

FIRST REGULAR SESSION

[PERFECTED]

SENATE BILL NO. 101

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CRAWFORD.

0898S.02P

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 379, RSMo, by adding thereto eleven new sections relating to lender-placed insurance.

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

Section A. Chapter 379, RSMo, is amended by adding thereto
2 eleven new sections, to be known as sections 379.1850, 379.1851,
3 379.1853, 379.1855, 379.1857, 379.1859, 379.1861, 379.1863,
4 379.1865, 379.1867, and 379.1869, to read as follows:

**379.1850. 1. Sections 379.1850 to 379.1869 shall
2 apply to insurers and insurance producers engaged in any
3 transaction involving lender-placed insurance, as defined in
4 section 379.1851.**

**2. All lender-placed insurance written in connection
6 with mortgaged real property, including manufactured homes
7 and modular units, as defined in section 700.010, is subject
8 to the provisions of sections 379.1850 to 379.1869, except:**

**9 (1) Transactions involving extensions of credit
10 primarily for business, commercial, or agricultural purposes;**

**11 (2) Insurance offered by the lender or servicer and
12 elected by the mortgagor at the mortgagor's option;**

**13 (3) Insurance purchased by a lender or servicer on
14 real estate owned property;**

**15 (4) Insurance for which no specific charge is made to
16 the mortgagor or the mortgagor's account.**

379.1851. As used in sections 379.1850 to 379.1869,
2 the following terms shall mean:

3 (1) "Affiliate", a person who directly, or indirectly
4 through one or more intermediaries, controls, is controlled
5 by, or is under common control with, the person specified;

6 (2) "Individual lender-placed insurance", coverage for
7 individual real property evidenced by a certificate of
8 coverage under a master lender-placed insurance policy or a
9 lender-placed insurance policy for individual real property;

10 (3) "Insurance producer", a person or entity, or its
11 affiliates, required to be licensed under the laws of this
12 state to sell, solicit, or negotiate insurance;

13 (4) "Insurer", an insurance company, association, or
14 exchange, or its affiliates, authorized to issue lender-
15 placed insurance in this state;

16 (5) "Investor", a person or entity, or its affiliates,
17 holding a beneficial interest in loans secured by real
18 property;

19 (6) "Lapse", the moment in time in which a mortgagor
20 has failed to secure or maintain valid or sufficient
21 insurance upon mortgaged real property as required by a
22 mortgage agreement;

23 (7) "Lender", a person or entity, or its affiliates,
24 making loans secured by an interest in real property;

25 (8) "Lender-placed insurance", insurance obtained by a
26 lender or servicer when a mortgagor does not maintain valid
27 or sufficient insurance upon mortgaged real property as
28 required by the terms of the mortgage agreement. Such term
29 shall include insurance purchased unilaterally by the lender
30 or servicer, who is the named insured, subsequent to the
31 date of the credit transaction, providing coverage against
32 loss, expense, or damage to collateralized property as a

33 result of fire, theft, collision, or other risks of loss
34 that would either impair a lender, servicer, or investor's
35 interest, or adversely affect the value of collateral
36 covered by limited dual interest insurance. Such term is
37 limited to insurance purchased according to the terms of a
38 mortgage agreement as a result of the mortgagor's failure to
39 provide evidence of required insurance;

40 (9) "Loss ratio", the ratio of incurred losses to
41 earned premium;

42 (10) "Master lender-placed policy", a group policy
43 issued to a lender or servicer providing coverage for all
44 loans in the lender or servicer's loan portfolio as needed;

45 (11) "Mortgage agreement", the written document that
46 sets forth an obligation or liability of any kind secured by
47 a lien on real property and due from, owing, or incurred by
48 a mortgagor to a lender on account of a mortgage loan,
49 including a security agreement, deed of trust, or any other
50 document of similar effect, and any other documents
51 incorporated by reference;

52 (12) "Mortgage loan", a loan, advance, guarantee, or
53 other extension of credit from a lender to a mortgagor;

54 (13) "Mortgage transaction", a transaction by the
55 terms of which the repayment of money loaned or payment of
56 real property sold is to be made at a future date or dates;

57 (14) "Mortgagee", the person who holds mortgaged real
58 property as security for repayment of a mortgage agreement;

59 (15) "Mortgagor", the person who is obligated on a
60 mortgage loan pursuant to a mortgage agreement;

61 (16) "Person", an individual or entity;

62 (17) "Real estate owned property", property owned or
63 held by a lender or servicer following foreclosure under the

64 related mortgage agreement or the acceptance of a deed in
65 lieu of foreclosure;

66 (18) "Replacement cost value" or "RCV", the estimated
67 cost to replace covered property at the time of the loss or
68 damage without deduction for depreciation. Replacement cost
69 value is not market value, but it is instead the cost to
70 replace covered property to its pre-loss condition, as best
71 determined under section 379.1855;

72 (19) "Servicer", a person or entity, or its
73 affiliates, contractually obligated to service one or more
74 mortgage loans for a lender or investor. Such term shall
75 include entities involved in subservicing arrangements.

379.1853. 1. Lender-placed insurance shall become
2 effective no earlier than the date of lapse of insurance
3 upon mortgaged real property subject to the terms of a
4 mortgage agreement or any other state or federal law
5 requiring the same.

6 2. Individual lender-placed insurance shall terminate
7 on the earliest of the following dates:

8 (1) The date insurance that is acceptable under the
9 mortgage agreement becomes effective, subject to the
10 mortgagor providing sufficient evidence of such acceptable
11 insurance;

12 (2) The date the applicable real property no longer
13 serves as collateral for a mortgage loan pursuant to a
14 mortgage agreement;

15 (3) Such other date as specified by the individual
16 policy or certificate of insurance;

17 (4) Such other date as specified by the lender or
18 servicer; or

19 (5) The termination date of the policy.

20 3. An insurance charge shall not be made to a
21 mortgagor for lender-placed insurance for a term longer than
22 the scheduled term of the lender-placed insurance, nor shall
23 an insurance charge be made to the mortgagor for lender-
24 placed insurance before the effective date of the lender-
25 placed insurance.

 379.1855. 1. Any lender-placed insurance coverage,
2 and subsequent calculation of premium, should be based upon
3 the replacement cost value of the property. Replacement
4 cost value of the property shall be determined as follows:

5 (1) The dwelling coverage amount set forth in the most
6 recent evidence of insurance coverage provided by the
7 mortgagor ("last known coverage amount" or "LKCA"), if known
8 to the lender or servicer;

9 (2) The insurer shall inquire of the insured at least
10 once as to the LKCA, and if it is not able to obtain the
11 LKCA from the insured or in another manner, the replacement
12 cost value may be determined as set forth in subdivision (3)
13 or (4) of this subsection;

14 (3) If the LKCA is unknown and cannot be obtained from
15 the insured or in another manner, the replacement cost of
16 the property serving as collateral as calculated by the
17 insurer, unless the use of replacement cost for this purpose
18 is prohibited by other law;

19 (4) If the LKCA is unknown and cannot be obtained from
20 the insured or in another manner, and the replacement cost
21 is not available or its use is prohibited, the unpaid
22 principal balance of the mortgage loan.

23 2. In the event of a covered loss, any replacement
24 cost coverage provided by an insurer in excess of the unpaid
25 principal balance of the mortgage loan shall be paid to the
26 mortgagor.

27 3. No insurer shall write lender-placed insurance for
28 which the premium rate differs from that determined by the
29 schedules of the insurer on file with the department of
30 commerce and insurance as of the effective date of the
31 policy.

379.1857. 1. No insurer or insurance producer shall
2 issue lender-placed insurance on mortgaged property if the
3 insurer or insurance producer, or an affiliate of the
4 insurer or insurance producer, owns, performs the servicing
5 for, or owns the servicing right to, the mortgaged property.

6 2. No insurer or insurance producer shall compensate a
7 lender, insurer, investor, or servicer, including through
8 the payment of commissions, for lender-placed insurance
9 policies issued by the insurer.

10 3. No insurer or insurance producer shall share lender-
11 placed insurance premium or risk with the lender, investor,
12 or servicer that obtained the lender-placed insurance.

13 4. No insurer or insurance producer shall offer
14 contingent commissions, profit sharing, or other payments
15 dependent on profitability or loss ratios to any person
16 affiliated with a servicer or the insurer in connection with
17 lender-placed insurance.

18 5. No insurer shall provide free or below-cost
19 outsourced services to lenders, investors, or servicers, and
20 no insurer shall outsource its own functions to lenders,
21 insurance producers, investors, or servicers on an above-
22 cost basis.

23 6. No insurer or insurance producer shall make any
24 payments, including but not limited to the payment of
25 expenses to a lender, insurer, investor, or servicer, for
26 the purpose of securing lender-placed insurance business or
27 related outsourced services.

379.1859. Nothing in sections 379.1850 to 379.1869
2 shall be construed to allow an insurance producer or an
3 insurer solely underwriting lender-placed insurance to
4 circumvent the requirements set forth within those
5 sections. Any part of any requirements, limitations, or
6 exclusions provided in sections 379.1850 to 379.1869 shall
7 apply in any part to any insurer or insurance producer
8 involved in lender-placed insurance.

379.1861. Lender-placed insurance shall be set forth
2 in an individual policy or certificate of insurance. A copy
3 of the individual policy, certificate of insurance, or other
4 evidence of insurance coverage shall be mailed, first class
5 mailed, or delivered in person to the last known address of
6 the mortgagor, or delivered in accordance with sections
7 432.200 to 432.295. In addition to any information
8 otherwise required by law, the individual policy or
9 certificate of insurance coverage shall include the
10 following information:

- 11 (1) The address and identification of the insured
12 property;
- 13 (2) The coverage amount, or amounts if multiple
14 coverages are provided;
- 15 (3) The effective date of the coverage;
- 16 (4) The term of coverage;
- 17 (5) The premium charge for the coverage;
- 18 (6) Contact information for filing a claim; and
- 19 (7) A complete description of the coverage provided.

379.1863. 1. All policy forms and certificates of
2 insurance to be delivered or issued for delivery in this
3 state, and the schedules of premium rates pertaining
4 thereto, shall be filed with the department of commerce and
5 insurance.

6 2. The department of commerce and insurance shall
7 review the rates to determine whether the rates are
8 excessive, inadequate, or unfairly discriminatory. This
9 analysis shall include a determination as to whether
10 expenses included by the insurer in the rate are appropriate.

11 3. All insurers shall re-file lender-placed insurance
12 rates at least once every four years.

13 4. All insurers writing lender-placed insurance shall
14 have separate rates for lender-placed insurance and
15 voluntary insurance obtained by a mortgage servicer on real
16 estate owned property.

17 5. Upon the introduction of a new lender-placed
18 insurance program, the insurer shall reference its
19 experience in existing programs in the associated filings.
20 Nothing in sections 379.1850 to 379.1869 shall limit an
21 insurer's discretion, as actuarially appropriate, to
22 distinguish different terms, conditions, exclusions,
23 eligibility criteria, or other unique or different
24 characteristics. Moreover, an insurer may, where
25 actuarially acceptable, rely upon models or, in the case of
26 flood filings where applicable experience is not credible,
27 on Federal Emergency Management Agency National Flood
28 Insurance Program data.

29 6. (1) No later than April first of each year, each
30 insurer with at least one hundred thousand dollars in direct
31 written premium for lender-placed insurance in this state
32 during the prior calendar year shall report to the
33 department of commerce and insurance the following
34 information for the prior calendar year:

35 (a) Actual loss ratio;

36 (b) Earned premium;

37 (c) Any aggregate schedule rating debit or credit to
38 earned premium;

39 (d) Itemized expenses;

40 (e) Paid losses;

41 (f) Loss reserves, including case reserves and
42 reserves for incurred but not reported losses.

43 (2) The report under subdivision (1) of this
44 subsection shall be separately produced for each lender-
45 placed program and presented on both an individual-
46 jurisdiction and countrywide basis.

47 7. If an insurer experiences an annual loss ratio of
48 less than thirty five percent in any lender-placed program
49 for two consecutive years, it shall submit a rate filing,
50 either adjusting its rates or supporting their continuance,
51 to the department of commerce and insurance no more than
52 ninety days after the submission of the data required in
53 subsection 6 of this section. This subsection shall not
54 apply with regard to lender-placed flood insurance.

55 8. Except as otherwise specifically set forth in this
56 section, rates and forms shall be filed as required under
57 the insurance laws of this state.

379.1865. 1. (1) The director of the department of
2 commerce and insurance shall have authority to enforce the
3 provisions of sections 379.1850 to 379.1869 as specified in
4 chapter 374.

5 (2) A final order of the director enforcing sections
6 379.1850 to 379.1869 shall be subject to judicial review in
7 accordance with the provisions of chapter 536 in the circuit
8 court of Cole County.

9 (3) No order of the director enforcing sections
10 379.1850 to 379.1869 or order of a court to enforce the same
11 shall in any way relieve or absolve any person affected by

12 such order from any liability under any other laws of this
13 state.

14 2. Nothing in sections 379.1850 to 379.1869 shall be
15 construed to create or imply a private cause of action for
16 violations of sections 379.1850 to 379.1869.

17 3. Nothing in sections 379.1850 to 379.1869 shall be
18 construed to extinguish any mortgagor rights otherwise
19 available under state, federal, or common law.

379.1867. An insurer that violates an order of the
2 director while the order is in effect may, after notice and
3 hearing and upon order of the director, be subject at the
4 discretion of the director to either or both of the
5 following:

6 (1) Payment of a monetary penalty of not more than one
7 thousand dollars per violation, not to exceed an aggregate
8 penalty of one hundred thousand dollars, unless the
9 violation was committed flagrantly in a conscious disregard
10 of sections 379.1850 to 379.1869, in which case the penalty
11 shall not be more than twenty-five thousand dollars for each
12 violation, not to exceed an aggregate penalty of two hundred
13 fifty thousand dollars; or

14 (2) Suspension or revocation of the insurer's license.

379.1869. The department of commerce and insurance may
2 promulgate rules as necessary for the implementation of
3 sections 379.1850 to 379.1869. Any rule or portion of a
4 rule, as that term is defined in section 536.010, that is
5 created under the authority delegated in this section shall
6 become effective only if it complies with and is subject to
7 all of the provisions of chapter 536 and, if applicable,
8 section 536.028. This section and chapter 536 are
9 nonseverable and if any of the powers vested with the
10 general assembly pursuant to chapter 536 to review, to delay

11 the effective date, or to disapprove and annul a rule are
12 subsequently held unconstitutional, then the grant of
13 rulemaking authority and any rule proposed or adopted after
14 August 28, 2023, shall be invalid and void.

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