

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 834
102ND GENERAL ASSEMBLY

3270H.07C

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 374.190, RSMo, and to enact in lieu thereof five new sections relating to reinsurance and examinations of insurance companies.

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

Section A. Section 374.190, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 374.190, 374.192, 375.1183, 380.621, and 380.631, to read as follows:

374.190. 1. The director shall examine and inquire into all violations of the insurance laws of the state, and inquire into and investigate the business of insurance transacted in this state by any insurance agent, broker, agency or insurance company.

2. He or any of his duly appointed agents may compel the attendance before him, and may examine, under oath, the directors, officers, agents, employees, solicitors, attorneys or any other person, in reference to the condition, affairs, management of the business, or any matters relating thereto. He may administer oaths or affirmations, and shall have power to summon and compel the attendance of witnesses, and to require and compel the production of records, books, papers, contracts or other documents, if necessary.

3. The director may make and conduct the investigation in person, or he may appoint one or more persons to make and conduct the same for him. If made by another than the director in person, the person duly appointed by the director shall have the same powers as above granted to the director. A certificate of appointment, under the official seal of the director, shall be sufficient authority and evidence thereof for the person or persons to act.

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 For the purpose of making the investigations, or having the same made, the director may
16 employ the necessary clerical, actuarial and other assistance.

17 **4. Notwithstanding any provision of law to the contrary, the confidentiality**
18 **provisions of section 374.205, including subdivision (5) of subsection 3 of section**
19 **374.205, and subsection 4 of section 374.205, shall apply to all reports, working papers,**
20 **recorded information, documents, and copies thereof, produced by, obtained by, or**
21 **disclosed to the director or any other person in the course of any market conduct**
22 **investigation or market conduct action.**

374.192. 1. Notwithstanding any provision of law to the contrary, a regulated
2 **entity shall have not less than thirty calendar days to submit any record or material**
3 **requested by the department. This subsection shall not apply to requests for records or**
4 **materials by the division of consumer affairs or to requests for information on forms**
5 **submitted under section 375.920.**

6 **2. Notwithstanding any provision of law to the contrary, any record or**
7 **document, regardless of physical form or characteristic, maintained beyond the record**
8 **retention period specified in section 374.205 shall not be subject to request or review by**
9 **the director unless the director has substantial and competent evidence that the**
10 **regulated entity has willfully engaged in an act or omission constituting a level four or**
11 **five violation of the laws of this state relating to insurance, including this chapter,**
12 **chapter 354, and chapters 375 to 385, or has been convicted of any felony related to the**
13 **business of insurance, in which case the director may request or review records or**
14 **documents maintained beyond the record retention period specified in section 374.205**
15 **that directly relate to the violation or conviction.**

375.1183. 1. Contracts reinsuring policies of life or health insurance or annuities
2 **referred to in section 375.1178 issued by a ceding insurer that has been placed in**
3 **conservation or rehabilitation proceedings under sections 375.1150 to 375.1246 shall be**
4 **continued or terminated under the terms and conditions of each contract and the**
5 **provisions of this section.**

6 **2. Contracts reinsuring policies of life or health insurance or annuities referred**
7 **to in section 375.1178 issued by a ceding insurer that has been placed into liquidation**
8 **under sections 375.1150 to 375.1246 shall be continued, subject to the provisions of this**
9 **section, unless:**

10 **(1) The contracts were terminated pursuant to their terms prior to the date of**
11 **the order of liquidation; or**

12 **(2) The contracts were terminated pursuant to the order of liquidation, in which**
13 **case the provisions of subsection 9 of this section shall apply.**

14 **3. (1) At any time within one hundred eighty days of the date of the order of**
15 **liquidation, a guaranty association covering policies of life or health insurance or**
16 **annuities referred to in section 375.1178, in whole or in part, may elect to assume the**
17 **rights and obligations of the ceding insurer that relate to the policies or annuities under**
18 **any one or more reinsurance contracts between the ceding insurer and its reinsurers.**
19 **Any such assumption shall be effective as of the date of the order of liquidation. The**
20 **election shall be made by the guaranty association or the national organization of life**
21 **and health insurance guaranty associations on its behalf by sending written notice,**
22 **return receipt requested, to the affected reinsurers.**

23 **(2) To facilitate the decision, the receiver and each affected reinsurer shall make**
24 **available upon request to the guaranty association or to the national organization of life**
25 **and health insurance guaranty associations on its behalf:**

26 **(a) Copies of in-force reinsurance contracts and all related files and records**
27 **relevant to the determination of whether such contracts should be assumed; and**

28 **(b) Notices of any defaults under the reinsurance contracts or any known event**
29 **or condition which with the passage of time could become a default under the**
30 **reinsurance contracts.**

31 **(3) Paragraphs (a) through (d) of this subdivision shall apply to reinsurance**
32 **contracts so assumed by a guaranty association:**

33 **(a) The guaranty association shall be responsible for all unpaid premiums due**
34 **under the reinsurance contracts, for periods both before and after the date of the order**
35 **of liquidation, and shall be responsible for the performance of all other obligations to be**
36 **performed after the date of the order of liquidation.**

37 **(b) The guaranty association shall be entitled to any amounts payable by the**
38 **reinsurer under the reinsurance contracts with respect to losses or events that occur in**
39 **periods on or after the date of the order of liquidation.**

40 **(c) Within thirty days following the date of the guaranty association's election to**
41 **assume a reinsurance contract, the guaranty association and the reinsurer shall**
42 **calculate the balance due to or from the guaranty association under each reinsurance**
43 **contract as of the date of such election, and the guaranty association or reinsurer shall**
44 **pay any remaining balance due the other within thirty-five days of the date of such**
45 **election. Any disputes over the amounts due to either the guaranty association or the**
46 **reinsurer shall be resolved by arbitration pursuant to the terms of the affected**
47 **reinsurance contract or, if the contract contains no arbitration clause, pursuant to the**
48 **provisions of subdivision (3) of subsection 9 of this section.**

49 **(d) If the guaranty association, or receiver on behalf of such guaranty**
50 **association, within sixty days of the date of the guaranty association's election to assume**

51 a reinsurance contract, pays the unpaid premiums due for periods both before and after
52 the date of such election that are due pursuant to the reinsurance contract, the reinsurer
53 shall not be entitled to terminate the reinsurance contract for failure to pay premiums,
54 and shall not be entitled to set off any unpaid amounts due under other contracts, or
55 unpaid amounts due from parties other than the guaranty association, against amounts
56 due such guaranty association.

57 4. If a receiver continues policies of life or health insurance or annuities referred
58 to in section 375.1178 in force following an order of liquidation, and the policies or
59 annuities are not covered in whole or in part by one or more guaranty associations, the
60 receiver may, within one hundred eighty days of the date of the order of liquidation,
61 elect to assume the rights and obligations of the ceding insurer under any one or more of
62 the reinsurance contracts that relate to the policies or annuities, provided the contracts
63 have not been terminated as set forth in subsection 2 of this section. The election shall
64 be made by sending written notice, return receipt requested, to the affected reinsurers.
65 In that event, payment of premiums on the reinsurance contracts for the policies and
66 annuities, for periods both before and after the date of the order of liquidation, shall be
67 chargeable against the estate as a class 1 administrative expense. Amounts paid by the
68 reinsurer on account of losses on the policies and annuities shall be to the estate of the
69 ceding insurer.

70 5. During the period from the date of the order of liquidation until the date the
71 guaranty association or the receiver elects to assume the rights and obligations of the
72 ceding insurer under any one or more of the reinsurance contracts that relate to the
73 policies or annuities as provided for in subsection 3 or 4 of this section, the guaranty
74 association, the receiver, and the reinsurer shall not have any rights or obligations under
75 any reinsurance contract that is eligible for assumption by such association or the
76 receiver.

77 6. (1) If the guaranty association or the receiver, as the case may be, has timely
78 elected to assume a reinsurance contract pursuant to subsection 3 or 4 of this section, as
79 applicable, the parties' rights and obligations shall be governed by the provisions of
80 subsection 3 or 4 of this section, as applicable.

81 (2) Where the guaranty association covering policies of life or health insurance
82 or annuities referred to in section 375.1178 or the receiver, as the case may be, does not
83 timely elect to assume a reinsurance contract pursuant to subsection 3 or 4 of this
84 section, as applicable, the reinsurance contract shall be terminated retroactively
85 effective on the date of the order of liquidation and subsection 9 of this section shall
86 apply.

87 7. When policies of life or health insurance or annuities referred to in section
88 375.1178, or the obligations of the guaranty association with respect thereto, are
89 transferred to an assuming insurer, reinsurance on the policies or annuities may also be
90 transferred by the guaranty association, in the case of contracts assumed under
91 subsection 3 of this section, or the receiver, in the case of contracts assumed under
92 subsection 4 of this section, subject to the following:

93 (1) Unless the reinsurer and the assuming insurer agree otherwise, the
94 reinsurance contract transferred shall not cover any new policies or annuities in
95 addition to those transferred;

96 (2) The obligations described in subsections 3 and 4 of this section shall no
97 longer apply with respect to matters arising after the effective date of the transfer; and

98 (3) Notice shall be given in writing, return receipt requested, by the transferring
99 party to the affected reinsurer not less than thirty days prior to the effective date of the
100 transfer.

101 8. The provisions of this section shall, to the extent provided in sections 375.1150
102 to 375.1246, supersede the provisions of any law or of any affected reinsurance contract
103 that provides for or requires any payment of reinsurance proceeds, on account of losses
104 or events that occur in periods after the date of the order of liquidation, to the receiver
105 of the ceding insurer or any other person. The receiver shall remain entitled to any
106 amounts payable by the reinsurer under the reinsurance contracts with respect to losses
107 or events that occur in periods prior to the date of the order of liquidation, subject to
108 provisions of sections 375.1150 to 375.1246 including applicable setoff provisions.

109 9. When a reinsurance contract is terminated pursuant to sections 375.1150 to
110 375.1246, the reinsurer and the receiver shall commence a mandatory negotiation
111 procedure in accordance with this subsection:

112 (1) No later than thirty days after the date of termination, each party shall
113 appoint an actuary to determine an estimated sum due as a result of the termination of
114 the reinsurance contract calculated in a way expected to make the parties economically
115 indifferent as to whether the reinsurance contract continues or terminates, giving due
116 regard to the economic effects of the insolvency. The sum shall take into account the
117 present value of future cash flows expected under the reinsurance contract and be based
118 on a gross premium valuation of net liability using current assumptions that reflect post-
119 insolvency experience expectations, with no additional margins, net of any amounts
120 payable and receivable, with a market value adjustment to reflect premature sale of
121 assets to fund the settlement;

122 (2) Within ninety days of the date of termination, each party shall provide the
123 other party with its estimate of the sum due as a result of the termination of the

124 reinsurance contract, together with all relevant documents and other information
125 supporting the estimate. The parties shall make a good faith effort to reach agreement
126 on the sum due;

127 (3) If the parties are unable to reach agreement within ninety days following the
128 submission of materials required in subdivision (2) of this subsection, either party may
129 initiate arbitration proceedings as provided in the reinsurance contract. In the event
130 that the reinsurance contract does not contain an arbitration clause, either party may
131 initiate arbitration pursuant to this subdivision by providing the other party with a
132 written demand for arbitration. The arbitration shall be conducted pursuant to the
133 following procedures:

134 (a) Venue for the arbitration shall be within the county of the court's jurisdiction
135 pursuant to section 375.1154, or another location agreed to by the parties;

136 (b) Within thirty days of the responding party's receipt of the arbitration
137 demand, each party shall appoint an arbitrator who is a disinterested active or retired
138 officer or executive of a life or health insurance or reinsurance company, or other
139 professional with no less than ten years' experience in or relating to the field of life or
140 health insurance or reinsurance. The two arbitrators shall appoint an independent,
141 impartial, disinterested umpire who is an active or retired officer or executive of a life or
142 health insurance or reinsurance company, or other professional with no less than ten
143 years' experience in the field of life or health insurance or reinsurance. If the
144 arbitrators are unable to agree on an umpire, each arbitrator shall provide the other
145 with the names of three qualified individuals, each arbitrator shall strike two names
146 from the other's list, and the umpire shall be chosen by drawing lots from the remaining
147 individuals;

148 (c) Within sixty days following the appointment of the umpire, the parties shall,
149 unless otherwise ordered by the panel, submit to the arbitration panel their estimates of
150 the sum due as a result of the termination of the reinsurance contract, together with all
151 relevant documents and other information supporting the estimate;

152 (d) The time periods set forth in these paragraphs may be extended upon mutual
153 agreement of the parties;

154 (e) The panel shall have all powers necessary to conduct the arbitration
155 proceedings in a fair and appropriate manner, including the power to request additional
156 information from the parties, authorize discovery, hold hearings, and hear testimony.
157 The panel also may appoint independent actuarial experts, the expense of which shall be
158 shared equally between the parties;

159 (4) An arbitration panel considering the matters set forth in this subsection shall
160 apply the standards set forth in this subsection and shall issue a written award

161 specifying a net settlement amount due from one party or the other as a result of the
162 termination of the reinsurance contract. The receivership court shall confirm that
163 award absent proof of statutory grounds for vacating or modifying arbitration awards
164 under the Federal Arbitration Act;

165 (5) If the net settlement amount agreed or awarded pursuant to this subsection is
166 payable by the reinsurer, the reinsurer shall pay the amount due to the estate subject to
167 any applicable set-off under section 375.1198. If the net settlement amount agreed or
168 awarded pursuant to this subsection is payable by the ceding insurer, the reinsurer shall
169 be deemed to have a timely filed claim against the estate for that amount, which claim
170 shall be paid pursuant to the priority established in subsection 5 of section 375.1218.
171 The affected guaranty associations shall not be entitled to receive the net settlement
172 amount, except to the extent they are entitled to share in the estate assets as creditors of
173 the estate, and shall have no responsibility for the net settlement amount.

174 10. Except as otherwise provided in this section, nothing in this section shall alter
175 or modify the terms and conditions of any reinsurance contract. Nothing in this section
176 shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a
177 reinsurance contract. Nothing in this section shall give a policyholder or beneficiary an
178 independent cause of action against a reinsurer that is not otherwise set forth in the
179 reinsurance contract. Nothing in this section shall limit or affect any guaranty
180 association's rights as a creditor of the estate against the assets of the estate. Nothing in
181 this section shall apply to reinsurance contracts covering property or casualty risks.

182 11. This section and subdivision (10) of subsection 1 of section 376.734 shall be
183 construed together in a manner that is consistent with each other and with the purpose
184 provided for in section 376.715.

380.621. 1. This section shall be known and may be cited as the "Protecting
2 Missouri's Mutual Insurance Companies Act".

3 2. As used in this section, the following terms shall mean:

4 (1) "Adequate reinsurance", commercially available reinsurance as deemed
5 appropriate by the board of directors of the company;

6 (2) "Unlimited aggregate reinsurance", aggregate reinsurance coverage where
7 the losses covered by the reinsurer are not limited.

8 3. Notwithstanding any provision of law to the contrary, the authority expressly
9 granted in this chapter shall be the sole authority granted to the department over any
10 Missouri mutual insurance company operating under the provisions of this chapter,
11 provided that any provisions regarding premium taxation set forth in chapter 148 that
12 are applicable to Missouri mutual insurance companies shall remain applicable to
13 Missouri mutual insurance companies and further, provided that chapter 382 shall

14 remain applicable to any Missouri mutual insurance company that is a member of, or is
15 seeking to become a member of, an "insurance holding company system", as that term
16 is defined in section 382.010, provided that any examination authorized by chapter 382
17 shall comply with subsections 6 and 7 of this section where a Missouri mutual insurance
18 company owns, in whole or part, an affiliate subject to examination. The department
19 shall not require any company operating under the provisions of this chapter to waive
20 any rights, benefits, or requirements specified in this chapter, nor shall it confer
21 favorable treatment in exchange for, nor condition the granting of any exception upon,
22 any company conceding additional regulatory oversight by the department. If the
23 department and any company operating under the provisions of this chapter have
24 entered into any agreement in which the department has received concessions including,
25 but not limited to, additional regulatory oversight beyond the authority expressly
26 granted in this chapter, such agreement as it relates to the department's authority is
27 void upon the enactment of this section, but such agreement shall remain in full force
28 and effect for the stated duration of the agreement as it relates to any benefits,
29 allowances, or exemptions granted to the company by the agreement.

30 4. (1) Notwithstanding any provision of law to the contrary, nothing in this
31 chapter nor any regulation promulgated by the department including, but not limited
32 to, any regulation promulgated under sections 374.045, 380.021, 380.271, and 380.561,
33 shall require or be construed to require any company operating under the provisions of
34 this chapter to acquire or carry reinsurance greater than adequate reinsurance
35 including, but not limited to, unlimited aggregate reinsurance. Nothing in this section
36 shall be construed to limit the option of an offer of unlimited aggregate reinsurance.

37 (2) Missouri mutual insurance companies operating under the provisions of this
38 chapter shall annually file the following with the director no later than March first of
39 each calendar year:

40 (a) Documentation from the reinsurer or broker of its reinsurance program,
41 such as the reinsurance coverage summary or other similar documentation; and

42 (b) A resolution from the company's board of directors stating that:

43 a. The board has reviewed the terms of the reinsurance obtained by the company
44 and believes it is sufficient to protect the financial stability of the company for the
45 upcoming calendar year;

46 b. The board agrees to notify the director within fifteen days after any event, or
47 as soon as practicable thereafter if adverse development occurs to trigger this
48 notification, that is expected to exceed the company's aggregate or catastrophe
49 attachment point or could cause the company's reinsurance coverage to be exhausted;
50 and

51 c. The board agrees to notify the director within fifteen days after the company
52 identifies liquidity concerns that could impact the company's ability to pay claims or
53 determines that the company's surplus is less than its admitted assets minus liabilities
54 plus the reserve fund or adequate guaranty fund required by section 380.021 or 380.271,
55 as applicable.

56 5. Notwithstanding any provision of law to the contrary including, but not
57 limited to, the provisions of section 380.321, the director shall not have the authority to
58 hold a hearing regarding a proposed merger of companies operating pursuant to the
59 provisions of this chapter unless the director has substantial and competent evidence to
60 believe the proposed merger will prejudice the interests of the policyholders of the
61 companies. The director shall have fifteen business days to review the petition for
62 merger and, upon substantial and competent evidence to believe the proposed merger
63 will prejudice the interests of the policyholders of the companies, send a written notice
64 of a hearing regarding the proposed merger. The written notice of hearing shall itemize
65 the reasons why the director believes the proposed merger will prejudice the
66 policyholders of the companies and shall include the date of a hearing regarding the
67 proposed merger no earlier than thirty days and no later than sixty days after the notice
68 of hearing is received by the companies involved in the proposed merger.

69 6. All working papers, recorded information, documents, and copies thereof,
70 produced by, obtained by, or disclosed to the department or any other person in the
71 course of an examination made under this chapter shall be confidential and not subject
72 to subpoena and shall not be made public by the department or shared with any other
73 person, except as follows:

74 (1) Upon adoption, the director may open the final examination report for public
75 inspection;

76 (2) The director may disclose the content of an examination report, preliminary
77 examination report or results, or any matter relating thereto, to the insurance
78 department of this or any other state or country, or to law enforcement officials of this
79 or any other state or agency of the federal government at any time, so long as such
80 agency or office receiving the report or matters relating thereto agrees in writing to hold
81 it confidential and in a manner consistent with this section; and

82 (3) In the event the director determines that legal or regulatory action is
83 appropriate as a result of any examination, he or she may initiate any proceedings or
84 actions as provided by law.

85 7. (1) Notwithstanding the provisions of section 380.491, the department shall
86 not charge a rate for examinations in excess of a reasonable fee. A reasonable fee is

87 determined by the average market rate typically charged by third-party vendors for
88 such services.

89 (2) At any time after notification of the commencement of an examination and
90 through its completion, a company may request on a prospective basis that the
91 department's monthly examination billing statements include the following additional
92 details:

93 (a) Hours billed for an examination shall be recorded in a billing statement
94 provided to the company each month that sets forth the time spent, using fifteen-minute
95 increments, for each billing examiner multiplied by the applicable hourly rate;

96 (b) Billing statements shall include a short and concise statement of the work
97 performed during the month to which the billing statement applies by the billing
98 examiner for each period of time spent on the examination;

99 (c) The hourly rate for a department employee shall be listed on the billing
100 statement and shall include the employee's salary, benefits, and other expenses of the
101 examination;

102 (d) The hourly rate for a third-party vendor shall be the lowest and best hourly
103 rate obtained by the department by and through the state procurement process; and

104 (e) Billing statements shall also include any other expenses of the examination,
105 including travel expenses, as allowed by section 380.491.

106 (3) At any time after notification of the commencement of an examination and
107 through its completion, a company may request a scheduling conference with the
108 department to discuss the following:

109 (a) The purpose and scope of the examination;

110 (b) The estimated costs of the examination;

111 (c) The types of information that the company will be asked to produce;

112 (d) The most efficient means of conducting the examination; and

113 (e) Any alternative approaches in conducting the examination that would be
114 more convenient, less burdensome, or less expensive for the company while still
115 providing for an effective examination by the department.

116 (4) (a) No more than thirty days after the scheduling conference, the department
117 shall provide the company with a detailed written budget estimate for the examination
118 that shall, for each forthcoming phase of the examination:

119 a. Identify the individuals or firms performing the examination and their daily
120 or hourly rates;

121 b. Provide an estimate of travel, lodging, meal, and other administrative or
122 supply costs; and

123 c. Estimate the length of time necessary to conduct on-site and off-site
124 examination activities.

125 (b) Within fifteen days of receipt of a budget estimate under paragraph (a) of
126 this subdivision, the company and the department shall have an additional discussion
127 regarding the most efficient means of conducting the examination and producing
128 information. If necessary, revisions of the budget estimate shall be made.

129 (c) The time periods under paragraphs (a) and (b) of this subdivision may be
130 extended if the company and the department mutually agree to the extension.

131 (d) At any time during the examination, the department shall hold another
132 scheduling conference with the company in accordance with the provisions of this
133 subsection and provide a revised budget estimate as set forth in paragraph (a) of this
134 subdivision if:

135 a. The department determines that the cost of the examination will exceed the
136 stated estimated budget by more than ten percent; or

137 b. There is a material change in staffing.

**380.631. 1. This section applies to any company operating under the provisions
2 of this chapter.**

3 **2. Notwithstanding any provision of law to the contrary including, but not
4 limited to, the definition of "insolvent" under section 375.1152, a company operating
5 under the provisions of this chapter is "insolvent" as such term is used in sections
6 375.1150 to 375.1246, if it is unable to pay its obligations when they are due, or if its
7 admitted assets do not exceed its liabilities plus the reserve fund or adequate guaranty
8 fund required by section 380.021 or 380.271, as applicable.**

9 **3. Notwithstanding any provision of law to the contrary including, but not
10 limited to, the specific exception under subdivision (1) of subsection 2 of section
11 375.1150, the provisions of sections 375.1150 to 375.1246 shall apply to all companies
12 operating under the provisions of this chapter, except that such companies shall not be
13 subject to sections 375.1160 to 375.1164. Sections 375.570 to 375.750 shall apply to such
14 proceedings.**

15 **4. Notwithstanding any provision of law to the contrary including, but not
16 limited to, the definition of "insolvent insurer" under section 375.772, a company
17 operating under the provisions of this chapter is an "insolvent insurer" as such term is
18 used in sections 375.771 to 375.779, upon the entry of a final order of liquidation with a
19 finding of insolvency by a court of competent jurisdiction under the applicable**

20 **provisions of sections 375.1150 to 375.1246, unless such order of liquidation has been**
21 **stayed or been the subject of a writ of supersedeas or other comparable order.**

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