimum trustee surplus requirements provided
307 in paragraph (e) of subdivision (4) of this subsection are
308 not applicable with respect to a multibeneficiary trust
309 maintained by a certified reinsurer for the purpose of
310 securing obligations incurred under this paragraph, except
311 that such trust shall maintain a minimum trustee surplus of
312 ten million dollars.

313 e. With respect to obligations incurred by a certified
314 reinsurer under this paragraph, if the security is
315 insufficient, the director shall order the certified
316 reinsurer to provide sufficient security for such incurred
317 obligations within thirty days. If a certified reinsurer
318 does not provide sufficient security for its obligations
319 incurred under this subsection within thirty days of being
320 ordered to do so by the director, the director has the
321 discretion to allow credit in the amount of the required
322 security for one year. Following this one-year period, the
323 director shall impose reductions in allowable credit upon
324 finding that there is a material risk that the certified
325 reinsurer's obligations will not be paid in full when due.

326 f. (i) For purposes of this paragraph, a certified
327 reinsurer whose certification has been terminated for any
328 reason shall be treated as a certified reinsurer required to
329 secure one hundred percent of its obligations.

330 (ii) As used in this subparagraph, the term
331 "terminated" refers to revocation, suspension, voluntary
332 surrender, and inactive status.

333 (iii) If the director continues to assign a higher
334 rating as permitted by other provisions of this subdivision,
335 this requirement does not apply to a certified reinsurer in

336 inactive status or to a reinsurer whose certification has
337 been suspended.

338 g. If an applicant for certification has been
339 certified as a reinsurer in an NAIC-accredited jurisdiction,
340 the director has the discretion to defer to that
341 jurisdiction's certification and to the rating assigned by
342 that jurisdiction, and such assuming insurer shall be
343 considered to be a certified reinsurer in this state.

344 h. A certified reinsurer that ceases to assume new
345 business in this state may request to maintain its
346 certification in inactive status in order to continue to
347 qualify for a reduction in security for its in-force
348 business. An inactive certified reinsurer shall continue to
349 comply with all applicable requirements of this subsection,
350 and the director shall assign a rating that takes into
351 account, if relevant, the reasons why the reinsurer is not
352 assuming new business.

353 (6) Credit:

354 (a) Shall be allowed when the reinsurance is ceded to
355 an assuming insurer meeting each of the conditions set forth
356 below:

357 a. The assuming insurer shall have its head office or
358 be domiciled in, as applicable, and be licensed in a
359 reciprocal jurisdiction. A "reciprocal jurisdiction" is a
360 jurisdiction that meets one of the following:

361 (i) A non-United States jurisdiction that is subject
362 to an in-force covered agreement with the United States,
363 each within its legal authority, or, in the case of a
364 covered agreement between the United States and European
365 Union, is a member state of the European Union. For
366 purposes of this subdivision, a "covered agreement" is an
367 agreement entered into pursuant to the Dodd-Frank Wall
368 Street Reform and Consumer Protection Act, 31 U.S.C.

369 Sections 313 and 314, that is currently in effect or in a
370 period of provisional application and addresses the
371 elimination, under specified conditions, of collateral
372 requirements as a condition for entering into any
373 reinsurance agreement with a ceding insurer domiciled in
374 this state or for allowing the ceding insurer to recognize
375 credit for reinsurance;

376 (ii) A United States jurisdiction that meets the
377 requirements for accreditation under the NAIC financial
378 standards and accreditation program; or

379 (iii) A qualified jurisdiction, as determined by the
380 director pursuant to paragraph (d) of subdivision (5) of
381 this subsection, which is not otherwise described in item
382 (i) or (ii) of this subparagraph and which meets certain
383 additional requirements, consistent with the terms and
384 conditions of in-force covered agreements, as specified by
385 the director by rule.

386 b. The assuming insurer shall have and maintain, on an
387 ongoing basis, minimum capital and surplus, or its
388 equivalent, calculated according to the methodology of its
389 domiciliary jurisdiction, in an amount to be set forth by
390 rule. If the assuming insurer is an association, including
391 incorporated and individual unincorporated underwriters, it
392 shall have and maintain, on an ongoing basis, minimum
393 capital and surplus equivalents (net of liabilities)
394 calculated according to the methodology applicable to its
395 domiciliary jurisdiction, and a central fund containing a
396 balance in amounts to be set forth by rule.

397 c. The assuming insurer shall have and maintain, on an
398 ongoing basis, a minimum solvency or capital ratio, as
399 applicable, which shall be set forth by rule. If the
400 assuming insurer is an association, including incorporated
401 and individual unincorporated underwriters, it shall have

402 and maintain, on an ongoing basis, a minimum solvency or
403 capital ratio in the reciprocal jurisdiction where the
404 assuming insurer has its head office or is domiciled, as
405 applicable, and is also licensed.

406 d. The assuming insurer shall agree and provide
407 adequate assurance to the director, in a form specified by
408 the director by rule, as follows:

409 (i) The assuming insurer shall provide prompt written
410 notice and explanation to the director if it falls below the
411 minimum requirements set forth in subparagraphs b or c of
412 this paragraph, or if any regulatory action is taken against
413 it for serious noncompliance with applicable law;

414 (ii) The assuming insurer shall consent in writing to
415 the jurisdiction of the courts of this state and to the
416 appointment of the director as agent for service of
417 process. The director may require that consent for service
418 of process be provided to the director and included in each
419 reinsurance agreement. Nothing in this provision shall
420 limit, or in any way alter, the capacity of parties to a
421 reinsurance agreement to agree to alternative dispute
422 resolution mechanisms, except to the extent such agreements
423 are unenforceable under applicable insolvency or delinquency
424 laws;

425 (iii) The assuming insurer shall consent in writing to
426 pay all final judgments, wherever enforcement is sought,
427 obtained by a ceding insurer or its legal successor, that
428 have been declared enforceable in the jurisdiction where the
429 judgment was obtained;

430 (iv) Each reinsurance agreement shall include a
431 provision requiring the assuming insurer to provide security
432 in an amount equal to one hundred percent of the assuming
433 insurer's liabilities attributable to reinsurance ceded
434 pursuant to that agreement if the assuming insurer resists

435 enforcement of a final judgment that is enforceable under
436 the law of the jurisdiction in which it was obtained or a
437 properly enforceable arbitration award, whether obtained by
438 the ceding insurer or by its legal successor on behalf of
439 its resolution estate; and

440 (v) The assuming insurer shall confirm that it is not
441 presently participating in any solvent scheme of arrangement
442 which involves this state's ceding insurers, and agree to
443 notify the ceding insurer and the director and to provide
444 security in an amount equal to one hundred percent of the
445 assuming insurer's liabilities to the ceding insurer, should
446 the assuming insurer enter into such a solvent scheme of
447 arrangement. Such security shall be in a form consistent
448 with the provisions of subdivision (5) of this subsection
449 and subsection 2 of this section and as specified by the
450 director by rule.

451 e. The assuming insurer or its legal successor shall
452 provide, if requested by the director, on behalf of itself
453 and any legal predecessors, certain documentation to the
454 director, as specified by the director by rule.

455 f. The assuming insurer shall maintain a practice of
456 prompt payment of claims under reinsurance agreements,
457 pursuant to criteria set forth by rule.

458 g. The assuming insurer's supervisory authority shall
459 confirm to the director on an annual basis, as of the
460 preceding December thirty-first or at the annual date
461 otherwise statutorily reported to the reciprocal
462 jurisdiction that the assuming insurer complies with the
463 requirements set forth in subparagraphs b. and c. of this
464 paragraph.

465 h. Nothing in this subdivision precludes an assuming
466 insurer from providing the director with information on a
467 voluntary basis.

468 (b) The director shall timely create and publish a
469 list of reciprocal jurisdictions.

470 a. A list of reciprocal jurisdictions is published
471 through the NAIC committee process. The director's list
472 shall include any reciprocal jurisdiction as defined under
473 items (i) and (ii) of subparagraph a. of paragraph (a) of
474 this subdivision, and shall consider any other reciprocal
475 jurisdiction included on the NAIC list. The director may
476 approve a jurisdiction that does not appear on the NAIC list
477 of reciprocal jurisdictions in accordance with criteria to
478 be developed under rules promulgated by the director.

479 b. The director may remove a jurisdiction from the
480 list of reciprocal jurisdictions upon a determination that
481 the jurisdiction no longer meets the requirements of a
482 reciprocal jurisdiction, in accordance with a process set
483 forth by rule promulgated by the director, except that the
484 director shall not remove from the list a reciprocal
485 jurisdiction as defined under item (i) and (ii) of
486 subparagraph a. of paragraph (a) of this subdivision. Upon
487 removal of a reciprocal jurisdiction from this list credit
488 for reinsurance ceded to an assuming insurer which has its
489 home office or is domiciled in that jurisdiction shall be
490 allowed, if otherwise allowed under this section.

491 (c) The director shall timely create and publish a
492 list of assuming insurers that have satisfied the conditions
493 set forth in this subdivision and to which cessions shall be
494 granted credit in accordance with this subdivision. The
495 director may add an assuming insurer to such list if an NAIC
496 accredited jurisdiction has added such assuming insurer to a
497 list of such assuming insurers or if, upon initial
498 eligibility, the assuming insurer submits the information to
499 the director as required under subparagraph d. of paragraph
500 (a) of this subdivision and complies with any additional

501 requirements that the director may adopt by rule, except to
502 the extent that they conflict with an applicable covered
503 agreement.

504 (d) If the director determines that an assuming
505 insurer no longer meets one or more of the requirements
506 under this subdivision, the director may revoke or suspend
507 the eligibility of the assuming insurer for recognition
508 under this subdivision in accordance with procedures set
509 forth by rule.

510 a. While an assuming insurer's eligibility is
511 suspended, no reinsurance agreement issued, amended, or
512 renewed after the effective date of the suspension qualifies
513 for credit except to the extent that the assuming insurer's
514 obligations under the contract are secured in accordance
515 with subsection 2 of this section.

516 b. If an assuming insurer's eligibility is revoked, no
517 credit for reinsurance may be granted after the effective
518 date of the revocation with respect to any reinsurance
519 agreements entered into by the assuming insurer, including
520 reinsurance agreements entered into prior to the date of
521 revocation, except to the extent that the assuming insurer's
522 obligations under the contract are secured in a form
523 acceptable to the director and consistent with the
524 provisions of subsection 2 of this section.

525 (e) If subject to a legal process of rehabilitation,
526 liquidation, or conservation, as applicable, the ceding
527 insurer, or its representative, may seek and, if determined
528 appropriate by the court in which the proceedings are
529 pending, may obtain an order requiring that the assuming
530 insurer post security for all outstanding ceded liabilities.

531 (f) Nothing in this subdivision shall limit or in any
532 way alter the capacity of parties to a reinsurance agreement
533 to agree on requirements for security or other terms in that

534 reinsurance agreement, except as expressly prohibited by
535 this section or other applicable law or regulation.

536 (g) Credit may be taken under this subdivision only
537 for reinsurance agreements entered into, amended, or renewed
538 on or after December 31, 2021, and only with respect to
539 losses incurred and reserves reported on or after the later
540 of: the date on which the assuming insurer has met all
541 eligibility requirements under paragraph (a) of this
542 subdivision; or the effective date of the new reinsurance
543 agreement, amendment, or renewal.

544 a. This paragraph shall not alter or impair a ceding
545 insurer's right to take credit for reinsurance, to the
546 extent that credit is not available under this subdivision,
547 as long as the reinsurance qualifies for credit under any
548 other applicable provision of this section.

549 b. Nothing in this subdivision shall authorize an
550 assuming insurer to withdraw or reduce the security provided
551 under any reinsurance agreement except as permitted by the
552 terms of the agreement.

553 c. Nothing in this subdivision shall limit, or in any
554 way alter, the capacity of parties to any reinsurance
555 agreement to renegotiate the agreement.

556 (7) Credit:

557 (a) Shall be allowed when the reinsurance is ceded to
558 an assuming insurer not meeting the requirements of
559 subdivision (1), (2), (3), (4), [or] (5), or (6) of this
560 subsection, but only as to the insurance of risks located in
561 a jurisdiction of the United States where the reinsurance is
562 required by applicable law or regulation of that
563 jurisdiction;

564 (b) May be allowed in the discretion of the director
565 when the reinsurance is ceded to an assuming insurer not
566 meeting the requirements of subdivision (1), (2), (3), (4),

567 [or] (5), or (6) of this subsection, but only as to the
568 insurance of risks located in a foreign country where the
569 reinsurance is required by applicable law or regulation of
570 that country;

571 ~~[(7)]~~ (8) If the assuming insurer is not licensed,
572 accredited, or certified to transact insurance or
573 reinsurance in this state, the credit permitted by
574 subdivisions (3) and (4) of this subsection shall not be
575 allowed unless the assuming insurer agrees in the
576 reinsurance agreements:

577 (a) That in the event of the failure of the assuming
578 insurer to perform its obligations under the terms of the
579 reinsurance agreement, the assuming insurer, at the request
580 of the ceding insurer shall submit to the jurisdiction of
581 the courts of this state, will comply with all requirements
582 necessary to give such courts jurisdiction, and will abide
583 by the final decisions of such courts or of any appellate
584 courts in this state in the event of an appeal; and

585 (b) To designate the director or a designated attorney
586 as its true and lawful attorney upon whom may be served any
587 lawful process in any action, suit or proceeding instituted
588 by or on behalf of the ceding insurer. This paragraph is
589 not intended to conflict with or override the obligation of
590 the parties to a reinsurance agreement to arbitrate their
591 disputes, if this obligation is created in the agreement and
592 the jurisdiction and situs of the arbitration is, with
593 respect to any receivership of the ceding company, any
594 jurisdiction of the United States;

595 ~~[(8)]~~ (9) If the assuming insurer does not meet the
596 requirements of subdivision (1), (2) or (3) of this
597 subsection, the credit permitted by subdivision (4) or (5)
598 of this subsection shall not be allowed unless the assuming

599 insurer agrees in the trust agreements to the following
600 conditions:

601 (a) Notwithstanding any other provisions in the trust
602 instrument, if the trust fund is inadequate because it
603 contains an amount less than the amount required by
604 paragraph (e) of subdivision (4) of this subsection, or if
605 the grantor of the trust has been declared insolvent or
606 placed into receivership, rehabilitation, liquidation or
607 similar proceedings under the laws of its state or country
608 of domicile, the trustee shall comply with an order of the
609 commissioner or director with regulatory oversight over the
610 trust or with an order of a court of competent jurisdiction
611 directing the trustee to transfer to the commissioner or
612 director with regulatory oversight all of the assets of the
613 trust fund;

614 (b) The assets shall be distributed by and claims
615 shall be filed with and valued by the commissioner or
616 director with regulatory oversight in accordance with the
617 laws of the state in which the trust is domiciled that are
618 applicable to the liquidation of domestic insurance
619 companies;

620 (c) If the commissioner or director with regulatory
621 oversight determines that the assets of the trust fund or
622 any part thereof are not necessary to satisfy the claims of
623 the United States ceding insurers of the grantor of the
624 trust, the assets or part thereof shall be returned by the
625 commissioner or director with regulatory oversight to the
626 trustee for distribution in accordance with the trust
627 agreement; and

628 (d) The grantor shall waive any right otherwise
629 available to it under United States law that is inconsistent
630 with this subsection.

631 ~~[(9)]~~ (10) (a) If an accredited or certified
632 reinsurer ceases to meet the requirements for accreditation
633 or certification, the director may suspend or revoke the
634 reinsurer's accreditation or certification.

635 (b) The director shall give the reinsurer notice and
636 opportunity for a hearing. The suspension or revocation
637 shall not take effect until after the director's order on
638 hearing, unless:

639 a. The reinsurer waives its right to hearing;

640 b. The director's order is based on regulatory action
641 by the reinsurer's domiciliary jurisdiction or the voluntary
642 surrender or termination of the reinsurer's eligibility to
643 transact insurance or reinsurance business in its
644 domiciliary jurisdiction or in the primary certifying state
645 of the reinsurer under subdivision (5) of this subsection; or

646 c. The director finds that an emergency requires
647 immediate action, and a court of competent jurisdiction has
648 not stayed the commissioner's action.

649 (c) While a reinsurer's accreditation or certification
650 is suspended, no reinsurance contract issued or renewed
651 after the effective date of the suspension qualifies for
652 credit except to the extent that the reinsurer's obligations
653 under the contract are secured in accordance with
654 subdivision (5) of this subsection or subsection 2 of this
655 section. If a reinsurer's accreditation or certification is
656 revoked, no credit for reinsurance shall be granted after
657 the effective date of the revocation except to the extent
658 that the reinsurer's obligations under the contract are
659 secured in accordance with subdivision (5) of this
660 subsection or subsection 2 of this section.

661 ~~[(10)]~~ (11) (a) A ceding insurer shall take steps to
662 manage its reinsurance recoverables proportionate to its own
663 book of business. A domestic ceding insurer shall notify

664 the director within thirty days after reinsurance
665 recoverables from any single assuming insurer or group of
666 affiliated assuming insurers exceeds fifty percent of the
667 domestic ceding insurer's last reported surplus to
668 policyholders or after it is determined that reinsurance
669 recoverables from any single assuming insurer or group of
670 affiliated assuming insurers is likely to exceed such
671 limit. The notification shall demonstrate that the exposure
672 is safely managed by the domestic ceding insurer.

673 (b) A ceding insurer shall take steps to diversify
674 its reinsurance program. A domestic ceding insurer shall
675 notify the director within thirty days after ceding to any
676 single assuming insurer or group of affiliated assuming
677 insurers more than twenty percent of the ceding insurer's
678 gross written premium in the prior calendar year or after it
679 has determined that the reinsurance ceded to any single
680 assuming insurer or group of affiliated assuming insurers is
681 likely to exceed such limit. The notification shall
682 demonstrate that the exposure is safely managed by the
683 domestic ceding insurer.

684 2. An asset or reduction from liability for the
685 reinsurance ceded by a domestic insurer to an assuming
686 insurer not meeting the requirements of subsection 1 of this
687 section shall be allowed in an amount not exceeding the
688 liabilities carried by the ceding insurer; provided further,
689 that the director may adopt by rule pursuant to subdivision
690 (2) of subsection 4 of this section specific additional
691 requirements relating to or setting forth the valuation of
692 assets or reserve credits, the amount and forms of security
693 supporting reinsurance arrangements described in subdivision
694 (2) of subsection 4 of this section, or the circumstances
695 under which credit will be reduced or eliminated. The
696 reduction shall be in the amount of funds held by or on

697 behalf of the ceding insurer, including funds held in trust
698 for the ceding insurer, under a reinsurance contract with
699 the assuming insurer as security for the payment of
700 obligations thereunder, if the security is held in the
701 United States subject to withdrawal solely by, and under the
702 exclusive control of, the ceding insurer; or, in the case of
703 a trust, held in a qualified United States financial
704 institution, as defined in subdivision (2) of subsection 3
705 of this section. This security may be in the form of:

706 (1) Cash;

707 (2) Securities listed by the securities valuation
708 office of the National Association of Insurance
709 Commissioners, including those deemed exempt from filing as
710 defined by the Purposes and Procedures Manual of the
711 Securities Valuation Office, and qualifying as admitted
712 assets;

713 (3) (a) Clean, irrevocable, unconditional letters of
714 credit issued or confirmed by a qualified United States
715 financial institution, as defined in subdivision (1) of
716 subsection 3 of this section, no later than December thirty-
717 first of the year for which filing is being made, and in the
718 possession of, or in trust for, the ceding insurer on or
719 before the filing date of its annual statement.

720 (b) Letters of credit meeting applicable standards of
721 issuer acceptability as of the dates of their issuance or
722 confirmation, notwithstanding the issuing or confirming
723 institution's subsequent failure to meet applicable
724 standards of issuer acceptability, shall continue to be
725 acceptable as security until their expiration, extension,
726 renewal, modification or amendment, whichever first occurs;

727 (4) Any other form of security acceptable to the
728 director.

729 3. (1) For purposes of subdivision (3) of subsection
730 2 of this section, a "qualified United States financial
731 institution" means an institution that:

732 (a) Is organized or, in the case of a United States
733 office of a foreign banking organization, licensed under the
734 laws of the United States or any state thereof;

735 (b) Is regulated, supervised and examined by federal
736 or state authorities having regulatory authority over banks
737 and trust companies; and

738 (c) Has been determined by either the director, or the
739 securities valuation office of the National Association of
740 Insurance Commissioners, to meet such standards of financial
741 condition and standing as are considered necessary and
742 appropriate to regulate the quality of financial
743 institutions whose letters of credit will be acceptable to
744 the director.

745 (2) A "qualified United States financial institution"
746 means, for purposes of those provisions of this law
747 specifying those institutions that are eligible to act as a
748 fiduciary of a trust, an institution that:

749 (a) Is organized, or in the case of a United States
750 branch or agency office of a foreign banking organization,
751 licensed under the laws of the United States or any state
752 thereof and has been granted authority to operate with
753 fiduciary powers; and

754 (b) Is regulated, supervised and examined by federal
755 or state authorities having regulatory authority over banks
756 and trust companies.

757 4. (1) The director may adopt rules and regulations
758 implementing the provisions of this section.

759 (2) The director is further authorized to adopt rules
760 and regulations applicable to reinsurance arrangements
761 described in paragraph (a) of this subdivision.

762 (a) A rule adopted under this subdivision may apply
763 only to reinsurance relating to:

764 a. Life insurance policies with guaranteed nonlevel
765 gross premiums or guaranteed nonlevel benefits;

766 b. Universal life insurance policies with provisions
767 resulting in the ability of a policyholder to keep a policy
768 in force over a secondary guarantee period;

769 c. Variable annuities with guaranteed death or living
770 benefits;

771 d. Long-term care insurance policies; or

772 e. Such other life and health insurance and annuity
773 products as to which the NAIC adopts model regulatory
774 requirements with respect to credit for reinsurance.

775 (b) A rule adopted under subparagraphs a or b of
776 paragraph (a) of this subdivision may apply to any treaty
777 containing policies issued on or after January 1, 2015, or
778 policies issued prior to January 1, 2015, if risk pertaining
779 to such pre-2015 policies is ceded in connection with the
780 treaty, in whole or in part, on or after January 1, 2015.

781 (c) A rule adopted under this subdivision may require
782 the ceding insurer, in calculating the amounts or forms of
783 security required to be held under rules promulgated under
784 this authority, to use the valuation manual adopted in
785 accordance with subsection 6 of section 376.380, including
786 all amendments adopted thereto and in effect on the date as
787 of which the calculation is made, to the extent applicable.

788 (d) A regulation adopted under this subdivision shall
789 not apply to cessions to an assuming insurer that:

790 a. Meets the conditions set forth in subdivision (6)
791 of subsection 1 of this section, or if this state has not
792 fully implemented provisions substantially equivalent to
793 subdivision (6) of subsection 1 of this section by rule or
794 otherwise, the assuming insurer is operating in accordance

795 with provisions substantially equivalent to subdivision (6)
796 of subsection 1 of this section in a minimum of five other
797 states;

798 b. Is certified in this state; or

799 c. Maintains at least two hundred fifty million
800 dollars in capital and surplus when determined in accordance
801 with the NAIC Accounting Practices and Procedures Manual,
802 including all amendments thereto adopted by the NAIC,
803 excluding the impact of any permitted or prescribed
804 practices, and is:

805 (i) Licensed in at least twenty-six states; or

806 (ii) Licensed in at least ten states, and licensed or
807 accredited in a total of at least thirty-five states.

808 (e) The authority to adopt regulations under this
809 subdivision does not limit the director's general authority
810 to adopt regulations under subdivision (1) of this
811 subsection.

812 5. (1) The director shall disallow any credit as an
813 asset or as a deduction from liability for any reinsurance
814 found by him to have been arranged for the purpose
815 principally of deception as to the ceding company's
816 financial condition as of the date of any financial
817 statement of the company. Without limiting the general
818 purport of this provision, reinsurance of any substantial
819 part of the company's outstanding risks contracted for in
820 fact within four months prior to the date of any such
821 financial statement and cancelled in fact within four months
822 after the date of such statement, or reinsurance under which
823 the assuming insurer bears no substantial insurance risk or
824 substantial risk of net loss to itself, shall prima facie be
825 deemed to have been arranged for the purpose principally of
826 deception within the intent of this provision.

827 (2) (a) The director shall also disallow as an asset
828 or deduction from liability to any ceding insurer any credit
829 for reinsurance unless the reinsurance is payable to the
830 ceding company, and if it be insolvent to its receiver, by
831 the assuming insurer on the basis of the liability of the
832 ceding company under the contracts reinsured without
833 diminution because of the insolvency of the ceding company.

834 (b) Such payments shall be made directly to the ceding
835 insurer or to its domiciliary liquidator except:

836 a. Where the contract of insurance or reinsurance
837 specifically provides for payment to the named insured,
838 assignee or named beneficiary of the policy issued by the
839 ceding insurer in the event of the insolvency of the ceding
840 insurer; or

841 b. Where the assuming insurer, with the consent of it
842 and the direct insured or insureds in an assumption
843 reinsurance transaction subject to sections 375.1280 to
844 375.1295, has assumed such policy obligations of the ceding
845 insurer as direct obligations of the assuming insurer to the
846 payees under such policies and in substitution for the
847 obligations of the ceding insurer to such payees.

848 (c) Notwithstanding paragraphs (a) and (b) of this
849 subdivision, in the event that a life and health insurance
850 guaranty association has made the election to succeed to the
851 rights and obligations of the insolvent insurer under the
852 contract of reinsurance, then the reinsurer's liability to
853 pay covered reinsured claims shall continue under the
854 contract of reinsurance, subject to the payment to the
855 reinsurer of the reinsurance premiums for such coverage.
856 Payment for such reinsured claims shall only be made by the
857 reinsurer pursuant to the direction of the guaranty
858 association or its designated successor. Any payment made
859 at the direction of the guaranty association or its

860 designated successor by the reinsurer will discharge the
861 reinsurer of all further liability to any other party for
862 such claim payment.

863 (d) The reinsurance agreement may provide that the
864 domiciliary liquidator of an insolvent ceding insurer shall
865 give written notice to the assuming insurer of the pendency
866 of a claim against such ceding insurer on the contract
867 reinsured within a reasonable time after such claim is filed
868 in the liquidation proceeding. During the pendency of such
869 claim, any assuming insurer may investigate such claim and
870 interpose, at its own expense, in the proceeding where such
871 claim is to be adjudicated any defenses which it deems
872 available to the ceding insurer, or its liquidator. Such
873 expense may be filed as a claim against the insolvent ceding
874 insurer to the extent of a proportionate share of the
875 benefit which may accrue to the ceding insurer solely as a
876 result of the defense undertaken by the assuming insurer.
877 Where two or more assuming insurers are involved in the same
878 claim and a majority in interest elect to interpose a
879 defense to such claim, the expense shall be apportioned in
880 accordance with the terms of the reinsurance agreement as
881 though such expense had been incurred by the ceding insurer.

882 6. To the extent that any reinsurer of an insurance
883 company in liquidation would have been required under any
884 agreement pertaining to reinsurance to post letters of
885 credit or other security prior to an order of liquidation to
886 cover such reserves reflected upon the last financial
887 statement filed with a regulatory authority immediately
888 prior to receivership, such reinsurer shall be required to
889 post letters of credit or other security to cover reserves
890 after a company has been placed in liquidation or
891 receivership. If a reinsurer shall fail to post letters of
892 credit or other security as required by a reinsurance

893 agreement or the provisions of this subsection, the director
894 may consider disallowing as a credit or asset, in whole or
895 in part, any future reinsurance ceded to such reinsurer by a
896 ceding insurance company that is incorporated under the laws
897 of the state of Missouri.

898 7. The provisions of section 375.420 shall not apply
899 to any action, suit or proceeding by a ceding insurer
900 against an assuming insurer arising out of a contract of
901 reinsurance effectuated in accordance with the laws of
902 Missouri.

903 8. Notwithstanding any other provision of this
904 section, a domestic insurer may take credit for reinsurance
905 ceded either as an asset or a reduction from liability only
906 to the extent such credit is allowed by the consistent
907 application of either applicable statutory accounting
908 principles adopted by the NAIC or other accounting
909 principles approved by the director.

910 9. The director may suspend the accreditation,
911 approval, or certification under subsection 1 of this
912 section of any reinsurer for failure to comply with the
913 applicable requirements of subsection 1 of this section
914 after providing the affected reinsurer with notice and
915 opportunity for hearing.

376.2080. 1. As used in this chapter and chapter 375,
2 the term "funding agreement" means an agreement for an
3 insurer to accept and accumulate funds and to make one or
4 more payments at future dates in amounts that are not based
5 on mortality or morbidity contingencies of the person to
6 whom the funding agreement is issued. A funding agreement
7 shall not be deemed to constitute a security, as such term
8 is defined in section 409.1-102.

9 2. A life insurance company formed under this chapter
10 may issue funding agreements. The issuance of a funding
11 agreement shall be deemed to be doing insurance business.

12 3. A funding agreement shall be a class 2 claim under
13 subdivision (2) of section 375.1218.

14 4. The director may promulgate rules as necessary for
15 the implementation of this section. Any rule or portion of
16 a rule, as that term is defined in section 536.010, that is
17 created under the authority delegated in this section shall
18 become effective only if it complies with and is subject to
19 all of the provisions of chapter 536 and, if applicable,
20 section 536.028. This section and chapter 536 are
21 nonseverable and if any of the powers vested with the
22 general assembly pursuant to chapter 536 to review, to delay
23 the effective date, or to disapprove and annul a rule are
24 subsequently held unconstitutional, then the grant of
25 rulemaking authority and any rule proposed or adopted after
26 August 28, 2021, shall be invalid and void.

379.120. 1. If any insurer refuses to write a policy
2 of automobile insurance, it shall, within thirty days after
3 such refusal, send a written explanation of such refusal to
4 the applicant at his last known address. Notice shall be
5 sent by United States Postal Service certified mail,
6 certificate of mailing, first class mail using Intelligent
7 Mail barcode (IMb), or another mail tracking method used,
8 approved, or accepted by the United States Postal Service.
9 The explanation shall state:

10 (1) The insurer's actual reason for refusing to write
11 the policy, the statement of reason to be sufficiently clear
12 and specific so that a person of average intelligence can
13 identify the basis for the insurer's decision without
14 further inquiry. Generalized terms such as "personal
15 habits", "living conditions", "poor morals", or "violation

16 or accident record" shall not suffice to meet the
17 requirements of this subdivision;

18 (2) That the applicant may be eligible for insurance
19 through the assigned risk plan if other insurance is not
20 available.

21 2. An insurer shall be exempt from the requirements of
22 subsection 1 of this section if the applicant is written on
23 a policy of automobile insurance issued by an affiliate or
24 subsidiary within the same insurance holding company system.

379.1800. 1. Except as provided in subsection 2 of
2 this section, no policy of group personal lines property and
3 casualty insurance shall be issued or delivered in this
4 state unless it conforms to one of the following
5 descriptions:

6 (1) A policy issued to an employer, or to the trustees
7 of a fund established by an employer, which employer or
8 trustees shall be deemed the policyholder, to insure
9 employees of the employer for the benefit of persons other
10 than the employer, subject to the following requirements:

11 (a) The employees eligible for insurance under the
12 policy shall be all of the employees of the employer, or all
13 of any class or classes thereof. The policy may provide
14 that the term "employees" shall include the employees of one
15 or more subsidiary corporations, and the employees,
16 individual proprietors, and partners of one or more
17 affiliated corporations, proprietorships or partnerships if
18 the business of the employer and of the affiliated
19 corporations, proprietorships or partnerships is under
20 common control. The policy may provide that the term
21 "employees" shall include the individual proprietor or
22 partners if the employer is an individual proprietorship or
23 partnership. The policy may provide that the term
24 "employees" shall include directors of a corporate employer

25 and retired employees. A policy issued to insure the
26 employees of a public body may provide that the term
27 "employees" shall include elected or appointed officials;

28 (b) The premium for the policy shall be paid either
29 from the employer's funds or from funds contributed by the
30 insured employees, or from both. A policy on which no part
31 of the premium is to be derived from funds contributed by
32 the insured employees shall insure all eligible employees,
33 except those who reject such coverage in writing;

34 (2) A policy issued to a labor union or similar
35 employee organization, which shall be deemed to be the
36 policyholder, to insure members of the union or organization
37 for the benefit of persons other than the union or
38 organization or any of its officials, representatives or
39 agents, subject to the following requirements:

40 (a) The members eligible for insurance under the
41 policy shall be all of the members of the union or
42 organization, or all of any class or classes thereof;

43 (b) The premium for the policy shall be paid from
44 funds of the union or organization, from funds contributed
45 by the insured members specifically for their insurance, or
46 from both. A policy on which no part of the premium is to
47 be derived from funds contributed by the insured members
48 specifically for their insurance shall insure all eligible
49 members, except those who reject such coverage in writing;

50 (3) A policy issued to a trust, or to the trustees of
51 a fund, established or adopted by two or more employers, or
52 by one or more labor unions or similar employee
53 organizations, or by one or more employers and one or more
54 labor unions or similar employee organizations, which trust
55 or trustees shall be deemed the policyholder, to insure
56 employees of the employers or members of the unions or
57 organizations for the benefit of persons other than the

58 employers or the unions or organizations, subject to the
59 following requirements:

60 (a) The persons eligible for insurance shall be all of
61 the employees of the employers or all of the members of the
62 unions or organizations, or all of any class or classes
63 thereof. The policy may provide that the term "employees"
64 shall include the employees of one or more subsidiary
65 corporations, and the employees, individual proprietors, and
66 partners of one or more affiliated corporations,
67 proprietorships or partnerships if the business of the
68 employer and of such affiliated corporations,
69 proprietorships or partnerships is under common control.
70 The policy may provide that the term "employees" shall
71 include the individual proprietor or partners if the
72 employer is an individual proprietorship or partnership.
73 The policy may provide that the term "employees" shall
74 include directors of a corporate employer and retired
75 employees. The policy may provide that the term "employees"
76 shall include the trustees or their employees, or both, if
77 their duties are principally connected with such trusteeship;

78 (b) The premium for the policy shall be paid from
79 funds contributed by the employer or employers of the
80 insured persons, by the union or unions or similar employee
81 organizations, or by both, or from funds contributed by the
82 insured persons or from both the insured persons and the
83 employers or unions or similar employee organizations. A
84 policy on which no part of the premium is to be derived from
85 funds contributed by the insured persons specifically for
86 their insurance shall insure all eligible persons, except
87 those who reject such coverage in writing;

88 (4) A policy issued to an association or to a trust or
89 to the trustees of a fund established, created or maintained
90 for the benefit of members of one or more associations. The

91 association or associations shall have at the outset a
92 minimum of one hundred persons and have been organized and
93 maintained in good faith for purposes other than that of
94 obtaining insurance, shall have been in active existence for
95 at least one year, and shall have a constitution and bylaws
96 which provide that:

97 (a) The association or associations hold regular
98 meetings not less than annually to further purposes of the
99 members;

100 (b) The association or associations collect dues or
101 solicit contributions from members; and

102 (c) The members have voting privileges and
103 representation on the governing board and committees.

104 Policies under this subdivision shall be subject to the
105 following requirements:

106 a. The policy may insure members of the association or
107 associations, employees thereof or employees of members, or
108 one or more of the preceding or all of any class or classes
109 thereof for the benefit of persons other than the employees'
110 employer;

111 b. The premium for the policy shall be paid from funds
112 contributed by the association or associations, or by
113 employer members, or by both, or from funds contributed by
114 the insured persons or from both the insured persons and the
115 association, associations, or employer members. A policy on
116 which no part of the premium is to be derived from funds
117 contributed by the insured persons specifically for their
118 insurance shall insure all eligible persons, except those
119 who reject such coverage in writing;

120 c. If compensation of any kind will or may be paid to
121 the policyholder in connection with the group policy, the
122 insurer shall cause to be distributed to prospective

123 insureds a written notice that compensation will or may be
124 paid. Such notice shall be distributed:
125 (i) Whether compensation is direct or indirect; and
126 (ii) Whether such compensation is paid to or retained
127 by the policyholder, or paid to or retained by a third party
128 at the direction of the policyholder or any entity
129 affiliated with the policyholder by ownership, contract or
130 employment.

131 The notice required by this subparagraph shall be placed on
132 or accompany any document designed for the enrollment of
133 prospective insureds;

134 Under this subsection, the definition of an eligible
135 employee or member may include the spouse of the eligible
136 employee or member.

137 2. Group personal lines property and casualty
138 insurance offered to a resident of this state under a group
139 personal lines property and casualty insurance policy issued
140 or delivered to a group other than one described in
141 subsection 1 of this section shall be subject to the
142 following requirements:

143 (1) No such group personal lines property and casualty
144 insurance policy shall be issued or delivered in this state
145 unless the director finds that:

146 (a) The issuance of the group policy is not contrary
147 to the best interest of the public;

148 (b) The issuance of the group policy would result in
149 economies of acquisition or administration; and

150 (c) The benefits are reasonable in relation to the
151 premiums charged;

152 (2) No group personal lines property and casualty
153 insurance coverage shall be offered in this state by an
154 insurer under a policy issued or delivered in another state

155 unless this state or another state having requirements
156 substantially similar to those contained in subdivision (1)
157 of this subsection has made a determination that the
158 requirements have been met;

159 (3) The premium for a group personal lines property
160 and casualty policy shall be paid from the policyholder's
161 funds, from funds contributed by the covered persons, or
162 from both;

163 (4) If compensation of any kind will or may be paid to
164 the policyholder in connection with the group policy, the
165 insurer shall cause to be distributed to prospective
166 insureds, a written notice that compensation will or may be
167 paid. Notice shall be distributed:

168 (a) Whether compensation is direct or indirect; and

169 (b) Whether such compensation is paid to or retained
170 by the policyholder, or paid to or retained by a third party
171 at the direction of the policyholder or any entity
172 affiliated with the policyholder by ownership, contract or
173 employment.

174 The notice required by this subsection shall be placed on or
175 accompany any document designed for the enrollment of
176 prospective insureds.

379.1803. 1. A master policy shall be issued to the
2 policyholder. Eligible employees or members insured under
3 the master policy shall receive certificates of coverage
4 setting forth a statement as to the insurance protection to
5 which they are entitled.

6 2. No master policy or certificate of insurance shall
7 be issued or delivered in this state unless the master
8 policy form, together with all forms for riders,
9 certificates and endorsements to the master policy form,
10 shall have met the applicable filing requirements in this
11 state. No subsequent amendments to the master policy form

12 or forms for riders, certificates and endorsements to the
13 master policy form shall be issued or delivered until they
14 have met the applicable filing requirements in this state.

15 3. The master policy shall set forth the coverages,
16 exclusions and conditions of the insurance provided therein,
17 together with the terms and conditions of the agreement
18 between the policyholder and the insurer. The master policy
19 shall make express provisions for the following:

- 20 (1) Methods of premium collection;
21 (2) Enrollment period, effective date provisions and
22 eligibility standards for employees or members;
23 (3) Termination of the master policy; and
24 (4) Conversion privileges of the employees or members.

25 4. If the master policy provides for remittance of
26 premium by the policyholder, failure of the policyholder to
27 remit premiums when due shall not be regarded as nonpayment
28 of premium by the employee or member who has made his or her
29 contribution on a timely basis.

379.1806. 1. The master policy shall provide a basic
2 package of coverages and limits that are available to all
3 eligible employees or members. The package shall include at
4 least the minimum coverages and limits of insurance as
5 required by law in that employee's or member's state of
6 residence or in the state where the subject property is
7 located, if applicable. In addition, the master policy may
8 provide additional coverages or limits to be available at an
9 increased premium to employees or members who qualify under
10 the terms of the master policy.

11 2. The master policy shall provide coverage for all
12 eligible employees or members who elect coverage during
13 their initial period of eligibility, which period shall not
14 be less than thirty-one days. Employees or members who do
15 not elect coverage during the initial period and later

16 request coverage shall be subject to the insurer's
17 underwriting standards.

18 3. Coverage under the master policy may be reduced
19 only as to all members of a class, and shall never be
20 reduced to a level below the limits required by applicable
21 law.

22 4. Coverage under the master policy may be terminated
23 as to an employee or member only for:

24 (1) Failure of the employee or member to make required
25 premium contributions;

26 (2) Termination of the master policy in its entirety
27 or as to the class to which the employee or member belongs;

28 (3) Discontinuance of the employee's or member's
29 membership in a class eligible for coverage; or

30 (4) Termination of employment or membership.

31 5. If optional coverages or limits are available by
32 law in an employee's or member's state of residence, the
33 policyholder's acceptance or rejection of the optional
34 coverages or limits on behalf of the group shall be binding
35 on the employees or members. If the policyholder rejects
36 any coverages or limits that are required by law to be
37 provided unless rejected by the named insured, notice of the
38 rejection shall be given to the employees or members at or
39 before the time their certificates of coverage are delivered.

40 6. Stacking of coverages or limits among separate
41 certificates of insurance is prohibited under a master
42 policy of group personal lines property and casualty
43 insurance; except that, if separate certificates under the
44 same master policy are issued to relatives living in the
45 same household, the state law pertaining to stacking of
46 individual policies shall apply to those certificates.

379.1809. 1. No master policy or certificate of
2 insurance shall be issued or delivered in this state unless

3 the rating plan and amendments thereto used in the
4 determination of the master policy premium have met the
5 applicable filing requirements in this state.

6 2. Group insurance premium rates shall not be deemed
7 unfairly discriminatory if adjusted to reflect past and
8 prospective loss experience or group expense factors, or if
9 averaged broadly among persons insured under the master
10 policy. Nor shall such rates be deemed to be unfairly
11 discriminatory if they do not reflect individual rating
12 factors including surcharges and discounts required for
13 individual personal lines property and casualty insurance
14 policies.

15 3. Experience refunds or dividends may be paid to the
16 policyholder of a group personal lines property and casualty
17 insurance policy if the insurer's experience under that
18 policy justifies experience refunds or dividends. However,
19 if an experience refund or dividend is declared, it shall be
20 applied by the policyholder for the sole benefit of the
21 insured employees or members to the extent that the
22 experience refund or dividend exceeds the policyholder's
23 contribution to premium for the period covered by such
24 experience refund or dividend.

379.1812. 1. An insurer issuing or delivering group
2 personal lines property and casualty insurance shall
3 maintain separate statistics as to the loss and expense
4 experience pertinent thereto.

5 2. No insurer shall issue or deliver a group personal
6 lines property and casualty insurance policy if it is a
7 condition of employment or of membership in a group that any
8 employee or member purchase insurance pursuant to the
9 policy, or if any employee or member shall be subject to any
10 penalty by reason of his or her non-participation.

11 3. (1) No insurer shall issue or deliver a group
12 personal lines property and casualty insurance policy if:

13 (a) The purchase of insurance available under the
14 policy is contingent upon the purchase of any other
15 insurance, product, or service; or

16 (b) The purchase or price of any other insurance,
17 product, or service is contingent upon the purchase of
18 insurance available under the group personal lines property
19 and casualty insurance policy.

20 (2) Subdivision (1) of this subsection shall not be
21 deemed to prohibit the reasonable requirement of safety
22 devices, such as heat detectors, lightning rods, theft
23 prevention equipment and the like. Neither shall
24 subdivision (1) of this subsection be deemed to prohibit the
25 marketing of "package" or "combination" policies.

26 4. The insurer's experience from its group personal
27 lines property and casualty insurance policies shall be
28 included in the determination of the insurer's participation
29 in the applicable residual market plans.

30 5. For purposes of premium taxes, the insurer shall
31 allocate premiums in accordance with the rules applicable to
32 individual personal lines property and casualty insurance
33 policies, except that any required allocation may be based
34 on an annual survey of insureds. Premiums shall be
35 apportioned among states without differentiation between
36 policyholder or employee or member contributions.

379.1815. 1. No person shall act in this state as an
2 insurance agent or broker in connection with the
3 solicitation, negotiation or sale of a group personal lines
4 property and casualty insurance policy unless the person is
5 duly licensed under sections 375.012 to 375.146 as an
6 insurance producer for the applicable lines of insurance.
7 However, none of the following activities engaged in by the

8 insurer or its employees, or the policyholder or its
9 employees, shall require the licensing of such entities or
10 persons as insurance producers:

11 (1) Endorsement or recommendation of the master policy
12 to employees or members;

13 (2) Distribution to employees or members, by mail or
14 otherwise, of information pertaining to the master policy;

15 (3) Collection of contributions toward premium through
16 payroll deductions or other appropriate means, and
17 remittance of the premium to an insurer; or

18 (4) Receipt of reimbursement from an insurer for
19 actual, reasonable expenses incurred for administrative
20 services which would otherwise be performed by the insurer
21 with respect to the master policy. However, nothing herein
22 shall supersede any applicable law or regulation that
23 prohibits or regulates splitting of commissions with
24 unlicensed persons, or rebating commissions or premiums.

25 2. No countersignature requirements shall apply to a
26 group personal lines property and casualty insurance policy
27 that is issued or delivered in this state pursuant to the
28 provisions of sections 379.1800 to 379.1824.

379.1818. 1. Each employee or member covered under
2 the master policy whose coverage thereunder terminates for
3 any reason other than the failure to make required
4 contributions toward premiums or at the request of the
5 employee or member, shall receive from the insurer thirty
6 days prior written notice of termination or ineligibility.
7 The notice shall state the reasons for discontinuance of
8 coverage under the master policy, and shall explain the
9 employee's or member's options for conversion to an
10 individual policy.

11 2. If, within thirty days after receipt of notice of
12 termination or ineligibility, application is made and the

13 first premium is paid to the insurer, the employee or member
14 shall be entitled to have issued to him or her by the
15 insurer, or an affiliate within the same group of insurers,
16 an individual policy, effective upon termination or
17 ineligibility, with coverages and limits at least equal to
18 the minimum coverages and limits of insurance as required by
19 the applicable state law.

20 3. No individual notice of termination as provided in
21 subsection 1 of this section and no conversion privilege as
22 provided in subsection 2 of this section shall be required
23 if the master policy is replaced by another master policy
24 within thirty days. Coverage under the prior master policy
25 shall terminate when the replacement master policy becomes
26 effective.

379.1821. 1. No master policy or certificate of
2 insurance shall be issued or delivered in this state unless
3 issued or delivered by an insurer which is duly licensed in
4 this state to write the lines of insurance covered by the
5 master policy.

6 2. The provisions of sections 379.1800 to 379.1824
7 shall not apply to the mass marketing or any other type of
8 marketing of individual personal lines property and casualty
9 insurance policies.

10 3. Sections 379.1800 to 379.1824 shall not apply to
11 policies of credit property or credit casualty insurance
12 which insure the debtors of a creditor or creditors with
13 respect to their indebtedness.

14 4. Sections 379.1800 to 379.1824 shall not apply to
15 policies of personal automobile insurance or personal motor
16 vehicle liability insurance, nor shall such sections be
17 construed as authorizing the sale or issuance of personal
18 automobile insurance or personal motor vehicle liability
19 insurance under a group or master policy within this state.

20 5. Nothing in sections 379.1800 to 379.1824 shall
21 limit the authority of the director with respect to
22 complaints or disputes involving residents of this state
23 arising out of a master policy that has been issued or
24 delivered in another state.

25 6. The director may promulgate rules as necessary to
26 implement and administer the provisions of sections 379.1800
27 to 379.1824. Any rule or portion of a rule, as that term is
28 defined in section 536.010, that is created under the
29 authority delegated in this section shall become effective
30 only if it complies with and is subject to all of the
31 provisions of chapter 536 and, if applicable, section
32 536.028. This section and chapter 536 are nonseverable and
33 if any of the powers vested with the general assembly
34 pursuant to chapter 536 to review, to delay the effective
35 date, or to disapprove and annul a rule are subsequently
36 held unconstitutional, then the grant of rulemaking
37 authority and any rule proposed or adopted after August 28,
38 2021, shall be invalid and void.

379.1824. The provisions of sections 379.1800 to
2 379.1824 shall become effective January 1, 2022. No master
3 policy or certificate of insurance shall be issued or
4 delivered in this state after the effective date unless
5 issued or delivered in compliance with sections 379.1800 to
6 379.1824. A master policy or certificate that is lawfully
7 in effect on January 1, 2022, shall comply with the
8 provisions of sections 379.1800 to 379.1824 within twelve
9 months of such date.